Chapter 7.

Open government in Peru

This chapter assesses Peru’s open government reform agenda including the initiatives taken to promote stakeholder engagement at the central and local levels. It benchmarks Peru against OECD instruments, standards and principles. The chapter recognises the Secretariat of Public Management in the Presidency of the Council of Ministers as a key actor. This body is in charge of co-ordinating, designing and implementing open government policies in Peru. The chapter also acknowledges recent efforts to incorporate open government principles into the ongoing public sector reform efforts. The chapter concludes with a set of recommendations to support Peru’s open government agenda.

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.
Introduction

The purpose of this chapter is to assess the relevance of Peru’s open government (OG) initiatives within the broader framework of the ongoing public sector reform efforts the country is undertaking and that are the focus of this review. This assessment makes specific reference to the role played by stakeholder engagement initiatives at the central and local levels. The chapter also provides an update on the information contained in the case study on open government in Peru in Open Government in Latin America (OECD, 2014); in so doing it assesses progress in relation to the previous recommendations. The chapter benchmarks Peru against OECD instruments, standards and principles; highlights good practices; and identifies areas where further improvement could be pursued by the government to align more clearly Peruvian OG policy with international good practice in this area.

The role of citizens’ participation in the policy cycle from an OECD perspective

The methodology used in this chapter, reflects the OECD approach to open government, which in turn is based on the OECD’s Guiding Principles for Open and Inclusive Policy Making and its extensive experience in working with member and non-member governments to conduct Public Governance Reviews and Open Government Reviews. The assessment and recommendations presented in this chapter reflect the ongoing collaboration between the OECD and the Open Government Partnership (OGP), to which the OECD is supporting OGP member countries and candidate countries to join, develop their action plans and carry them forward to implementation.

Figure 7.1. The OECD supports the Open Government Partnership

As an official multilateral partner of the Open Government Partnership (OGP) since 2013, the OECD supports current and aspiring members by providing policy advice and technical assistance to implement the reforms necessary to meet the OGP eligibility criteria, draft and implement the OGP action plans, and assess their impact.

OECD approach to open government

The OECD has been at the forefront of international efforts to promote and disseminate open government policies and practices for over ten years. Open government brings together a range of issues related to how government interacts with citizens and other stakeholders. Figure 7.2 summarises the main features of an open government.

Since 2001, the OECD has collected and analysed information demonstrating the importance of citizens’ participation in the design and implementation of better public policies and in the delivery of citizen-centred public services. In collaboration with senior public officials from member countries committed to improve government-citizen...
Box 7.1. Guiding Principles for Open and Inclusive Policy Making

1. Commitment: Leadership and strong commitment to open and inclusive policy making is needed at all levels – politicians, senior managers and public officials.

2. Rights: Citizens’ right to information, consultation and public participation in policy making and service delivery must be firmly grounded in law or policy. Government obligations to respond to citizens must be clearly stated. Independent oversight arrangements are essential to enforcing these rights.

3. Clarity: Objectives for, and limits to, information, consultation and public participation should be well defined from the outset. The roles and responsibilities of all parties must be clear. Government information should be complete, objective, reliable, relevant, and easy to find and understand.

4. Time: Public engagement should be undertaken as early in the policy process as possible to allow a greater range of solutions and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective.

5. Inclusion: All citizens should have equal opportunities and multiple channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.

6. Resources: Adequate financial, human and technical resources are needed for effective public information, consultation and participation. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports both traditional and online tools.

7. Co-ordination: Initiatives to inform, consult and engage civil society should be co-ordinated within and across levels of government to ensure policy coherence, avoid duplication and reduce the risk of “consultation fatigue.” Co-ordination efforts should not stifle initiative and innovation but should leverage the power of knowledge networks and communities of practice within and beyond government.

8. Accountability: Governments have an obligation to inform participants how they use inputs received through public consultation and participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny can help increase accountability of, and trust in, government.

9. Evaluation: Governments need to evaluate their own performance. To do so effectively will require efforts to build the demand, capacity, culture and tools for evaluating public participation.

10. Active citizenship: Societies benefit from a dynamic civil society, and governments can facilitate access to information, encourage participation, raise awareness, strengthen citizens’ civic education and skills, as well as support capacity building among civil society organisations. Governments need to explore new roles to effectively support autonomous problem-solving by citizens, civil society organisations and businesses.

These principles reflect the belief that governments, in order to reap fully the benefits of active interaction with their citizens, should inform and consult them and actively engage with them not merely as subjects, but as partners. These relationships are defined by the OECD (Figure 7.3) as follows (OECD, 2001):

- **Information is a one-way relationship** in which government produces and delivers information for use by citizens. It covers both “passive” access to information upon demand by citizens and “active” measures by government to disseminate information to citizens. Examples include: access to public records, official gazettes and government websites.

- **Consultation is a two-way relationship** in which citizens provide feedback to government. It is based on the prior definition by government of the issue on which citizens’ views are being sought and requires the provision of information. Governments define the issues for consultation, set the questions and manage the process, while citizens are invited to contribute their views and opinions. Examples include: public opinion surveys, comments on draft legislation.

- **Active participation is a relation based on partnership** with government, in which citizens actively engage in defining the process and content of policy making. It acknowledges equal standing for citizens in setting the agenda, proposing policy options and shaping the policy dialogue – although the responsibility for the final decision or policy formulation rests with government. Examples include: consensus conferences, citizens’ juries.

Based on more than a decade of policy analysis, data collection and elaboration, OECD member countries have shown that open government policies can be used successfully to improve the efficiency and effectiveness of the public administration and increase the transparency and accountability of the public sector as a whole (government and public administration alike). These improvements open the door to positive effects on citizens’ trust and hence on good governance and democracy, promote economic development and ultimately generate inclusive growth. To manage consultation and co-operation in an effective manner, it is key that government, civil society organisations (CSOs) and other stakeholders establish and use a set of consistent guidelines that translate the above principles into practical procedures. Box 7.2 presents a number of
factors that should be taken into consideration in designing a specific consultation and tailoring the overall guidelines to the needs of a particular case.

Figure 7.3. Defining information, consultation and active participation

Box 7.2. Understanding the key factors in citizen participation

Citizen participation can take a wide variety of forms depending on the presence and extent of many key features.

- **Size.** Size of a process can range from a few participants to hundreds or thousands, and online processes potentially involve millions.

- **Purpose.** Processes are used for many reasons: to explore an issue and generate understanding, to resolve disagreements, to foster collaborative action or to help take decisions, among others.

- **Goals.** Objectives can include informing participants, generating ideas, collecting data, gathering feedback, identifying problems or taking decisions, among others.

- **Participants.** Some processes involve only expert administrators or professional or lay stakeholders, while others involve selected or diffuse members of the public.

- **Participant recruitment.** Processes may use self-selection, random selection, targeted recruitment and incentives to bring people to the table.

- **Communication mode.** Processes may use one-way, two-way and/or deliberative communication.

- **Participation mechanisms.** Processes may occur face-to-face, online and/or remotely.

- **Named methodology.** Some processes have official names and may even be trademarked; others do not employ named methodologies.

- **Locus of action.** Some processes are conducted with intended actions or outcomes at the organisational or network level, whereas others seek actions and outcomes at the neighbourhood or community level, the municipal level, the state level, the national level or even the international level.

- **Connection to policy process.** Some processes are designed with explicit connections to policy and decision makers (at any of the loci listed above), while others have little or no connection to policy and decision makers, instead seeking to invoke individual or group action or change.

Policy makers in OECD countries broadly agree that promoting an open and inclusive government is a prerequisite for building trust between citizens and governments and promoting a transparent and accountable government. An open government also promotes a level playing field for businesses, thus contributing to economic development. Accordingly, they have put in place a number of mechanisms that facilitate fair and equitable access to information and services for all stakeholders and leverage the opportunities for citizen’s engagement in the policy-making process (OECD, 2013).

As part of their efforts to promote an open government, OECD countries adopted the above-mentioned guiding principles (see Box 7.1) that recognise that citizen participation in the policy cycle contributes to further transparency and accountability of governments and leads to building trust between citizens and their public administration. However, to strengthen this relationship, among other things, governments need to ensure that:

- there is a national open government strategy or plan that includes a component on citizen participation; its principles and implications are well understood horizontally in line ministries and across levels of government; public officials throughout the administrations have the necessary capacities to implement initiatives in an inclusive and participatory manner
- citizens and CSOs are actively involved in the entire policy cycle and on a continuous basis
- complete, objective, reliable, relevant and easy to understand information is made available in order for governments to be exposed to public scrutiny.

Examples of mechanisms that have been implemented across OECD countries include national open government policies or directives (i.e. the United States\(^1\)\(^2\)\(^3\)\(^4\) and Canada)\(^4\)^, open government action plans (i.e. all OGP members)\(^5\), ad hoc or permanent steering committees specifically dedicated to the management and implementation of the open government agenda at national (i.e. in Tunisia)\(^6\) or local levels (i.e. the state of New York)\(^7\), access to information (or freedom of information) laws (almost all OECD countries), more or less formal two-way citizen engagement mechanisms, often enabled by the use of information and communications technology (ICTs).

Policy and legal frameworks for participation in Peru

Peru has demonstrated a long-standing willingness to achieving stronger government-citizen relations and to improve policy making and service provision through the enhancement of openness, transparency and participation in the policy-making processes. Open government principles have been included as a building block of its democracy since the adoption of the 1993 Constitution, where access to information was set as a fundamental right (Article 2, item 5) and in Law 27245 of 1999 on Fiscal Prudence and Transparency (Ley de Prudencia y Transparencia Fiscal). They also constitute a cross-cutting theme in the 2013 National Policy for the Modernisation of Public Administration and its related implementation plan (Política Nacional de la Modernización de la Gestión Pública DS 004-2013-PCM and Plan de Implementación RM 125-2013-PCM).

In addition, Peru’s prioritisation of openness was included as an essential aspect of the National Agreement (Acuerdo Nacional) of 2002 (OECD, 2014; see below and Chapter 2). As described in Chapter 2, the National Agreement is a consultation and consensus-building institutional mechanism whose main purpose is to define state reform
objectives and related policies with a long-term vision (to 2021), based on dialogue and consultation. Objective 4 of the National Agreement, “An efficient, transparent and decentralised state”, clearly sets the basis for a more open, transparent and inclusive government. It is supported by three specific policy objectives:

1. confirmation of an efficient and transparent state
2. promotion of ethics and transparency and eradicating corruption, money laundering, tax evasion and smuggling in all its forms
3. access to information, freedom of expression and freedom of the press.

Reflecting this, over the years Peru has established a series of provisions that have contributed to strengthening the legal framework for an open and participatory government (Box 7.3), with the notable feature that citizen participation enjoys broad protections at all levels of government. In June 2009, Peru signed the Ibero-American Charter on Citizen Participation in Public Administration, which sets out a series of public policy implementation guidelines in this area.

**Box 7.3. Legal framework for citizens’ participation in Peru**

**Constitution**

- Article 2, subsection 17 – Participate individually or collectively, in political, economic, social and cultural life of the nation. Citizens have, according to the law, rights of election, removal or revocation of authorities, rights of legislative initiative and rights of referendum.
- Article 5, subsection 5 – “Everyone has the right to express the information which she or he wants to obtain from any public entity without giving the cause at the legal term with the costs according to the order”.
- Article 31 – Citizens have the right to participate in public affairs through referendum; legislative initiative, removal or revocation of authorities and demand for accountability. They also have the right to be elected and to freely elect their representatives, in accordance with the conditions and procedures specified by organic law. It is the right and duty of residents to participate in the municipal government of their jurisdiction.
- Article 41 – The civil servants and public servants mentioned by law or who administer funds of the state or bodies affiliated with these funds shall declare juristically their assets and incomes when taking office, as well as when ending their time in office.
- Article 199 – Established that the regional and local governments formulate their budgets with the participation of society and render account of their performance, annually under the responsibility in accordance with the law.

**Laws and decrees**

- Law 26300 of 1994, Law on the Right of Participation and Citizen Control (Ley sobre los Derechos de Participación y Control Ciudadanos).
- Supreme Decree No. 001-2000-JUS, regulates the use of advanced technology in the area of archiving the documents and information to public and private entities.
Box 7.3. Legal framework for citizens’ participation in Peru (continued)

- Supreme Decree No. 018-2001-PCM, provided that the entities of the public sector incorporate a procedure in their legal texts on administrative procedures to facilitate citizens’ access to information, which the citizens own or produce.

- Decree of Urgency 035-2001, Access for Citizens to Public Finances (*Acceso Ciudadano a Información sobre Finanzas Públicas*).

- Law 27482 of 2001, Law Regulating the Publication of the Disclosure of Revenue, Property and Income of Civil Servants and Public Officials (*Ley que Regula la Publicación de la Declaración Jurada de Ingresos y de Bienes y Rentas de los Funcionarios y Servidores Públicos del Estado*).

- Law 27444 of 2001, Law of the General Administrative Procedure (*Ley del Procedimiento Administrativo General*), establishes “mechanisms for the reception of complaints and other mechanisms of citizen participation” (Article 48.3). Article 110.1 — the right to petition includes the request for information, possessed by the entities, following the intended regime as laid down in the Constitution and the law. It also acknowledges citizens’ participation as a tool to enhance the performance of the public administration.

- Decree of Urgency 077-2001, creation of the Portal of Economic Transparency and Office for Economic and Citizen Information.

- Supreme Decree No. 166-2001-EF, approval of the incorporation of the Office for Economic and Citizen Information in the organic structure of the Ministry of Economy and Finance.

- Supreme Decree No. 060-2001-PCM, state portal of Peru as an interactive system of information to the citizens via the Internet.

- Director’s Resolution 234-2001-INEI “Norms and technical procedures of the web content in the public administration entities”.

- Law 27658 of 2002, Framework Law for the Modernisation of the State Administration (*Ley Marco de la Modernización de la Gestión del Estado*)

- Law 27783 of 2002, Law of the Basis of the Decentralisation (*Ley de Bases de la Descentralización*), which provides that regional and local governments are obliged to promote citizen participation in the formulation, discussion and co-ordination of development plans and budgets, and in public management. For this purpose they must ensure access to public information for all citizens, with the exceptions provided by law, and the establishment and operation of spaces and mechanisms of consultation, co-ordination, control, evaluation and accountability.


- Supreme Decree No. 030-2002-PCM, Regulation of the Law of the Modernisation of the Public Administration.


- Law 27867 of 2002, Organic Law of the Regional Governments (*Ley Orgánica de Gobiernos Regionales*), Article 8 provides that regional management will develop and make use of instances and concrete strategies for citizens’ participation in the different phases of formulation, monitoring, control and evaluation of public management, and of the implementation of plans, budgets and regional projects.
Box 7.3. Legal framework for citizens’ participation in Peru (continued)

- Supreme Decree No. 043-2003-PCM, approval of the legislative text of the Law 27806, Law on Transparency and Access to Public Information.
- Supreme Decree No. 072-2003-PCM, approval of the Regulation of the Law on Transparency and Access to Public Information.
- Law 28044 of 2003, General Law of Education (*Ley General de Educación*), Article 2, members of the indigenous population shall be empowered to actively participate in education programs (Article 20.d). In addition, Article 69 establishes various bodies of citizen oversight and participation, such as the Institutional Education Council (*Consejo Educativo Institucional*).
- Supreme Decree No. 059-2004-PCM administration of the “Portal of the State Peru”.
- Supreme Decree No. 032-2006-PCM, Portal of Services to Citizens and Enterprises.
- Directive 02-2006-CG Citizen Watchdog Procedure in Public Entities (*Veeducaría Ciudadana*) approved by Comptroller’s Resolution 155-2006-CG, which “enables the organized participation of the citizenry in governmental oversight activities through citizen watchdog organizations, for the purposes of which the Office of the Comptroller General will participate by providing training and technical advisory services for members of the public who engage in citizen oversight, in order to ensure that their efforts contribute to the technical activities performed by the National Oversight System in the exercise of governmental control”.
- Decision of the Comptroller Office No. 273-2007-CG, Citizen Brigades of the Comptroller General of the Republic (*Brigadas Ciudadana de la Contraloría General de la República*), created with the aim of becoming a support mechanism for the preventive control and oversight of the Comptroller General of the Republic.
- Supreme Decree No. 027-2007-PCM approved the national politics of obligatory compliance with the entities of the national government.
- Supreme Decree No. 142-2009, Regulation of the Law on the Framework of Participatory Budget (*Reglamento de la Ley Marco del Presupuesto Participativo*) includes civil society in the budgetary processes on the regional and local level (Article 7.1). Eventually, citizen participation in implementation, control and sustainability of the investment projects shall lead to higher social commitment (Article 7.2).
Box 7.3. Legal framework for citizens’ participation in Peru (continued)

- Supreme Decree 002-2009-MINAM, Regulation on Transparency, Access to Environmental Public Information and Citizens Participation and Consultation in Environmental Matters (Reglamento sobre Transparencia, Acceso a la Información Pública Ambiental y Participación y Consulta Ciudadana en Asuntos Ambientales) seeks to enhance access to information and active citizen participation. Article 26 “Public agencies with environmental responsibilities must have qualified personnel to conduct public participation procedures. Moreover, they shall organise capacity training for its personnel with the goal of developing effective participation, based on the principles of inclusion, efficiency, collaboration and co-operation”. Citizen participation shall be reflected in the following processes:
  - elaboration and diffusion of information on the environment
  - design and application of policies, norms and instruments of environmental expenditures
  - evaluation and implementation of projects of public expenditures, including projects on natural resources
  - follow up, control and environmental monitoring, including the complaints for infringements to the environmental legislation or dangers or violations of the environmental rights and citizen vigilance (Article 28).
- Supreme Decree 063-2010-PCM, approved the implementation of the Portal for Transparency Standards in the Public Administration Entities.
- Supreme Decree 063-2010-PCM, Implementation of the Portal for Transparency Standards in the Public Administration Entities.
- Supreme Decree 028-2011-EM created the Permanent Multisector Commission for the Monitoring and Supervision of Transparency in the use of resources which are obtained by the state for the development of extractives industries of mining and hydrocarbon.

Source: Government of Peru.

However, despite this comprehensive legal framework, it appears that its impact has been limited. This is recognised by the government itself in its responses to the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC) questionnaire, in which it stated that “the provisions have been inadequate for promoting citizen participation” (OAS, 2004):

- In its 2009 report, the MESICIC went as far as affirming that “the framework for citizen participation was not only inadequate; it had also been devised in such a complicated fashion as to be, in practice, impossible to apply” (OAS, 2009). Consequently, the MESICIC has recommended to Peru that it continue to improve and
implement its mechanisms to encourage CSOs to collaborate with the public administration and to repeal those rules that discourage such participation.

- In the 2013 MESICIC report, Peru enumerated the commitments established under the OGP 2012-13 Action Plan, to which the commission recognised Peru’s efforts to reinforce the mechanisms for citizens’ participation. It also noted that the implementation of those commitments was still a work in progress.

In recent years, Peru has tried to involve CSOs in decision making in other contexts. A case in point is the participation of civil society and the private sector in the High-level Commission against Corruption (CAN) to which, according to Law 29976 of 2013, six representatives of civil society are members. In fact, the President of the Consejo Nacional para la Ética Pública (Proética, Peru’s chapter of Transparency International), the President of the National Confederation of Private Business Associations (Confederación Nacional de Instituciones Empresariales Privadas), a representative of the labour unions of Peru, a representative from the Catholic church, a representative from the Evangelical church and the Executive Director of the Peruvian Press Council can participate in the sessions of the CAN, although they cannot vote. Another recent initiative is Infobras, established to promote social accountability in infrastructure projects.

Definition and implementation of a national open government agenda

The Public Management Secretariat (Secretaría de la Gestión Pública, SGP; see Chapter 2) in the Presidency of the Council of Ministers is the public body in charge of co-ordinating the implementation of the National Policy for the Modernisation of Public Administration and of all transparency and open government initiatives (as provided by Supreme Decree No. 057-2008-PCM on the rules of procedure regarding the organisation and functions of the Office of the President of the Council of Ministers). Specifically, it has the function of co-ordinating the drafting and implementation of Peru’s OGP Action Plan and it supervises the correct and uniform implementation of the standard transparency portals of all government entities.

This reflects good practice in most OECD countries: countries identify an office, often placed in the centre of government, to co-ordinate such policies. This is the case here. That said, the continuous change of prime minister (even since Peru sent its letter of intent to the OGP on 15 September 2011) and consequently of PCM staff has inevitably affected the continuity of the PCM’s action, its effectiveness and impact. For instance:

- As of September 2013, according to Peru’s own Self-assessment Report of the Open Government Action Plan (Reporte de Cumplimiento Plan de Acción de Gobierno Abierto del Perú), only 7 out of the 47 commitments of the Action Plan were fully completed, 18 were in process and 22 were in the information gathering phase (PCM, 2013).

- In addition, these constant changes may also explain the different approaches used to carry out the consultation phases of the different OGP action plans. According to Proética, Peru’s chapter of Transparency International, “the constant change of President of the Council of Ministers and the instability of their technical staff inside the PCM has been a major cause of delays on the action plan” (Proética, 2014a).

Overall, the PCM and the government in general are to be praised for having sustained the pursuit of open government objectives as a policy priority over the past decade, despite numerous prime ministers. That said, one of the outcomes of this
instability appears to be the lack of an overall national open government vision which links the principles of transparency, accountability and participation to Peru’s broader public sector reform and overall development plan. Although open government has been established as a cross-cutting theme in the 2013 National Policy for the Modernisation of Public Administration and its related implementation plan (Política Nacional de la Modernización de la Gestión Pública DS 004-2013-PCM and Plan de Implementación RM 125-2013-PCM), this initial and important step needs to be accompanied by a national open government policy that includes more specific guidelines on how to streamline open government across the whole government development agenda, the desired results, and the mechanisms to measure implementation and impact. It is essential that this open government policy be linked to Peru’s broader development objectives and to specific high-priority elements on the public governance reform agenda in the country, such as its integrity and anti-corruption initiatives.

In fact, linkages between open government and public sector integrity and anti-corruption policies, a key whole-of-government priority, can sustain continuity and boost impact. While the Public Management Secretariat has purposely tried to use the OGP action plans to compensate for this lack of a government-wide vision on open government, the plans’ short-term nature and focus on specific initiatives preclude their capacity to provide the necessary strategic framework to guide policy design and implementation horizontally across the government and between levels of government.

1st Action Plan 2012-2013: A dissemination and consensus-building exercise

Evidence suggests that Peru’s first OGP Action Plan was a participative exercise. In 2011, the Ministry of Foreign Affairs, initial proponent of the initiative in Peru, invited relevant institutions (including the Ombudsman, the Comptroller General of the Republic and the PCM’s Public Management Secretariat, its National Electronic and Information Government Office and its High-level Anti-corruption Commission) to participate in the preparation of the Peruvian Action Plan. The invitation was extended to civil society, the private sector, trade union organisations and international co-operation agencies. In total, five public entities and four CSOs formed the Executive Committee for Open Government.

Once the draft Action Plan was ready, it was submitted to a consultation process that included citizens, CSOs and public entities. Half of the comments received were from public entities, 25% from CSOs and 25% from citizens (SGP, 2013). The Action Plan was finally approved in April 2012, through Ministerial Resolution 085-2012-PCM. There is a general consensus among both public officials and civil society activists that this process greatly contributed to the dissemination of the notion of open government principles among Peruvian public officials, many of whom were being exposed to them for the first time. While there is still a significant portion of the civil service, at both national and local levels, that would greatly benefit from specific training in these areas, the process that led to the initial OGP Action Plan and its implementation were the first significant steps the government took in this direction.

In order to ensure a proper implementation of the Action Plan, the Multisector Monitoring Commission (Comisión Multisectorial de Seguimiento, CMS) was established in January 2013 through Supreme Decree No. 003-2013-PCM. The CMS is comprised of officials from the central government, with the participation of representatives from the judiciary, the private sector and civil society. The SGP acts as a technical and co-ordinating body for this commission.
The result of this collaboration was an ambitious action plan containing 47 commitments with significant potential impact and relevance. Twenty-four of the 47 commitments were related to access to information, 14 to citizen participation, 18 to accountability, 4 to technology and innovation for transparency and accountability, and 9 to other topics. These commitments were subsequently transformed into activities and clustered in 12 new commitments as follows:

1. improve the regulatory framework for transparency and access to public information
2. improve tools for promoting participation
3. strengthen the institutional framework for transparency and access to public information
4. strengthen forums for participation
5. develop tools to increase transparency and access to public information
6. strengthen the participation capacity of CSOs and officials of public institutions
7. tools to improve integrity
8. improve and develop information and communication technology tools that facilitate the integration of government information
9. institutional framework to improve integrity
10. improve the regulatory framework of electronic government
11. revise and improve the regulatory framework for public integrity
12. co-ordinate public institutions’ electronic government efforts

According to the Independent Reporting Mechanism (IRM) (OGP, 2014a), the clustering process led to the omission of several of the initial commitments; in addition, the new commitments and indicators did not become public until ten months after the start of the implementation period, and were never clearly formalised (OGP, 2014a).
Even though the commitments were reduced to 12, at the end of its two-year period the overall implementation rate was still limited. This was partially due to overly ambitious goals, too many initiatives to be implemented in the allotted time frame, and the lack of structured and integrated monitoring and evaluation mechanisms. However, an important part of the responsibility is to be attributed to the limited legal, financial or regulatory capacity of the SGP to provide positive incentives or to sanction those institutions that do not comply with their commitments. In addition, although it was a participative action plan, such key actors as the Congress and regional/local governments were not involved in the process in a way that would have allowed them to influence the implementation of the plan: some of the activities were to be directly carried out by them.

2nd Action Plan 2014-2016: The challenge of re-establishing consensus

Despite limited implementation, the process that led to the drafting of the first OGP Action Plan can still be considered as a good example of participation and involvement of different stakeholders, especially from civil society. Although, the first versions of the 2nd OGP Action Plan were the result of a participative and inclusive process that included, inter alia, higher participation at the local level, the final approved OGP Action Plan 2014-16 has raised some concerns:

- At first, the process to develop it looked very much like an improved version of that used for the first plan. It was a participatory methodology that included workshops and meetings to gather inputs and suggestions on the commitments from public entities, CSOs and business associations. In addition, websites, Facebook and Twitter accounts were used extensively as communication channels to facilitate gathering additional contributions from those institutions that could not participate in the workshops, as well as from the general public (PCM, 2014).

- In some respects the design of the process was even better than that of the first plan, as it also included activities to extend its reach to the local level, as suggested by many national and international actors, through meetings in Ayacucho, Piura and San Martin. Based on these inputs, a draft was published online for public consultation. A final document was ready to be approved by the PCM and formalised through a ministerial resolution before the deadline of 15 June 2014, as mandated by the OGP. The draft document included the following major commitments (Proetica, 2014b):
  - the creation of an autonomous authority on transparency and access to information with punitive capacity
  - the creation of a national register of members affiliated to social programmes or state subsidies
  - the adoption of a regulation for the participation of citizens in the plenaries of the Supreme Court
  - the redesign of the accountability process of public entities supported by ICTs
  - the development of a technical standards, strategies and methodologies for open government data; interoperability of the state’s databases
  - courses in digital citizenship.

- However, the approval of this first version of the plan was delayed by a year; when it was finally adopted, in July 2015 and following a formal letter from the OGP Support
Unit (OGP, 2014b), the new version was different and covered only the period 2015-16. This second version was immediately met with numerous criticisms from CSOs, which focused not only on the delay by which the government had approved it, but also on the lack of transparency and participation which characterised its design phase.

- Key players in the Peruvian open government panorama among the CSOs involved in the drafting and implementation of the first plan, such as Proetica, declared that the government had lost leadership and interest in the open government agenda (Proetica, 2014b), that the approved Action Plan was not the same as the one they participated in drafting.9

- Moreover, it was of particular significance for CSOs the fact that the government had deleted any reference to the previously proposed creation of an authority to guarantee access to information (Proetica, 2014b), which was and still is considered by many of them to be a pillar of Peru’s open government agenda and a since qua non condition to improve the transparency and accountability of Peru’s public sector. CSOs suspended their participation in the Multisector Monitoring Commission as of 5 December 2014, following the unexplained refusal of the government to approve the 2014-16 OGP Action Plan and to create the above-mentioned authority.

As a result, several CSOs are demanding, through a joint press release signed by at least 30 of them, to include the following actions in the plan:10

- creation of the National Authority for Transparency and Access to Public Information to implement Peru’s transparency policy, with a national and regional level jurisprudence, and with a budget provided by the Ministry of Economy and Finance
- promotion of a specific anti-corruption policy to strengthen the High-level Anti-Corruption Commission, the regional anti-corruption prosecutors and the Anti-Corruption Observatory, instances that struggle to meet their mandated objectives
- establishing minimum standards to access public information in open data format
- consolidation of effective mechanisms for citizen participation at all levels of government, including the judiciary and Congress
- establishment of spaces dedicated to innovation and economic development, involving civil society
- promoting transparency in environmental issues and the extractive sector (procurement and environmental assessments) to enable a dialogue with communities and the proper implementation of the prior consultation provision for indigenous peoples.

This request from citizens and CSOs has been also supported by the Ombudsman’s Office of Peru: it had proposed to the executive branch15 the creation of a “National Authority for Transparency and Access to Public Information” even before the elaboration of the 1st OGP Action Plan. In its proposal, the authority should be established as an autonomous institution to carry out the following main duties:

- monitor and sanction breaches of the law
- resolve disputes in the administration, determining binding criteria
- promote and disseminate this right among citizens
- provide technical advice to public entities.
This proposal, which was backed by leading scholars, several civil society organisations and various media, was reiterated by the Ombudsman to the government in May 2013\textsuperscript{12} and August 2014.\textsuperscript{13}

According to the declarations of CSOs and government representatives interviewed in the framework of this review, the most important obstacle currently preventing a constructive dialogue on Peru’s national open government agenda is the creation of this authority.

During the 29 October 2015 session of the High-level Anti-corruption Commission, its members agreed to promote the adoption of the bill creating the National Authority for Transparency and Access to Public Information. Various technical meetings have been taking place to determine its level of independence and its main functions and roles. A final draft text has been finalised and will be presented to CAN members for their approval and subsequent submission to Congress.

OECD countries have different mechanisms to monitor the implementation of their access to information law (authorities, parliamentary committees, executive committees, national and/or regional ombudsmen, administrative courts, etc.). While the choice of the institution ultimately belongs to the government of Peru, in consultation with all relevant national stakeholders, if it wants to improve the transparency and accountability of its public sector effectively, it is paramount that it improves the compliance of its institutions with the law, either through the creation of a new oversight body or by formally handing this responsibility and associated powers to an existing office or institution.

This is in line with the OAS transparency model law, which suggests that an information commission should be established to be in charge of promoting the effective implementation of the freedom of information law. It should have a legal personality; operational, budgetary and decision-making autonomy; and should report to the legislature. It should be comprised of three (or more) commissioners, reflecting a diversity of skills and backgrounds. Specific duties and powers for the information commission need to be established, such as the mandate to:

- review any information held by a public authority, including on site
- \textit{sua sponte} monitor, investigate and enforce compliance with the law
- issue recommendations to public authorities.

Public authorities in turn need to report annually to the information commission on the activities of the public authority pursuant to, or in compliance with, the freedom of information law. The reports should contain information such as the number of requests for information received, granted in full or in part and refused, as well as appeals from refusals to communicate information. An overview of the role and responsibilities of such offices is provided in Box 7.4.
Box 7.4. Information commission(ers) and other oversight bodies and mechanisms

At a global level, there are four main types of oversight bodies for access to information laws, with some assigning the role to existing entities and others having established a specialised entity.

Creation of specialised entities:

- Information Commissioner (Hungary, Scotland, Serbia, Slovenia, United Kingdom)
- commission/institute (France, Mexico, Portugal)
- assignment of responsibility to an existing organisation:
  - Ombudsman given oversight (Bosnia and Herzegovina, New Zealand, Norway, Sweden).
  - other body given oversight (South Africa, Turkey).

The global trend tends towards one of the first approaches, that is, the establishment of either an information commissioner or an information commission (indeed, there is very little difference between the two; essentially it is a question of whether one or more individuals are charged with the role of commissioner, but apart from that the functions of these offices remain the same).

Typical powers and functions

There are a number of functions which are common to the information commissioners surveyed and to other information commissioners. These include the following:

- receive and review complaints from requestors:
  - review contested information
  - consult on matters of public interest
  - conduct onsite inspections.
- order release of information (binding)
- monitor compliance with the law, including proactive disclosure
- train public officials
- guide public authorities on interpreting and implementing the law
- raise awareness among the public and provide advice
- recommend how to strengthen access through existing and proposed legislation
- other powers:
  - submit *amicus curiae* briefs and appear as an expert in other court processes
  - exercise free rein in co-ordinating with other state bodies to ensure that administrative procedures and structures maximise compliance with the right to information
  - engage in international co-operation to be up to date on the latest global developments in the law and practice of the right to information.

In the case of Peru, the law does not foresee a specific institution, body or public entity to act as the guarantor of the right of access to information. Due to the fact that access to information is defined as a right in the Constitution and protected with habeas data proceeding (Constitution, Article 200, Part 3), the Ombudsman has taken the lead in receiving complaints from citizens, assessing and monitoring the implementation of the law, and providing training to public officials. However, due to the multiple activities that the Ombudsman carries out (described later in this chapter) and the lack of an enforcement role and of the power to impose sanctions, this solution can only be seen as partial. As stated before, it is important for Peru to create a specialised entity or identify an existing institution with the financial independence and human resources capacity to carry out the activities needed to guarantee fully implementation and the rule of law in this area. Peru could follow the examples of Chile, Mexico or the United States, as described in Box 7.5.

**Box 7.5. Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States**

**Chile**

The Council for Transparency is an autonomous public body with its own legal personality, created by the Law on Transparency of Public Service and Access to Information of the State’s Administration. Its main task is to ensure proper enforcement of the law, which was enacted on 20 August 2008 and became effective on 20 April 2009.

The boards’ direction falls under four designated counsellors appointed by the President, with the agreement of the Senate, adopted by two-thirds of its members. The board is entrusted with the management and administration of the Council for Transparency. The counsellors serve six years in office, may be appointed only for one additional period and may be removed by the Supreme Court at the request of the President or the Chamber of Deputies.

The council has the following main functions:

- monitor compliance with the provisions of the Law on Transparency and apply sanctions in case of infringements of them
- solve challenges for denial of access to information
- promote transparency in the public service by advertising information from the state administration bodies
- issue general instructions for the enforcement of legislation on transparency and access to information by the bodies of the state administration, and require them to adjust their procedures and systems to such legislation
- make recommendations to the bodies of the state administration aimed at improving the transparency of its management and to facilitate access to the information they possess
- propose to the President and to the Congress, where appropriate, rules, instructions other regulatory improvements to ensure transparency and access to information
- train directly or through third parties, public officials in matters of transparency and access to information
- carry out statistics and reports on transparency and access to information of the organs of the state administration and compliance of this law.
Box 7.5. Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States (continued)

Mexico
The National Institute on Transparency, Access to Information and Protection of Personal Data (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales) was established by the Federal Law on Transparency and Access to Public Governmental Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental) in 2002.

The institute is composed of a Commissioner President and six commissioners, who are appointed by the federal executive for six years, without the possibility of renewal. As laid down in the law, the institute shall work fully independent and report annually to Congress. Its threefold mandate can be summarised as guaranteeing the access of governmental information to the public, fostering accountability and defending the right to privacy. In addition, the institute aims at:

- assisting in the organisation of the national archives
- promoting a culture of transparency in public expenditures
- fostering accountability within the government to raise trust among its citizens
- contributing to the processes of analysis, deliberation, design and issuance of judicial norms of relevance to the archives and personal data
- enhancing the legislative processes targeted to improve and strengthen the normative and institutional framework for transparency and access to public information.

The United States
In the United States, the Office of Government Information Services, known as “the Federal FOIA ombudsman” was created within the National Archives and Records Administration. The Office of Government Information Services was created when the Open Government Act of 2007 amended the freedom of information law and is responsible for:

- Mediating disputes. Offer mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation). May issue advisory opinions if mediation has not resolved the issue.
- Serving as ombudsman. Solicit and receive comments and questions from federal agencies and the public regarding the administration of FOIA to improve FOIA processes and facilitate communication between agencies and FOIA requesters.
- Providing dispute resolution training for the FOIA staff of federal agencies, working closely with key FOIA stakeholders like the requester, community and open government advocates, and more.

The National Archives and Records Administration is seen as an independent arbitrator distanced from the White House. According to its statute, the National Archives and Records Administration shall be an independent establishment in the executive branch of the government. The administration shall be administered under the supervision and direction of the Archivist. The Archivist of the United States shall be appointed by the President by and with the advice and consent of the state. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President communicates the reasons for any such removal to each House of the Congress.

Despite the criticisms the 2nd OGP Action Plan received from CSOs, it contains several new commitments that seek to address some of the weakness identified in the implementation of the first plan. Namely, it aims to improve the capacity of public servants to share information through institutional websites, open data and social media, not only at the central level but at the regional and local levels, which were excluded by the first plan and were often identified as a major limitation for open government.

Table 7.1. Comparison of the OGP Action Plans 2012-13 and 2015-16

Commitment I: Transparency and access to public information

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Monitor the compliance of the Law on Transparency and Access to Public Information</td>
<td>Formulate a proposal of regulations for the modification of the Law on Transparency and Access to Public Information</td>
</tr>
<tr>
<td>Revise and strengthen instruments to implement norms of transparency and access to information</td>
<td>Strengthen the accessibility and interoperability of the Web Portal of Transparency Standards</td>
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<tr>
<td>Enable easy handling of the Web Portal of Transparency Standards</td>
<td>Strengthen the knowledge and application of norms of transparency and access to public information of civil servants</td>
</tr>
<tr>
<td>Evaluate the creation of an autonomous institution, tasked to guarantee the right to access to information</td>
<td>Foster better information on eligibility of social programmes</td>
</tr>
<tr>
<td>Strengthen the access to information on environmental and extractive industries</td>
<td>Strengthen the Portal of the Electronic System of Public Procurement (SEACE)</td>
</tr>
<tr>
<td>Consolidate the Extractive Industries Transparency Initiative (EITI)</td>
<td>Implement the Commission for Transparency of the Extractive Industries Transparency Initiative in three regional governments</td>
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Commitment II: Citizen participation

<table>
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<tbody>
<tr>
<td>Enhance the areas of participation, dialogue and scrutiny and the mechanisms of accountability at all levels of government</td>
<td>Institutionalise citizen participation through mechanisms of social vigilance of the processes of the National Program of School Alimentation (PNAE)</td>
</tr>
<tr>
<td>Promote the empowerment of capacities of civil society institutions</td>
<td>Enhance the information for society on the implementation of the Law of Prior Consultation</td>
</tr>
<tr>
<td>Expand the use of ICT for enhanced co-operation among all levels of government</td>
<td>Strengthen spending of citizen participation in the public entities of the three levels of government</td>
</tr>
<tr>
<td>Facilitate access to budgetary information</td>
<td>Institutionalise and empower citizen participation in the Supreme Court</td>
</tr>
<tr>
<td>Adopt the plenary agreements of the Supreme Court of Justice</td>
<td>Adopt the plenary agreements of the Supreme Court of Justice</td>
</tr>
<tr>
<td>Promote citizen participation as inspectors of tenders, auctions and bids</td>
<td>Promote citizen participation as inspectors of tenders, auctions and bids</td>
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</table>

Commitment III: Public integrity

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<tr>
<td>Adopt the National Plan for the Fight Against Corruption 2012-2016</td>
<td>Offer comprehensive information on accountability online</td>
</tr>
<tr>
<td>Strengthen the capacities of the Comptroller General of the Republic</td>
<td>Enhance the quality of hearings on accountability of regional and local governments</td>
</tr>
<tr>
<td>Strengthen the National Defence Council</td>
<td>Implement mechanisms to publish and hold accountable all entities involved in public expenditures</td>
</tr>
<tr>
<td>Strengthen the High-level Anti-corruption Commission</td>
<td></td>
</tr>
<tr>
<td>Develop an Observatory of Governance</td>
<td></td>
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<tr>
<td>Empower the National System of Attention to Denouncing (SINAD)</td>
<td></td>
</tr>
<tr>
<td>Strengthen the Nacional Authority of Civil Service (SERVIR)</td>
<td></td>
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</table>

Commitment IV: Electronic government and public services

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<tbody>
<tr>
<td>Confirm the Multisector Commission of Monitoring the Peruvian Digital Agenda 2.0</td>
<td>Promote the publication of open data on a web portal</td>
</tr>
<tr>
<td>Increase the number of services which are available on the Platform of Interoperability</td>
<td>Increase the number of online services offered by the Portal of Services to citizens and enterprises</td>
</tr>
<tr>
<td></td>
<td>Improve the skills of public officials to offer public services online and encourage society to use them</td>
</tr>
<tr>
<td></td>
<td>Promote the use of social media by the public administration to diffuse information</td>
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Peru’s laws on transparency and access to public information

Access to information or freedom of information laws (FOI) constitute a fundamental pillar of open and inclusive government and recognition of a basic democratic principle: governments represent the people and act on their behalf; thus their actions must be open to scrutiny (Abramovich and Courtis, 2000). The regulation and implementation of the right to access to information has advanced significantly in the world. Today, 106 countries, including almost all OECD countries \(^\text{14}\) (Centre for Law and Democracy and Access Info, n.d.), have a stand-alone access to/freedom of information law or embed the right to access information within other laws, regulations or even in some countries’ constitution.

**Scope and the right to information**

Recognising the importance of access to information as a key condition for promoting an open and inclusive government, Peru enshrined access to information as a fundamental right in its 1993 Constitution. As mentioned above, Article 2, Item 5 provides that “Every individual has the right to request information without requiring an explanation and to receive it from any public entity, within the legal deadline, and with the cost associated to it. Information that affects personal privacy, national security or is expressly mentioned by law are excluded” \(^\text{15}\). But the potential of access to information goes beyond its recognition as a basic democratic right: access to the information that the government generates, acquires, obtains or processes is indispensable if citizens are to be given the necessary tools to make their participation in public affairs well-argued and relevant (Stiglitz, 1999).

For this to happen, comprehensive regulations need to be passed, followed by adequate implementation that considers the relevance and “usability” of the information provided vis-à-vis its potential users. In this regard, Peru adopted the Law on Transparency and Access to Public Information in 2003 (Law 27806) that endorses the principle of maximum disclosure to govern the action of the state and requires it to take all necessary measures to promote transparency and provide the information requested by citizens and non-citizens, except from those public entities demonstrating that the disclosure of the information affects constitutional and fundamental rights protected by legally established exceptions (Article 3, Law 27806). This law applies to:

- the executive branch, including ministries and decentralised public agencies
- the legislative branch
- the judiciary
- regional governments
- local governments
- agencies which are autonomous pursuant to the Peruvian Political Constitution and laws
- other institutions and organisations, projects and government programmes, whose activities are carried out under administrative powers; therefore, they are considered to be subject to common rules of public law, unless otherwise mandated by law referring them to another system
- legal entities under private arrangements which provide public services or exercise administrative functions under government concession, delegation or authorisation, under applicable rules.
In this context, Peru is one of the only countries, along with eight OECD member countries (Estonia, Finland, Hungary, Italy, Korea, Poland, the Slovak Republic and Sweden) to extend its law vertically to all levels of government and horizontally to all branches of the central government. As shown in Table 7.2, OECD governments differ in the coverage of the various levels of government by freedom of information laws. While nearly all governments ensure access to information generated by the central government and the executive, 25 countries ensure access to information generated by subnational units – such as provinces – and only half provide access to information at the legislative, judicial and other branches. For example, Greece’s Administrative Procedural Code grants access to documents “drawn up by public services” which may include all central, regional and local administrations but does not apply to archives, the executive branch or the Cabinet of Ministers.

In OECD member countries that are federal, legislation passed by national legislatures are constitutionally not applicable at the state or provincial level. That said, in most OECD countries, the constitutionally autonomous state/provincial legislatures also have FOI/access to information legislation in force. Canada’s ten provincial and three territorial legislatures, for example, have all passed such legislation. In some cases (e.g. Quebec), they did so before their national parliaments enacted theirs.

Table 7.2. Breadth of freedom of information laws

<table>
<thead>
<tr>
<th>Level of government</th>
<th>Total OECD countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States. Also Peru and the Russian Federation.</td>
</tr>
<tr>
<td>Subnational</td>
<td>Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Turkey and United Kingdom. Also Peru and the Russian Federation.</td>
</tr>
<tr>
<td>Executive</td>
<td>Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States. Also Peru, the Russian Federation and Ukraine.</td>
</tr>
<tr>
<td>Legislative</td>
<td>Belgium, Chile, Estonia, Finland, Hungary, Ireland, Israel, Italy, Korea, Mexico, Poland, Slovak Republic, Slovenia, Sweden, Turkey and United Kingdom. Also Peru, the Russian Federation and Ukraine.</td>
</tr>
<tr>
<td>Judicial</td>
<td>Australia, Belgium, Chile, Estonia, Finland, France, Hungary, Ireland, Israel, Italy, Korea, Mexico, Norway, Poland, Slovak Republic, Slovenia and Sweden. Also Peru, the Russian Federation and Ukraine.</td>
</tr>
<tr>
<td>Other bodies Managing public funds</td>
<td>Australia, Belgium, Czech Republic, Estonia, Finland, France, Hungary, Iceland, Italy, Korea, Netherlands, Poland, Portugal, Slovak Republic, Sweden, Switzerland, Turkey and United Kingdom. Also Peru and Ukraine.</td>
</tr>
</tbody>
</table>


Standard transparency portals

Proactive disclosure (i.e. information that must be publicly available prior to public request) is instrumental in achieving greater transparency and openness in government. Proactive disclosure ensures that information seekers get immediate access to public...
information and avoid the costs of filing a request or engaging in administrative procedures. For public organisations, proactive disclosure can reduce the burden of complying with FOI requests.

Chapter 2 of Peru’s transparency law provides that every public entity must publish the following information on their own standard transparency portals as shown in Figure 7.5.

- general information of the entity, such as organigrams, legal framework, Single Text of Administrative Proceedings (Texto Único de Procedimientos Administrativos, TUPA), among others
- budget information that includes data on executed budgets, investment projects, senior officials, and staff remuneration and benefits
- procurement of goods and services, including details of committed amounts, suppliers, quantity and quality
- official activities carried out by the senior officials of the entity and registry of visits to public officials
- any other relevant information that the entity deems necessary.

Figure 7.5. **Standard transparency portals**

![Standard transparency portals](source: www.pcm.gob.pe/menu-principal/transparenciapcm)

The SGP is the unit in charge of monitoring the establishment of the standard transparency portals and collecting information on requests for information. According to the SGP, the number of standard transparency portals has grown from 480 in 2010 to 1 100 in 2015, which suggests a higher degree of commitment to transparency of the different Peruvian public entities. The Co-ordination Secretariat has created a website where citizens can follow the number of requests for information, the number of requests that were satisfied or not, and the main reasons for not delivering the information. It also provides suggestions on how the public entities can avoid not providing information, such as training or improving the material resources available for public servants. This information can be found by region, province or district. In addition, it also provides numbers on the information that is commonly consulted. Based on this information, it can be evidenced that general information on public entities and information regarding the planning and organisation of the public entities are the most consulted categories (Figure 7.6).
The Ombudsman also monitors the implementation of the standard transparency portals. Every six months it monitors the level of compliance by disseminating the information required by law of all 3 levels of government, which includes 18 ministries and the PCM, 25 regional governments and 25 provincial municipalities located in the capitals of each region. According to the Ombudsman’s report, the local level still faces a low level of compliance (Figure 7.7) and information on citizens’ participation is seldom published. In addition, the SGP, responsible for the supervision of the standard transparency portals, expanded the number of supervised entities from 44 in 2014 (ministries and regional governments) to 230 (including public bodies, legislative, judiciary, constitutionally autonomous bodies, provincial and district municipalities, and national universities). The SGP has witnessed an improvement in the number of entities that keep the information up to date; nevertheless, its observations are the same as those of the Ombudsman: local and regional governments have the lowest levels of compliance. In response, the SGP is intensifying the number of technical assistance and awareness-raising activities at all three levels of government, across all branches, constitutionally autonomous bodies and national universities. During 2015, 1105 public officials were trained in the use of standard transparency portals and at the time of writing in 2016, the SGP had trained 865 public officials.

In the first semester of 2015, all 18 ministries and the PCM had a standard transparency portal working and publishing information at different levels of compliance. The Ministries of Economy and Finance, Trade, and Labour publish all of the information required by law. However, the PCM has the lowest level of compliance (83%), with information on procurement being the least published category.

On average, at the central level, the entities reach 93% of compliance. In contrast, the regional level reaches 71% and the local level only 50%. For instance, 36% of the regions, such as Ancash, Cajamarca, Junin and Puno, do not publish information on citizens’ participation. Furthermore, only 9 out of 25 regions, including Ayacucho, Ica and San Martin, published information of the registry of visits to public officials (Defensoria del Pueblo, 2015b).
Ease of filing requests

The possibility for individuals to exercise their right to information depends on, among other factors, the degree of accessibility of FOI laws, the ease of filing requests and individual protections granted to those requesting information. Narrow eligibility conditions to file a request, long response times or unjustifiably high fees are factors that can limit or undermine the right to know.

In Peru, along with 71% of OECD countries (that participated in the 2011 OECD survey), there is no legal restriction concerning the status of applicants (OECD, 2011), citizens and non-residents may request information. Furthermore, the regulations of Law 27806 (Supreme Decree No. 072-2003-PCM) provide that those who file a request are not required to provide the reasons for the request. The request can be made through the transparency portal of the entity, in person at the relevant office by filling the official – yet optional request form or by mail.

Peru is one of the countries where users can file information requests online, but according to the Ombudsman’s report, not all Peruvian public entities have been able to implement these mechanisms. According to the report, 99% of citizens’ information requests are received in paper format, but 79% of these requests do not use the official – yet optional – information request format. The request must include the following information:

- Name, surname, ID number, address. Minors do not need to provide an ID number.
- If applicable, phone number and/or email address.
- If the application is submitted to the institutions’ document reception unit, the applicant’s signature or fingerprint, if not able to sign or prevented from doing so.
- Concrete and precise request of information.
• If the applicant knows the institution holding the information, it should indicate it in the request.
• If the applicant did not include the name of the public official or did it incorrectly, the institutions’ document reception unit should transfer the request to the responsible public official.

However, if the personal information requested on the form is not provided, the request for information is not processed. This means that the procedure does not permit anonymous information requests, unlike the principles established by the Organisation of American States’ (OAS) Model Law on Access to Public Information (Box 7.6), which states that any person making a request for information in writing, by electronic means or orally to any public authority shall be entitled to, *inter alia*, make an anonymous request for information. Peru could adapt its current Law on Transparency to reflect recent good practices to promote a more transparent and accessible government; for instance, to allow access to information requests to be anonymous.

**Box 7.6. The right to transparency: Common European legal standards and the OAS Model Law on Access to Public Information**

**Right to information**

Any person making a request for information in writing, by electronic means or orally, to any public authority shall be entitled:

- to be informed whether or not the public authority in question holds a record containing that information or from which that information may be derived
- if the public authority does hold such a record, to have that information communicated to the requester in a timely manner
- to an appeal where access to the information is denied
- to make an anonymous request for information
- to make a request without providing justifications for why the information is requested
- to be free from discrimination based on the nature of the request
- to be provided with the information free of charge or at a cost limited to the cost of reproduction.

**Response from the public authority and exceptions**

In addition, each public authority must respond to a request as soon as possible and in any event, within 20 working days of its receipt. In case exceptions to disclosure of the information are applied, they must be clear and narrow and must be legitimated and strictly necessary in a democratic society. The requester must be informed of the reason and legal provision of why the information is not given as well as the possibility to appeal the decision.

**Appeals**

A requester can appeal to a refusal to respond within 60 working days. The requester can ask for an internal appeal with the head of the public authority or for an external appeal with the information commission. Finally, the requester can challenge the decision of the information commission in court.
Box 7.6. The right to transparency: Common European legal standards and the OAS Model Law on Access to Public Information (continued)

The information commission

An information commission must be established and will be in charge of promoting the effective implementation of the freedom of information. It should have legal personality and operative, budgetary and decision-making autonomy, and shall report to the legislature. It is comprised of three (or more) commissioners, reflecting a diversity of skills and backgrounds. Specific duties and powers for the information commission need to be set, such as:

- to review any information held by a public authority, including through on site
- sua sponte authorisation to monitor, investigate and enforce compliance with the law
- to issue recommendations to public authorities.

Reporting

Public authorities shall report annually to the information commission on the activities of the public authority pursuant to, or to promote compliance with, the freedom of information. The reports could contain information such as the number of requests for information received, granted in full or in part, and refused and appeals from refusals to communicate information.

Promotional and compliance measures

The model law establishes that the operation of the law should be monitored regularly, training on the law should be provided to public officials, a formal education to citizens needs to be given in order to raise awareness on the right to ask for information. The law suggests doing so in primary and secondary education.

The right to transparency: Common European legal standards

Beneficiaries

The recognition of the public’s right to information implies that “everyone” is entitled to access. The administration cannot reject a request on the grounds that the request is not based on a specific interest. Disclosure can only be prevented if the administration shows the existence of a prevailing public or private interest in confidentiality. The burden of justification is on the public authority.

Scope

- As for the first issue, freedom of information should, in principle, regard all documents and information held by public authorities, regardless of their pertinence to a specific administrative procedure or to the executive power.
- As a general rule, transparency regimes apply to all of the sectors/areas of public intervention.
- Transparency rules pertain to a fundamental right. As a consequence, they should also apply to regional/territorial entities.

Object

According to some legislative acts on transparency, the right of access concerns “documents”, whereas according to other regulations, the right to access concerns “information”. In abstract terms, the two notions are different. The former allows the requester to view a document and extract a copy of it. The latter allows the requester, in addition, to ask the administration to disclose whatever information it has, even when it is not included in a document.
Box 7.6. The right to transparency: Common European legal standards and the OAS Model Law on Access to Public Information (continued)

Exceptions

The right of access to documents, like other fundamental rights, meets some limitations. The discipline of exceptions represents the most crucial part of freedom of information regimes. Its aim is to ensure that the disclosure of information held by public authorities does not harm relevant public or private interests. Two issues must be addressed:

- grounds: protection of legitimate public or private interests
- legislative constraints on administrative discretion: absolute exemptions include the harm test; relative exemptions include the balancing test.

Processing of requests

Time: requests of access should be processed “promptly” or “without undue delay” and, in any case, within a reasonable time “which has been specified beforehand”. In most freedom of information acts, the time limit is short: 5 days in Estonia; 10 in Portugal; 15 in the Czech Republic, Finland and Poland and at EU level; 20 in Slovenia and the United Kingdom.

Format: access should be granted by effective and appropriate means.

Fee: it is generally admitted that administrative authorities may charge a reasonable fee on the occasion of a request, a distinction should be made between access to documents that are already available and access to information that involves activities of research, elaboration or processing on the part of the administration.

Give reasons and indicate remedies: no administration can deny access to a requested document without justifying its decision. Any refusal should mention the legislative exemption upon which it is grounded and clarify why the disclosure would harm the legitimate public or private interests protected by the exemption.

Publication

The general principle is that documents should be made accessible by the institutions from the outset unless an exception to the public right of access clearly applies. In all of the European legal orders taken into consideration, there are transparency provisions that impose on the administrations a duty to publish information of public interest.

A precondition for the effectiveness of publication is the use of the Internet. Publication on paper in official bulletins or journals does not sufficiently fulfil the duty of the government to promote access to public information; publication on institutional websites is also necessary. The elaboration and publication of registers is another essential prerequisite. Each public authority has to publish a register containing all of the categories of documents and information held on its website. Each register should provide a “guide to information”, giving details of: 1) the information routinely published and directly accessible by means of the register; 2) how the remaining information can be accessed on demand; and 3) whether a charge will be made for providing access to information.

The selection of information to be published should not be entrusted solely to the concerned administration. Rather, it involves a process of gradual specification and harmonisation, which requires a unitary supervision by an ad hoc competent body or government unit.

Review mechanisms

In Europe there are two basic models of reviewing administrative decisions on access requests: in the first model, the crucial reviewing role is performed by the courts, while in the second it is mainly entrusted to a specialised and independent administrative authority.
Box 7.6. The right to transparency: Common European legal standards and the OAS Model Law on Access to Public Information (continued)

- The first model is typically structured as an “ordinary” review of administrative acts. In most European countries, this is the basic scheme: if the public authority denies access to information, the requesting person can challenge the decision either before a higher office of the same authority (internal administrative review) or before a judge (usually an administrative court, where a “dual” system of justice – with a jurisdictional distinction between ordinary and administrative courts – is in place).

- The second review model assigns a central role to an ad hoc authority that is independent (or quasi-independent) from the government and accountable to parliament. Decisions on access requests may be challenged before the independent authority. Therefore, administrative review is not diffuse, but rather centralised; it is not internal to the decision-making administration, but external and independent; it has a sector-specific mandate, rather than a general competence.


Yet, in this regard, few OECD countries have enacted strong provisions to protect the privacy and integrity of parties and individuals requesting information. FOI laws in seven countries contain a provision that provides anonymity for requestors:

- In Finland, the person requesting information does not need to identify him/herself nor provide reasons for the request, unless this is necessary for the exercise of the authority’s discretion or for determining if the person requesting information has the right of access to the document.

- Other countries, such as Australia, the Czech Republic, Ireland, Mexico, the United Kingdom and the United States provide de facto anonymity because they do not require applicants to provide proof of identity.

- In Canada, the identity of the applicant is protected by federal law (Figure 7.8).

  Article 11 of Peru’s Law 27806 provides that the public entity has a period not exceeding seven working days to provide the information; this term may be extended exceptionally for five additional days if it unusually difficult to gather the required information. In this case, the entity shall disclose in writing, before the expiration of the first deadline, the reasons that make use of such an extension.

  This is in line with OECD good practice, as almost all countries have established standards for timely responses to requests for information in their laws or in related legal documents, usually within 20 working days or less; for instance, 5 days in Estonia; 10 in Portugal; 15 in the Czech Republic, Finland and Poland; and 20 in Slovenia and the United Kingdom. In addition, if the public entity does not have the requested information and if the location is known it shall inform the applicant.

  Yet, according to Defensoría del Pueblo (2013), 55.43% of the complaints received by the Ombudsman at the national level were motivated by the failure of the public entities to provide information within seven days working days after reception of the
request. In addition, in 15.11% of complaints addressed, the public administration omitted to respond to the requests made by citizens or refused to provide information.

Figure 7.8. **Individual protection granted to those requesting information**

![Pie chart showing the distribution of individual protection granted to those requesting information.](image)


In fact, while the OAS model states that “in any event, the failure of the public authority to complete the processing of the request within 20 working days, or, if the conditions specified in paragraph 1 are met, the failure to respond to the request within 40 working days, shall be deemed a denial of the request”, other countries such as Mexico state in their Transparency Law that “Failure to respond to an information request within the period prescribed in Article 44, is meant to be resolved in a positive direction. Therefore the agency or entity shall be obliged to give access to information in a time period not exceeding 10 working days, covering all costs generated by the reproduction of information, except material considered as privileged or confidential.”

In Peru, the law proposes “negative administrative silence”, meaning that “In the absence of response within the period specified, the applicant can consider his/her request denied” (Article 11d of Law 27806). Therefore, officials responsible for responding to requests for information could be induced to refrain from responding. This aspect has raised some concerns because it may affect the guiding principles of transparency, which imply that all public information is, in principle, accessible and can only be withheld in order to protect other rights and national security as stated in the law and it can also open the door to discretion and legal insecurity. In addition, it is worthwhile to mention that the absence of response would mean a breach of the general rules of administrative procedure, where it is stated that the denial of the request must be properly based on the exceptions provided by the law and in case of non-existence of the information, the entity must reply in writing that the denial is due to the absence of information.
Fees

According to the Common European legal standards and the OAS Model Law on Access to Public Information (see Box 7.6), it is generally admitted that administrative authorities may charge a reasonable fee for a request; a distinction should be made between access to documents that are already available and access to information that involves research, elaboration or processing on the part of the administration. In this regard, all OECD countries, with the exception of Iceland and Poland, apply fees at one or more stages of the information request process, most often to cover the cost of reproduction. In about half the countries, fees are also related to the cost of sending the documents, although several countries (such as Australia and Finland) waive these fees if the information is sent electronically. Most fees are variable, meaning that they depend on the number of pages to be reproduced or the amount of time to process the request (for example). When a variable fee can be charged, a cap on the amount of this fee is applied only in a limited number of countries (Austria, Finland, France, Italy, Norway and Portugal).

In Peru, the fee must only reflect the cost associated with the reproduction of the information. It has to be determined by each entity and must be specified in their Single Text of Administrative Proceedings (Texto Único de Procedimientos Administrativos, TUPA) (Article 17 of Law 27806). It has been pointed out by the Ombudsman and by the Consorcio de Investigación Económica y Social (CIES), an association of 48 prestigious to academic and research institutions in economics and social sciences, that the right to information is sometimes limited because the requester is charged with illegal costs. This may be a result of the fact that fees differ from one institution to another as shown in Table 7.3.

Table 7.3. Cost associated with the reproduction of the information requested

<table>
<thead>
<tr>
<th>Means to provide information</th>
<th>Ministry of Finance</th>
<th>Ministry of Interior</th>
<th>Ministry of Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email</td>
<td>Free</td>
<td>Free</td>
<td>Not mentioned</td>
</tr>
<tr>
<td>Copy per page in black and white</td>
<td>PEN 0.10 (EUR 0.03)</td>
<td>PEN 0.20 (EUR 0.06)</td>
<td>Size A4: PEN 0.15 (EUR 0.04)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Size A3: PEN 0.23 (EUR 0.062)</td>
</tr>
<tr>
<td>CD</td>
<td>PEN 1.5 (EUR 0.40)</td>
<td>PEN 3.5 (EUR 1)</td>
<td>PEN 9.7 (EUR 2.6)</td>
</tr>
<tr>
<td></td>
<td>Not mentioned</td>
<td>PEN 14 (EUR 3.8)</td>
<td>PEN 0.15 (EUR 0.04) per minute</td>
</tr>
<tr>
<td>Video</td>
<td>Not mentioned</td>
<td>PEN 0.7 (EUR 0.20)</td>
<td>Not mentioned</td>
</tr>
<tr>
<td>Photo</td>
<td>Not mentioned</td>
<td>PEN 0.7 (EUR 0.20)</td>
<td>Not mentioned</td>
</tr>
<tr>
<td>Floppy disk</td>
<td>Not mentioned</td>
<td>Not mentioned</td>
<td>PEN 1.9 (EUR 0.52)</td>
</tr>
</tbody>
</table>

1. Exchange rate used: PEN 1 = EUR 0.27 as of 8 October 2015.


In addition, as it is the case for any other administrative procedure, payment has to be made in situ at the headquarters of each public entity or at the Banco de la Nación with the relevant invoice; this may represent a disincentive for individuals to request information. This aspect is easy to solve: Peru could establish an online payment system to avoid the transaction cost of making the payment in situ.
Exceptions

In OECD countries, the FOI law presumes a principle of maximum disclosure of information, i.e. the information held by the state is, in principle, available to the public. However, FOI laws also contain a list of exemptions that may be applied to justify withholding certain information from disclosure. Class tests and harm tests are two common ways to exempt information. Under class tests, any information that falls within a certain category (such as national security) can be denied. Under harm tests, the government can deny a request for information on the basis that disclosure would cause potential prejudice, for example, to an individual, harm to the defence of the state or domestic order. The class tests applied by the greatest number of OECD countries concern exemptions related to national security, international relations and personal data. Exemptions to FOI requests can be both mandatory (a public entity is required to withhold the information) or discretionary (public entities can use their judgement to withhold or disclose information).

In Peru, the law makes a distinction between secret, reserved and confidential information:

- **Secret**: information classified as secret is based on reasons of national security, in accordance with Article 163 of the Political Constitution of Peru, which also has as its basis ensuring the safety of people and its disclosure would cause risks to the territorial integrity and/or to the survival of the democratic system as well as in relation to intelligence and counterintelligence activities. This includes military operations, installations, military resources and equipment, among others.

- **Reserved**: information classified as reserved for reasons of national security that are related to internal order and its disclosure would cause a danger to the territorial integrity and/or the survival of the democratic system. Therefore information that aims to prevent and suppress crime in the country and whose disclosure could hamper it is considered reserved. This includes, among others, police operations meant to combat illicit drug trafficking, terrorism and criminal organisations.

- **Confidential**: information providing advice, recommendations and opinions as part of the deliberative and consultative process of the government decision-making process, unless such information is public. This information refers to bank, tax, commercial, industrial or technological secrecy and personal data, among others.

In these cases, the responsible official should duly substantiate the refusal to provide information on the basis of the exceptions provided for in Articles 15, 15A and 15B pointing out – expressly and in writing – the reasons for the application of the exceptions and the period for which such impediment will last. In this regard, the Constitutional Court has stated that to adequately justify a refusal, the following steps must be taken:

- check that the information requested falls within a legal exception to deny the request for access
- prove that the disclosure of the information harms the judicial asset or the right protected by the exceptions more than the right of access
- weigh between the damage from dissemination of the information and the damage caused by preventing the public from knowing the information.

However, it has been pointed out by the Ombudsman and by the Consortium for Economic and Social Research (Consortio de Investigación Económica y Social) that the
right to information is sometimes limited due to a wrong interpretation of the exceptions, especially on the issue of the need to provide justification for the request that is not compulsory by law. For instance, in the region of Ayacucho, a citizen was denied access to documents related to the social programme “Vaso de Leche” because she did not justify why she needed the documents. Similarly, in Lima, information related to the licensing of the construction of a building was denied because they did not have the consent of the public official in charge of the procedure (Defensoría del Pueblo, 2015a).

In this sense, Peru does not have policies or guidelines for the classification and declassification of information or more detailed information than the one stated in Articles 15, 15A and 15B of the Law on Transparency, which leaves a high degree of discretion to the public official to decide what information can be provided. The only guidelines that exist relate to the declassification of defence information (Ministerial Resolution No. 392-2011-DE/SG of 30 April 2011).  

**Training**

Furthermore, proper interpretation and application of the exception requires entities to appoint specialised officers to determine properly whether the requested information should be disclosed. The law provides that the public entity appoint a public official who is responsible for delivering the information. Article 4 of the Law on Transparency determines that those officials who fail to comply with the law shall be sanctioned for committing a grave offense, and could even be charged criminally for committing the offense of abuse of authority.

However, the Ombudsman has pointed out that there are several challenges to strengthening the capacity of the public servants in charge of addressing citizens’ request. In particular, there is lack of knowledge on the norms that regulate access to information. In fact, Peru does not have a job profile for the public official responsible for access to information.

- Acknowledging this, Peru included in its Open Government Partnership (OGP) Action Plan 2012-13, the establishment of background and experience profiles for officials responsible for access to information to improve quality of service and access to information. However, Peru is behind schedule on this action due to the heavy responsibility that officials have in addressing requests for information.

- In addition, public servants, especially at the local level, still have paper-based archives and do not process access to information requests electronically. This makes the tasks of identifying the necessary information and ensuring proper follow up to all requests inefficient, costly and slow.

Since Peru does not have a guarantor or authority on the right of access to public information who would be responsible for training public officials, there are only a few scattered public and private entities’ initiatives. For instance, in 2014, the Ombudsman’s Office carried out a total of 22 training courses and conferences on the right of access to public information, intended for the benefit of 1 100 public officials from different ministries, local governments (Defensoría del Pueblo, 2015a) and citizens. Most of the training was carried out for the Ministries of Economy and Finance, Justice, and Interior. In addition, the Public Management Secretariat trained 3 218 public servants and civil society in 2015.
Appeals

According to the Model Law on Access to Public Information, a requester can appeal a refusal for access to information within 60 working days. The requester can ask for an internal appeal with the head of the public authority or for an external appeal with the information commission. Finally, the requester can challenge the decision of the information commission in court.

In Europe, there are two basic models of reviewing administrative decisions on access to information requests. In the first model, the crucial reviewing role is performed by the courts, while in the second it is mainly entrusted to a specialised and independent administrative authority. In Peru, Article 11 establishes that if the interested party has not received a response within the period allotted, the request for information shall be considered to have been denied and the administrative avenue exhausted unless an appeal is filed. The petitioner must file an appeal within the public entity where the request was made in order to exhaust administrative remedies. In many cases, it is the same official that denied the request for information in the first place who will receive the appeal to transfer it to his/her superior. According to the Ombudsman’s report (Defensoría del Pueblo, 2013), 42% of the ministries signalled that they do not have a pre-established procedure to solve appeals. This may be an indication that there is little will to revise and rectify a decision.

If the decision is unfavourable or if there has been no response within a period of ten days, the interested party may initiate an administrative litigation proceeding or opt for a constitutional *habeas* data proceeding.

- The *habeas* data is a prerogative writ that empowers citizens to act as a legal personal privacy protection tool. The inclusion of these components in the Peruvian supreme law constituted an important starting point to develop national and sector-based policies and programmes in the early 2000s (OECD, 2014). It is up to the Constitutional Tribunal to resolve the *habeas* data proceedings and force the institution to provide the information. In addition, an appeal can also be filed if the information provided is imprecise, false, untimely or incorrect.
- For example, “in 2003, the Constitutional Court of Peru ruled on a *habeas* data action in which the plaintiff affirmed that he had requested information on the expenses incurred by former President Alberto Fujimori and his delegation during the 120 trips made overseas in the course of his presidency, and that the information that had been turned over was incomplete, imprecise and inexact. The court affirmed that the right of access to information was affected not only when the requested information was denied, but also when the information provided was imprecise, false, untimely or incorrect” (OAS, 2011).

Ministries are the institutions that have received more *habeas* data, followed by local governments (Figure 7.9). In 75% of the cases, the information requested should have been provided and only 2% of the information falls into the exceptions.

The number of complaints to the Ombudsman at the national level and the number of *habeas* data instituted by citizens prove that there is an interest to see their right to information granted and a resistance to comply with the law, which forces citizens to turn to external institutions to solve their request.
Open government principles are fully embedded in the 2013 National Policy for the Modernisation of Public Administration and its related implementation plan, where they represent one of the three transversal axes that cut across the five main pillars of the reform. Moreover, since 2011, the Open Government Partnership has been a remarkable driver to bring open government policies to the centre of Peru’s reform efforts and, through its action plans, has enabled the government to take concrete steps in collaborating with citizens.

However, representatives from both government and CSOs acknowledge that the capacity of the various institutions involved to deliver against their commitments has been limited. More importantly, it appears that the value of open government initiatives has so far been focusing on selected areas of public sector reform, thus underutilising their potential contribution to broader societal goals and, overall, to the country’s socio-economic development. This is partly due to the lack of a broader reflection on the value added of the principles and practices of openness, transparency, accountability and citizen participation for areas such as integrity and anti-corruption, inclusive growth, territorial development, conflict prevention and resolution, etc.

Countries should not miss the opportunity to build upon their existing practices and institutional arrangements that have traditionally promoted good governance even before open government was codified as a priority in international and national agendas. These practices range from national dialogue that led to the drafting of new constitutions or national development plans/visions, to consensus-building exercises to solve or avoid social conflicts, and institutions that mediate between government, citizens and business in such areas as public-private partnerships, infrastructure projects, management of natural resources, etc. Examples of this type of institution include ombudsman’s offices, anti-corruption agencies or human rights offices, or analogous regional and municipal sector-based commissions.
The open government eco-system in most countries goes far beyond the activities included within their national modernisation strategies or OGP action plans. These practices and institutions provide good examples and concrete experiences that are often more institutionalised and have been successfully implemented for longer than OGP membership, and should therefore be considered as an integral and fundamental part of any national vision on open government.

- In the case of Peru, institutions like the Ombudsman, the National Office for Dialogue and Sustainability, and the National Agreement bear testimony to the many and diverse attempts of the people and governments to promote and implement open government principles. They also constitute solid pillars on which to build a broader and more integrated national open government agenda for Peru.

- In order to increase the reach, inclusiveness and effectiveness of its open government agenda, Peru should build on the good practices of the Ombudsman, of the National Office for Dialogue and Sustainability, and of the National Agreement. This would allow Peruvian policy makers to promote a more integrated national vision of what open government means for Peru and how to strategically use it to better achieve national policy outcomes. In particular, by including the National Office for Dialogue and Sustainability and the National Agreement in the Multisector Monitoring Committee (the Ombudsman is already a member), would give them the opportunity to play a crucial role in disseminating a culture of openness and accountability and in ensuring higher implementation rates, especially at the local level.

    In addition, Peru could consider the following recommendations:

1. **Strengthen the governance of open government**

   - Define a national stand-alone open government policy to go beyond the open government components of the 2013 National Modernisation Strategy and its implementation plan (DS 004-2013-PCM and RM 125-2013-PCM) and provide a broader and more integrated context to the specific initiatives of the OGP action plans. This would allow Peru to develop a more detailed and specific approach on how to promote the principles of transparency, accountability and citizen participation in the country, at all level of government, and link them to the objectives of the national or territorial development plans.

   - Strengthen the co-ordination role of the Public Management Secretariat and establish a systematic monitoring and evaluation function within it, coupled with a system of incentives/disincentives for public servants in charge of the implementation of open government initiatives, especially in the area of access to information.

   - Revitalise the Multisector Monitoring Commission and consider expanding its role to turn it into a forum to discuss the country’s open government priorities (and eventual national policy), to recognise obstacles to the successful implementation of Peru’s OGP Action Plan, and to jointly identify solutions.

       - Improve its functioning by organising more meetings on a consistent basis, promoting the participation of all relevant stakeholders, instituting the requirement to provide implementation reports to the commission and the publication of minutes of each session, which can allow citizens to be better informed about Peru’s open government efforts and CSOs and the media to play their role of watchdogs. The combined impact of some or all of these
actions will have positive repercussions on the implementation of present and future OGP action plans.

− Ensure that the institutions involved in the OGP action plan appoint qualified staff in charge of the implementation of their respective commitments.

− Provide more extensive training opportunities for public officials at central and local level on open government principles and practices.

− Carry out large-scale awareness campaigns to inform the general population on the OGP action plans as well as the different members of the government and the legislative branch.

2. Strengthen the management of Peru’s transparency and access to information framework

To increase the level of institutional compliance to the requirement of the access to information law and facilitate citizens’ access to information, Peru should consider the following:

− Improve the compliance of national institutions to the requirements of the access to information law, either through the creation of an oversight body or by giving this responsibility, and relative powers and funds, to an existing institution.

− Develop a binding regulatory framework to define incentives and sanctions for public officials in charge of dealing with access to information requests.

− Make it mandatory to respond to every request for information in writing.

− Set the same parameters to define fees for all public institutions to ensure coherence in the fees.

− Implement capacity to make online payments to reduce the cost incurred reaching the public entity or bank, and especially if the request for information was filed online.

− Develop guidelines for the classification and declassification of information.

− Design job profiles of public officials in charge of implementing the law and base recruitment on them.

− Use IT to process the requests for information, monitoring their status and communicating their final outcomes to citizens.

− Design specific training modules on the right of access to public information and include them in the HRM strategy to develop the competency of the civil service, as part of the broader attempt to promote knowledge of open government principles and practices.

− Establish clear guidelines on how to address appeals and record the appeal process to monitor how these have been addressed.

− Provide specific support to regional and local administrations to publish online the information required by the Law on Transparency through capacity-building activities and the provision of the necessary IT equipment.
Notes

1. The “policy cycle” means: 1) the identification of policy priorities; 2) the drafting of the actual policy document, 3) the policy implementation; and 4) the evaluation of its impacts and the use of impact evidence to improve the policy or change course to improve results. “Citizens’ participation in the policy cycle” (CPPC) means any activity that foresees the involvement of citizens (including civil society organisations and organisations representing the private sector) in the four above-mentioned building blocks of the policy cycle.

2. www.whitehouse.gov/open/about/policy.
5. www.opengovpartnership.org/countries.
14. Luxembourg does not have an access to information or freedom of information law (Centre for Law and Democracy and Access Info, n.d.).
18. For more information, see www.minsa.gob.pe/portada/transparencia/solicitud/frmFormulario.asp.
19. For more information, see www.minsa.gob.pe/portada/transparencia/solicitud/frmFormulario.asp.


22. Ibid.


24. Ibid.


27. For more details, see Annex 7.A1.

**Bibliography**


Legal texts


Peru’s institutional arrangements for open government

Peru’s Ombudsman - The Defensor del Pueblo

The Defensor del Pueblo has been associated with Peru’s Open Government Partnership (OGP) process, participating in the elaboration of the first Action Plan and taking on responsibility for a commitment in the second. This is in line with the recommendations of the International Ombudsman Institute (IOI) which is encouraging ombudsmen to be active in the OGP process. The ombudsman is well-placed to contribute to dialogue between civil society and government and to the drafting, implementation and monitoring of the action plans (Tyndall, 2014).

With its traditional role as a guardian of public interest, the Office of the Ombudsman has been an effective actor of open government far beyond Peru’s recent commitments within the framework of the OGP. The Ombudsman promotes a transparent, responsive and accountable government. Thanks to the individual complaints and the investigations the Ombudsman conducts, the office collects valuable data on the performance of public institutions at all levels of government. Highlighting specific and systemic failures in its annual reports and, where applicable, also via press statements, it provides transparency about government action. Most of the time, these are presented to parliament supporting it in its role of holding government to account. In addition, at the core of its work, the Ombudsman serves as a direct means to engage with citizens. It offers them an avenue to seek redress in their interaction with the public administration through handling complaints. Thereby it channels citizens’ voices into the policy-making cycle, informing public servants about the problems citizens face, their most pressing needs and their attitudes towards government. As its working method is based on finding amicable solutions, to mediate if possible, the Ombudsman promotes a different pattern of engagement, one that is based on collaboration and consensus-building instead of on confrontation.

Ombudsman institutions around the world

In most countries, institutions are established to monitor and implement the rule of law, fight against corruption and promote good public administration. Although the specific role of the ombudsman institution/office may vary, the holder of this office is legitimised by parliament or congress, either through direct elections or through appointment by the head of state or government by/or after consultation with parliament/congress (International Ombudsman Institute, n.d.). The ombudsman was originally created in Sweden in 1809 and was the only one for at least 100 years until Finland established its own in 1919. The last 30 years have witnessed a dramatic growth in the number of institutions throughout the world as countries have transitioned toward democracy, especially in Latin America, and there are now approximately 120 ombudsman offices worldwide (Office of the Ombudsman, n.d.).
The role of the ombudsman is to protect the people against violation of rights, abuse of powers, unfair decisions and maladministration. Ombudsman institutions play an increasingly important role in improving public administration while making the government’s actions more open and its administration more accountable to the public and they have become an important component of democratic governance (International Ombudsman Institute, n.d.).

It provides citizens with an independent agency that receives and investigates complaints against the public administration, makes recommendations regarding these complaints, and attempts to have the recommendations adopted by the administration. Each country’s ombudsman is adapted to the local context and integrated into its institutional set up. As a consequence, ombudsmen offices have wide variations in mandate, powers and functions. Some ombudsmen offices operate at the national level while others operate also at the regional and municipal levels. Some have a general mandate to supervise the public administration, while others supervise only one institution or administrative field. In addition, there are significant functional differences between institutions.

Box 7.A1.1. Categories of ombudsman institutions/offices

Classical ombudsman

The classical function of an ombudsman institution is to investigate complaints against the public administration, make recommendations on actions to be taken by the administration, and try to get these recommendations adopted. Ombudsman institutions following the classical model often have extensive powers to investigate cases submitted to them. They may work towards mediation of conflicts, but if no solution can be reached, they provide recommendations to the relevant administrative unit. The classical ombudsman institution has no power of coercion and can only employ “soft” pressure to get its recommendations adopted. The ombudsman institution submits an annual activity report to the parliament to draw the latter’s attention to remedied grievances.

Classical ombudsman institutions are common in Western Europe and some of the Commonwealth countries. Examples include Australia, Belgium, Bulgaria, Denmark, Ireland, Iceland, Israel, the Netherlands, Norway and the United Kingdom.

In recent years, ombudsmans institutions with an extended legal mandate to get its recommendations adopted have started to appear. Legal powers vary between countries and may include the powers to: appeal to courts, participate in court proceedings, file applications in administrative proceedings, propose legislative amendments, and recommend disciplinary or criminal proceedings. The classical ombudsman institution with extended legal powers can be found in all regions of the world, especially among younger institutions. These countries include Botswana, Croatia, Estonia, Ethiopia, Kazakhstan, Papua New Guinea, Poland, Portugal and Spain.

Human rights ombudsman

Ombudsman institutions in this category have a specific mandate to look into the observance of human rights. In some cases, the ombudsman institution is restricted to handle only human rights issues, while in others the human rights function is added to the classic mandate. The tasks of a human rights ombudsman institution often include: filing of human rights violations, educating and informing the public on human rights, reporting on the general human rights situation in the country, conducting research and analysis in human rights, and monitoring the implementation of human rights within the country.
Box 7.A1.1. Categories of ombudsman institutions/offices (continued)

Human rights ombudsman institutions are particularly common in Eastern Europe, Central Asia and Latin America. Examples of countries include all Latin American countries, Albania, Armenia, Hungary, Kyrgyzstan, Papua New Guinea, Chinese Taipei and Tanzania. In Azerbaijan, Bolivia, Colombia, El Salvador, Georgia, Uzbekistan and the Bolivarian Republic of Venezuela, the ombudsman institution is restricted to only human rights issues.

**Anti-corruption ombudsman**

Ombudsman institutions in this category have a specific mandate to curb corruption. These often operate as a combined ombudsman institution and anti-corruption agency. Its specific functions may include overseeing the conduct of senior public officials, collecting and reviewing assets and income declarations, investigating instances of alleged or suspected corruption, and educating and informing the public regarding issues related to corruption.

Anti-corruption ombudsman institutions are mostly found in Asia and Africa. Country examples include Gambia, Ghana, Korea, Papua New Guinea, Chinese Taipei, Rwanda and Vanuatu.

**Auditing ombudsman**

A few ombudsman institutions have a specific auditing mandate, which gives them the power to oversee government bodies and/or conduct audits of the administrative practices and procedures of government bodies, irrespective of whether they have received an individual complaint. Ombudsman institutions with an auditing mandate can be found among the Australian regional ombudsman institutions and in Ethiopia.


Box 7.A1.2. Difference between ombudsman institutions/offices across the regions

**Europe and central Asia**

The Nordic countries led the establishment of ombudsman institutions in the region. After the Second World War, the concept spread quickly throughout Western Europe. But the institution appeared much later in Eastern Europe, starting in the 1990s after the fall of the Soviet Union. Recently, central Asian countries including Azerbaijan, Kazakhstan, Kyrgyz Republic and Uzbekistan have established their own ombudsman institutions.

The mandate of ombudsman institutions in Western Europe generally follows the classic model. Usually it does not go beyond handling complaints regarding public administration. Issues pertaining to human rights, anti-corruption and other similar issues are processed through the judicial system.

In many of the Eastern European countries, ombudsman institutions emerged after a period of totalitarian rule. This historical heritage strongly affected the role of the institution. In contrast to its Western European counterparts, Eastern European institutions focus more on human rights. Similarly, the ombudsman institutions in central Asia were established primarily to enforce human rights laws and regulations.

**Latin America and Caribbean**

Latin America’s first ombudsman institution was established in Guatemala in 1985. Since then, almost all other countries in the region have established an ombudsman institution, or a Defensor del Pueblo, which is the Spanish name commonly used for the institution in the region.

The institution was adopted during the 1980s when most Latin American countries transitioned from authoritarian regimes towards democracy. Due to the lack of human rights protection during the military dictatorships and internal conflicts, human rights protection became the ombudsman institutions’ primary function. To date, it remains one of the ombudsman institutions’ main roles in the region.
Box 7.A1.2. Difference between Ombudsman institutions/offices across the regions (continued)

Africa
The first African country to establish an ombudsman institution was Tanzania in 1966. Zambia, Zimbabwe and Uganda followed in 1974, 1980 and 1986, respectively. However, the spread of the institution did not take off until the 1990s, when there was a dramatic increase in the number of ombudsman institutions in the region.

The first Africa ombudsman institutions followed the classic Nordic model. But in recent years, these have been increasingly modified to better fit the African context. Countries such as Ghana and Tanzania shut down their classical ombudsman institutions and replaced them with institutions that have a broader mandate to meet the needs of their respective countries. In general, ombudsman institutions in Africa operate today under comprehensive mandates, including human rights protection, anti-corruption, leadership code enforcement and/or environmental protection. The ombudsman institutions are increasingly recognised as central pillars of the institutional arrangements aimed at enforcing democracy and good governance.

Ombudsman institutions are named differently across the African continent. While the Swedish name “ombudsman” is used in some countries, others are called “human rights commissions”. A majority of the francophone countries use the French word médiateur as the label for the institution.

Middle East and North Africa
Ombudsman institutions only exist in a few countries in the Middle East and North Africa. These include Jordan, Morocco and Tunisia, where they assume the classical role of handling complaints regarding practices and decisions taken by the public administration.

South Asia
Pakistan and Sri Lanka are the only south Asian countries that have national level ombudsman institutions. These have a general mandate to investigate complaints regarding the public administration. Sri Lanka established its ombudsman institution in 1982 followed by Pakistan in 1983. In addition to the national level general purpose institution, Pakistan established its ombudsman institution with specific mandates in the fields of tax, insurance and banking in the early 2000s. In some areas, Pakistan also has regional level ombudsman institutions. Similarly, India has regional level institutions in some states, but has yet to establish a national level ombudsman institution.

East Asia and the Pacific
In 1962, New Zealand established its ombudsman institutions. It was the first country in the region and the fourth in the world to do so. New Zealand’s version followed the classic model and became the basis for many of the ombudsman institutions in the region. As a consequence, most of the ombudsman institutions in Asia Pacific have the mandate of investigating complaints pertaining to practices and decisions taken by public administrations. Others, such as the ombudsman institutions of Papua New Guinea and Chinese Taipei, have much broader mandates, including human rights protection.


The Ombudsman in Peru
In Peru, the Ombudsman is an independent public body established by the Political Constitution of 1993. Its main function is to defend the fundamental rights of the individual and the community, monitoring the compliance of the duties of the state and the adequate provision of public services to citizens.

The Ombudsman Office has the following functions:
• **Investigate**: can initiate and pursue investigations, either on its own initiative or at the request of any interested person whose rights have been affected by the state administration, its agents including non-state legal persons providing public services. Also, it can investigate as a priority issues that may be affecting a significant number of people.

• **Exercise of legislative power**: the Ombudsman can submit bills before the Congress.

• **Reporting on issues of particular importance**: the Ombudsman prepares reports on matters within its competence, known as Ombudsman’s reports, and submits an annual report to Congress on the management of the Ombudsman Office.

• **Intervene in constitutional proceedings**: in order to defend human rights and the principle of constitutional supremacy, the Ombudsman is empowered to intervene in the constitutional processes of *amparo*, *habeas corpus*, *habeas data*, unconstitutionality, popular action and enforcement action. His/her intervention can be accomplished by various methods. Thus, it can initiate constitutional processes, intervene in pending proceedings as an intervener or submit briefs as *amicus curiae* and may file reports or opinions at the request of the parties or the Constitutional Court.

• **Promote human rights treaties**: the Ombudsman is empowered to promote the signature, ratification, adherence and effective dissemination of international human rights treaties, in order to ensure their implementation. It also promotes national legislation and practices are carried out according to the provisions of the treaties signed by Peru.

• **Promote administrative procedures**: the Ombudsman can initiate any administrative proceeding or to participate in it on his/her own initiative or at the request of a third party, using the criterion of discretion on behalf of one or more persons, for the defence of the fundamental and constitutional rights.

The Ombudsman of Peru has developed an Institutional Strategic Plan (Plan Estratégico Institucional) around the following topics of utmost importance:

• defend the full enjoyment of fundamental rights of the individual and the community before the state administration and encourage strengthening citizenship for its exercise

• contributing to the democratic governance of the country, promoting transparency and state decentralisation and its ability to prevent social unrest

• strengthen and modernise the internal institutional organisation to meet citizens’ needs efficiently and effectively.

The PEI gives preferential attention to vulnerable groups in conditions of inequality or that require special protection such as boys and girls, women, indigenous groups, people with disabilities, the elderly, detainees and persons affected by violence. It focuses on seven strategic topics: health, education, access to justice, environment, utilities, identity and citizenship, and social conflicts.

The Ombudsman institution plays an important role at the local level. It has 38 local representations across Peru divided into 28 regional offices and 10 Ombudsman attention offices (*módulos de atención*) (Figure 7.A1.1). In 2014, the regions recorded 86,359 cases (74.02%) while in Lima 30,312 cases (25.98%) were recorded.

Municipalities ranked first among public institutions with the highest number of complaints nationwide, reaching 23.7%. (Figure 7.A1.1) Among the main reasons for
complaints are irregularities in administrative procedures, lack of response to citizen requests, labour claims, violations of the right to access to public information. These are also the main reasons at the regional level.

Figure 7.A1.1. Public institutions with the highest number of complaints


Social conflicts

As economic growth consolidates in Peru, mainly driven by extractive industries, social tensions between local communities, the private sector and the state have been widely recorded over past years. As stated by Ban Ki Moon, UN Secretary General, “The development process generates inevitable conflicts as new actors arise, resources and priorities change and social divisions are corrected or deepened”. In Peru, in some jungle, mountain and rural areas of the country, over 60% of the population continues to live in poverty. The income distribution gap remains quite large as well. This economic disparity has contributed to rising social unrest (Taft-Morales, 2013). Most of the conflicts occur in areas where the state has a very limited presence. In addition, conflicts are often related to sectors where the government is perceived by the population as an actor of the conflict, for instance as an ally of extractive companies (ONDS-PCM, 2014).

For more than ten years, the Ombudsman’s Office has been working actively to address social conflict through its Social Conflicts and Governance Unit. This unit has sub-units in every ombudsmen office at the regional level and has also created mobile units (oficinas moviles) that travel throughout the country in order to be close to the source of conflict, have direct relations with stakeholders and civil society organisations, issue monthly bulletins resulting from their monitoring activities and participate in dialogue processes. The Ombudsman plays a key role in promoting dialogue and this practice has generated a virtuous collaboration with other public institutions, such as, for instance, the National Office for Dialogue and Sustainability (Oficina Nacional de Diálogo y Sostenibilidad) at the PCM.

The Ombudsman’s Office creates opportunities for dialogue and collaboration permanently with the state to prevent or mediate in situations that generate a threat or a violation of fundamental rights, or affect local, regional or national governance.
Specially, its work addresses conflicts over consultation processes on the impact of mining, logging and hydrocarbons in the environment. The year 2014 started with 213 social conflicts and ended with 210 conflicts, most of them related to the initiation and development of extractive industries and their relationship with communities, population centres and farmers (Figure 7.A1.2).

Figure 7.A1.2. Main sources of social conflict


The Ombudsman can intervene to guarantee the rights of citizens in the case of a conflict in the following cases:

- a culture of peace and dialogue is discouraged
- its mediation is requested
- its presence in roundtables or high commissions is requested
- to carry out actions to ensure respect for the fundamental rights to life, integrity and health through the evaluation of people injured and detained in case of violent acts
- in the critical phase of a conflict to monitor the police, prosecutor and judiciary
- if there is need to facilitate access to information for actors of a social conflict.

The role of the Ombudsman in promoting open government

The Defensor del Pueblo of Peru is one of the most active proponents of open government among ombudsman worldwide. As discussed above, the Defensor del Pueblo has taken a key role in promoting access to information, monitoring its implementation and providing recommendations to create conditions more favourable to the successful implementation of the right to information. Furthermore, in addition to its traditional role of receiving complaints from individual citizens, Peru’s Ombudsman with its local offices is well-placed to reach out to citizens in the most remote areas, ensuring that their voices are also heard in the policy-making process at the local and national level. Its extensive experience in mediating between the government and different social groups to address or
avoid social conflict is an effective gateway to enhance citizen participation and public sector accountability in Peru.

National Office for Dialogue and Sustainability

In July 2012, President Ollanta Humala committed to change the management of national conflicts through new initiatives that were aimed at reducing social tensions. The first law President Humala signed was the Law of the Right to Prior Consultation to the Indigenous or Native People (Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios), requiring mining, energy and logging companies to consult with indigenous and rural communities about projects planned in their territories, which had been the source of much social conflict. Former President Alan García had vetoed a similar law and violent conflicts over land use continued throughout his term. The law brings Peru into compliance with the International Labour Organization’s Convention on Indigenous Peoples, which Peru ratified in 1993. The convention requires that companies consult indigenous groups before entering their ancestral territories to exploit natural resources. Implementing regulations went into effect on 4 April 2012 (Taft-Morales, 2013). However, government delays in publishing an Official Database of Indigenous Peoples, which determines which indigenous populations in which area will be eligible for prior consultation, and the complex consultation rules are hindering implementation of the law (Taft-Morales, 2013).

To further pursue Peru’s goal of reducing social conflicts, the National Office for Dialogue and Sustainability was created through Decree 106-2012-PCM in October 2012. It is a specialised technical body within the Presidency of the Council of Ministers, and is responsible for:

- leading the process of dialogue involving the different social actors, representatives of private and public organisations as well as officials at various levels of government, to channel citizens’ demands and provide a solution for the settlement of disputes, differences, conflicts and expectations of the population
- enhancing co-ordination with the executive and other levels of government for the prevention and management of disputes, differences, social conflicts, expectations of the population, and for defining policies and strategies in this area
- strengthening functions related to research, prevention, dialogue, promotion and management, so that social conflicts policy established by the government is implemented, comprehensive, consistent and sustainable.

In its methodology, the National Office for Dialogue and Sustainability has characterised the conflicts as follows:

- Difference: conflict of judgment or opinion – “cognitive conflict” – which occurs when one party believes that other(s) has/have come to wrong conclusions about facts. It is fundamentally a clash of opinions.
- Controversy: opposition of interests or positions regarding a fact, an action or a decision. An interest is an objective or goal which a social group pursues, while one position is the vision or representation that the group has been forged. Both revolve around a fact, concrete action or decision.
- Social conflict: a dynamic social process in which two or more interdependent parties perceive that their interests are opposed: incompatible goals, resource shortages and
interference of the other party to achieve their own goals; and initiate actions that may constitute a threat to the governance and/or the public order, and for whose resolution state intervention is required in his capacity as mediator, negotiator or guarantor of rights.

The National Office for Dialogue and Sustainability has three main forms of intervention:

1. Prevention: done before the outbreak of the social conflict or before it escalates.
2. Treatment: occurs when the social conflict is expressed openly and can even reach a crisis. When this occurs, the office seeks to achieve the de-escalation of it, trying to channel it toward a solution through dialogue and negotiation.
3. Monitoring: monitors and follows up the established mechanisms for conflict resolution (roundtables, working groups, etc.). The purpose is to identify new potential problems that eventually lead to the resurgence of the conflict.

One example of its *modus operandi* is the use of “spaces for dialogue” as a preventive tool and to address conflicts. These roundtables are defined as “a mechanism for citizen participation and consensus building”, whose purpose is to develop a process to help create a climate of confidence among potential actors involved in a conflict, in order to reach a better understanding of their interests, positions and needs, and thus arrive at mutually beneficial arrangements (ONDS-PCM, 2014). Between July 2012 and July 2014, Peru had 156 “spaces for dialogue” divided into roundtable, working groups, multi-sector commissions and other modalities, helping to solve 98 cases of social conflict.

Between July 2012 and July 2014, the National Office for Dialogue and Sustainability carried out 5,106 activities at the national level to promote dialogue between different parties of a conflict. These were divided into:

- 1,904 activities with state actors
- 1,066 with civil society
- 660 with the private sector
- 1,476 multisectoral including actors of the state, civil society and the private sector (Figure 7.A1.3).
As for the case of the ombudsman institution, the National Office for Dialogue and Sustainability provides an effective instrument to promote citizens’ consultation and participation and in the promotion of a culture of transparency, openness and accountability. This is even more noticeable as the office works in areas where these principles are particularly weak and much needed, where the government’s presence is to be improved, and where the implementation of the various initiatives of Peru’s OGP Action Plan has been the least successful. Its involvement in Peru’s national open government agenda would provide it with greater impact as well as relevance for local communities at the subnational level.

**National Agreement**

National visions and strategic plans aim to provide a country with policy guidance within and beyond electoral cycles. OECD analysis suggests that these visions are more legitimate and find more support within government and society as a whole when they are elaborated in an inclusive manner. Several OECD member and partner countries have engaged in open and inclusive processes not only to define the objectives of their strategic visions, but also to implement them, monitor them and refine them over time. A national vision, given its broad focus and time horizon, lends itself to public engagement as it aims to define the future for all citizens. Like Lithuania and South Africa (Box 7.A1.3), Peru can build on the already existing, and generally appreciated, open government practices of its National Agreement. Until today, the National Agreement remains an institutionalised forum for regular dialogue among various actors in society (government, political parties and civil society, among others). This engagement mechanism could be further used to organise an ad hoc dialogue about Peru’s contested open government agenda, which is currently in a critical stage.

After Peru’s political turbulence and the struggle of public powers in 1992, Peruvian authorities decided to restructure public institutions. The 1979 Constitution was abolished, the parliament was dissolved and a new Constitution entered into force in 1993. Efficient horizontal and vertical co-operation and the implementation of
cross-cutting policies were necessary to rebuild the Peruvian state; as well as to redesign, strengthen and consolidate its public institutions; and restore public trust. Coordination between Peruvian public authorities, political leaders and civil society was crucial in this respect. Therefore the Compromiso de Diálogo para lograr un Acuerdo Nacional was signed on 5 March 2002 that formally established the National Agreement on 22 July 2002 (DS 105-2002-PCM, 17 October 2002).

The National Agreement has the purpose to define state policies with a long-term vision, more precisely until 2021, based on dialogue and consensus. To successfully achieve such an ambitious goal in an inclusive manner, a forum on governance and three additional thematic forums on each of the objectives were constituted, decentralised forums in all the regions were carried out and several consultative mechanisms were established:

- Suggestion boxes: between May and June 2002, 200,000 surveys regarding the creation of the National Agreement were distributed in more than 350 agencies of the National Bank nationwide; 44,277 people responded.
- Hotline: between May and June 2002 a public telephone line was made available. It received a total of 1,147 calls from across the country to inquire about the National Agreement and through which 107 people responded to the survey.
- Website: between 6 March and 15 June 2002, 337,859 visits were recorded on the website www.acuerdonacional.pe to consult and send suggestions regarding the creation of the National Agreement. Also, through it, 222 people completed a survey.

### Box 7.A1.3. Defining national visions based on open government practices

The government of Lithuania has engaged in an in-depth process to define its national strategy “Lithuania 2030”. The State Progress Council, led by the centre of government, was responsible for the drafting process of the strategy: government authorities, business leaders, community groups and prominent public figures participated in its development. Three working groups were set up on smart economy, smart governance and smart society. The consultation involved the national level and Lithuanians living abroad. The council also went on a road trip to discuss with mayors, municipality representatives, young people and non-governmental organisations. Innovative approaches were developed to involve harder to reach groups. Since the elderly were especially seen not to believe in the strategy, the council reached out to school children, who were trained to interact with the elderly. The outcome is a national strategy which is guiding the policies of the whole country and whose implementation is monitored in an inclusive process (OECD, 2015).

South Africa equally embarked on an inclusive process to define its National Development Plan – “Our future, make it work, South Africa’s vision till 2030”. A commission with 25 commissioners was responsible for leading the planning process. It was supposed to take an independent view and consult various stakeholders in society. They consulted policy communities, community-based organisations, political parties, labour unions, business organisations, government departments, the Forum of South Africa Director’s General, Cabinet, and provinces and municipalities through various means such as TV and radio interviews and talk shows, newspaper inserts and op-ed pieces, roundtable discussions, fireside chats, social media conversations, Jam – 72-hour collaborative online brainstorming session, YouTube – animations and a dedicated e-mail address for written comments/submissions. This process aimed at defining overarching goals, building consensus and providing a common framework for action given the limited resources.

It has tripartite structure composed of the three levels of government, political parties represented in the Congress and civil society organisations at the national level (Table 7.A1.1).

Table 7.A1.1. Members of the National Agreement 2015

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<th>Government</th>
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<td>President of the Council of Ministers</td>
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<td>National Assembly of Regional Governments</td>
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<td>Association of Municipalities of Peru</td>
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<td>Political parties</td>
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<td>Unión por el Perú</td>
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<td>organisations</td>
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<td>Confederación Nacional de Instituciones Empresariales Privadas (CONFIERP)</td>
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<td>Conferencia Episcopal Peruana</td>
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<td>Mesa de Concertación para la Lucha contra la Pobreza</td>
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<td>Plataforma Agraria de Consenso (represented by the Junta Nacional de Usuarios de los Distritos de Riego del Perú [JNUDRP] and the Convención Nacional del Agro Peruano [CONVEAGRO])</td>
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<td>Sociedad Nacional de Industrias</td>
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<td>Other instances</td>
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<td>Advisory Committee</td>
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<td>High-level Technical Committee</td>
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The President of the Republic is the Chairman of the National Agreement, who may delegate its role to the President of the Council of Ministers. In addition, the Executive Secretariat of the National Agreement has the responsibility to organise outreach activities, monitors the agreements of the National Agreement, and promotes the discussion and approval of long-, medium- and short-term agreements. However, as of October 2015, the monitoring and annual reports available online are out of date, as they go only until 2008. The National Agreement approved 34 state policies framed along 4 major objectives (Box 7.A1.4).

All public policies, plans and strategies of the three levels of government and legislative initiatives must be framed around these 34 state policies. They are also meant to inform the strategic planning of the private sector, civil society organisations, multilateral organisations and political parties, as their activities need to contribute to reaching their objectives. Public policies affecting the medium- and long-term development of Peru must be submitted to the National Agreement Forum, where they are presented, discussed and eventually approved. All public policies should support one or more state policies, as defined in the 2002 National Agreement. Box 7.A1.5 presents examples of public policies that have been submitted to and approved by the National Agreement.
Box 7.A1.4. National Agreement: State policies that were discussed and agreed

- **Democracy and rule of law**
  1. Strengthening of the democratic governance and rule of law.
  2. Democratisation of political life and strengthening of the party system.
  3. Affirmation of national identity.
  4. Institutionalisation of dialogue and consensus-building mechanisms.
  5. Government according to the objectives of strategic planning, national perspective and transparent procedures.
  6. Foreign policies for peace, democracy, development and integration.
  7. Eradication of violence and strengthening of public mindedness and citizen security.
  8. Political, economic and administrative decentralisation to favour a comprehensive, harmonious and sustained development of Peru.

- **Equity and social justice**
  11. Promotion of equal opportunities without discrimination.
  12. Universal access to free and quality public education and promotion and protection of culture and sport.
  13. Universal access to health and social security services.
  15. Promotion of food security and nutrition.
  16. Strengthening of family, protection and promotion of children, adolescence and youth.

- **Country competitiveness**
  17. Affirmation of the social market economy.
  18. Search for competitiveness, productivity and formalisation of the economic activity.
  19. Sustainable development and environmental management.
  22. Foreign trade policy for extending markets with reciprocity.
  23. Agricultural and rural development policy.

- **Efficient, transparent and decentralised state**
  24. Confirmation of an efficient and transparent state.
  25. Prudence in the institutionalism of the military forces and their service to democracy.
Box 7.A1.4. National Agreement: State policies that were discussed and agreed (continued)

26. Promotion of ethics and transparency and eradicating corruption, money laundering, tax evasion and smuggling in all its forms.
27. Eradication of production, trafficking and use of illegal drugs.
28. Full observance of the Constitution and human rights and access to justice and judicial independence.
30. Elimination of terrorism and affirmation of national reconciliation.
31. Fiscal sustainability and reducing the debt burden.
32. Disaster risk management.
33. State policy on water resources.
34. Planning and territorial management.


Box 7.A1.5. Examples of public policies developed in the framework of the National Agreement

- Decision of the current government to increase the share of the education sector’s budget of at least 0.25% annually in order to reach 6% of the national budget. This will be mainly used for the revalorisation of the teaching profession, improving the quality of learning, improving the educational infrastructure and schools management.

- Social pact of mutual commitments for education 2004-2006, which contributed to the National Education Project, which addressed state policy 12 of the National Agreement: Access to a free and high-quality public education.

- The Law for the System and the Strategic Planning Center (CEPLAN) adopted by the Congress, was inspired by the fifth state policy of the National Agreement. The approval of the Economic and Social Commitment agreed on short-term issues such as: annual increase in public investment to reach 5% of gross domestic product; giving priority to requests from regional governments to eliminate tax exemptions; generalising one-stop windows for the creation of businesses; the mandatory sale of generic drugs; approval of a new public teaching career; the promotion of literacy; the creation and implementation of a concerted strategic planning system, among others.

- Public support for the Peruvian government in the decision to submit to the International Court of Justice in The Hague the issue of maritime delimitation with Chile.

- The adoption of the Commitment for Better Quality Expenditure, which was incorporated into the Public Budget Act from 2006 and in the Law of Fiscal Balance. This led to the first strategic budget programmes: nutritional articulated programme; maternal and neonatal health; learning achievements at the end of cycle III; public access to identity; access to basic services and market opportunities.

By reaching a consensus among political and social leaders, the National Agreement aims to address policy continuity and institutional issues in the long term. It is a vivid example of multi-stakeholder consultation and participation in Peru.

Notes


Bibliography


