OECD Justice Review of Peru

TOWARDS EFFECTIVE AND TRANSPARENT JUSTICE INSTITUTIONS FOR INCLUSIVE GROWTH

OECD

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Foreword

This *OECD Justice Review of Peru: Towards Effective and Transparent Justice Institutions for Inclusive Growth* ("Justice Review") demonstrates Peru's intention to align more closely with OECD standards in the area of ensuring equal access to justice, including the OECD Recommendation on Access to Justice and People-Centred Justice Systems [OECD/LEGAL/0498]. Indeed, Peru is implementing its 2021-2025 Justice Reform, led by the Ministry of Justice and Human Rights (MINJUSDH), with the aim of modernising its justice system and improving people's access to justice services for all. Peru has committed to strengthening access to justice and the Rule of Law under United Nations Agenda 2030, notably the Sustainable Development Goal 16.3.3 indicator on access to justice, of which the OECD is co-custodian with the United Nations.

This Justice Review provides an in-depth analysis of Peru's justice system and how it operates. It benchmarks Peru against OECD Member countries' best practices and includes actionable policy recommendations for Peruvian authorities and policymakers. This Justice Review was commissioned by the MINJUSDH and aims to help Peru design and deliver public justice policies and services to improve the administration of justice and its approaches to people-centred service delivery.

This Review is separate from the evaluation of Peru that is being conducted by the Public Governance Committee in the context of the country's accession process to the OECD, which began on 25 January 2022. Nevertheless, the recommendations identified herein also aim to bring Peru closer to OECD standards and best practices and could serve as technical support for the implementation of actions that may be relevant in the context of accession.

The improvements to the judicial system recommended in this Review will provide a unique opportunity for Peru to address structural challenges related to the access to justice and the rule of Law that have limited the implementation of major justice reforms and people access to justice services.

The analysis and recommendations presented in this Justice Review reflect good practices that have demonstrably enhanced justice outcomes in OECD Member countries. It benefited from insights of a country peer from Colombia and advice from OECD Member countries representatives based in Lima, including the European Union Delegation to Peru.

This Justice Review was approved and declassified by the OECD Public Governance Committee on 28 June 2024 and prepared for publication by the Secretariat.

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Executive summary

Modernising its justice system is a priority for Peru. Since 2003, the country has taken several steps to strengthen the institutional framework supporting the design and delivery of justice policy and services for all Peruvians, including the most vulnerable, through forward-looking institutional and functional justice policy reforms. At the same time, their effective implementation depends on the removal of institutional bottlenecks, as well as political commitment and stability.

Peru's fragmented justice system often translates into a disconnected approach to justice policy reform, design and implementation. This can lead to duplication and inefficiencies, affecting service quality and undermining efficient spending of scarce public resources, sometimes resulting in justice services that are limited or unavailable for too many people, particularly the most vulnerable. These effects tend to be magnified by the limited development of non-court-based justice tools, notably alternative dispute resolution services. Further digitalising the system could also improve access to and delivery of justice services.

While Peru aims to guarantee the independence of the judiciary through constitutional provisions, the existing institutional, legal and operational framework safeguarding the independence of judges, such as performance appraisals and evaluation of judges, could be improved to guarantee their autonomy and impartiality. As such, there is scope to further protect judicial independence, including the management of judicial careers, notably of judges and public prosecutors, as well as ensuring that third-party, public institutions such as the Ombuds Office (*Defensoría del Pueblo)* cannot interfere unduly in judicial decision making. The judiciary's involvement in justice policy design and in delivering a range of legal and justice services that lie beyond its traditional administrative and adjudicatory functions further adds to the challenges to secure its independence.

Additionally, the conflation of "access to justice" with "access to the court system" and the relatively limited power and resources assigned to the executive to lead and co-ordinate justice policy and service design and delivery limit Peru's capacity to plan, co-ordinate and implement system-wide justice policy reforms. There is thus scope to strengthen the executive's system-wide leadership and co-ordination capacity in justice policy and service design and delivery, as is the practice in many OECD Member countries. This will require a "paradigm shift" that empowers and equips the executive to lead and co-ordinate system-wide justice policy reforms that place people at its centre.

Peru has made considerable efforts to increase the availability and accessibility of justice services, notably by modernising its justice system and programmes. Yet, systemic barriers continue to affect access to a full range of justice services, particularly for the most vulnerable. To effectively respond to citizens' legal needs, Peru needs to develop the institutional and functional capacity to identify and quantify people's legal and justice needs and design and deliver truly responsive justice policy and services from a system-wide perspective.

Expanding the justice system's focus beyond the courts by placing people at the centre of the justice system could considerably increase people's access to justice. The implementation of the 2021-2025 Justice Policy Reform could contribute effectively to modernising Peru's justice system in a way that

prioritises meeting the needs of all Peruvians, notably the most vulnerable, thereby creating more efficient, effective and accessible justice for all.

Finally, there is room for improving the Rule of Law and equal access to justice by effectively safeguarding Peru's Constitutional Separation of Powers guarantee. This could be done by defining in law when and how the constitutional system of checks and balances can be applied in practice and to ensure that the Constitutional Court plays a key role in interpreting the Constitution on this matter. This could also help limit the use of constitutional control mechanisms for short-term, partisan or political purposes.

1 Assessment and recommendations

This chapter outlines the main findings of the OECD assessment and presents policy recommendations to support ongoing efforts in Peru to reform and modernise its justice system. These recommendations aim to support Peru's justice actors in drawing on the experience and good practices of OECD Member countries, along with relevant OECD and other international standards, to achieve their strategic objectives and bring justice closer to people's needs.

1.1. Introduction

This review assesses Peru's justice system and offers concrete recommendations to build more effective, efficient, transparent, accessible and people-centred justice in Peru. It evaluates the institutional and functional arrangements underpinning the administration of the justice system in Peru while comparing them with OECD good practices, including from Australia, Austria, Belgium, Canada, Chile, Colombia, Lithuania, Portugal, Spain, England (United Kingdom), Wales (United Kingdom) and the United States. The review also assesses justice service access and mapping issues in Peru using a people-centred approach and illustrations from legal needs analysis in two regions, Lima and San Martín.

The review finds that access to justice in Peru has historically been centred on access to courts, with a relatively limited role and corresponding resources assigned to the executive in justice policy planning, implementation, monitoring and evaluation. The conflation of "access to justice" with "access to the court system" and the relatively limited power and resources assigned to the executive to lead and co-ordinate justice policy across the justice system undermine Peru's capacity to respond effectively to its citizens' justice needs, regardless of who they are or where they reside in the country. This can help explain some of the current gaps, overlaps and duplications in the availability of key justice services, notably for the most vulnerable, especially in rural and remote areas.

1.2. Institutional set-up and co-ordination in the justice system

Peru has put forward a series of major justice reform plans to modernise its justice system and improve its interoperability and integrity. However, limited clarity in terms of justice institutions' roles and functions, leadership, and co-ordination among them, have impeded the implementation of justice reforms.

The Peruvian justice system comprises many institutions whose roles and justice functions have not been clearly defined. This, together with the shortage of effective communications and co-ordination across institutions, often leads to overlaps in mandates, roles and responsibilities in justice policy design and service delivery. The implementation of the latest reform initiative (2021-25) has displayed partial co-ordination and fragmentation, due to limited system-wide leadership, and has unevenly impacted the modernisation of the justice system. Similarly, multiple programmes have been set up by institutions with similar or overlapping mandates, with limited clarity in the allocation of resources and gaps in monitoring and evaluation frameworks.

Moreover, the fragmented nature of the Peruvian justice system leads to a compartmented approach to law enforcement, in which the institutions work as separate entities with little co-ordination among them in the implementation of laws and policies that require their joint work. Tackling the fragmentation and the dispersed responsibility for justice services across institutions could enhance their capacity to understand and respond to people's justice needs. This issue reflects the broader challenges associated with a fragmented yet highly centralised state, which has operated in a context of high political instability in recent years.

Furthermore, most of the justice reforms have primarily focused on the judiciary and its needs, with less attention to the out-of-court services and processes that can help access to justice. Addressing this imbalance requires boosting the capacity of MINJUSDH to lead the planning and co-ordination of justice services and reforms for a people-centred system of providing access to justice.

As a multicultural country with important and diverse Indigenous and rural populations, ordinary justice co-exists with various levels of Indigenous, peasant and community justice. However, even though the Constitution recognises peasants' and native communities' right to exercise jurisdictional functions, no law regulates or further develops this right or co-ordinates the co-existence of these two justice systems.

In addition, the implementation of this right can be uncertain and vary in each region of Peru depending on the presence, power and perceived legitimacy of these groups in terms of problem solving and providing intercultural access to justice. This can make it difficult to separate the roles and functions of both institutions and services, avoid overlap of functions, and guarantee intercultural justice and the respect of both justice systems across the country.

Moreover, in Peru, a clear and integrated people-centred approach to justice has yet to be applied, including in the mandates of core justice institutions. As such, improving clarity in the role and justice functions and services could increase users' knowledge regarding justice services and pathways, so they know where to go to prevent legal issues and seek resolution. Moreover, it could further improve the efficiency in resource allocation and the delivery of people-centred justice services.

Finally, administrative justice as an area of the law is still underdeveloped in Peru, often overshadowed by the constitutional justice system. This can be illustrated by the fact that citizens prefer the constitutional *amparo* rather than using administrative justice channels to protect their rights. This imbalance restricts to effectively oversee administrative actions by public authorities, thereby limiting the protection of individual rights against government action. There is also scope to expand the scope of review within the administrative justice system to include public procurement and election-related issues, in line with practices in many OECD Members.

1.2.1. Recommendations

In light of the above, the following recommendations are presented for consideration by Peru (presented in greater detail at the end of Chapter 3):

Key recommendations

- Take measures to fully implement Peru's legal framework on safeguarding the Constitutional Separation of Powers by clarifying procedures and circumstances under which the system of checks and balances is applied. This should include specifying the roles and powers of each branch of government in overseeing and checking the others.
- Take measures to empower the executive branch to lead and co-ordinate the design and implementation of system-wide justice policy reforms, through a people-centred approach.
- Take steps for designing and implementing co-ordination mechanisms that focus on responding to justice needs with a whole-of-government approach, including clarifying roles and responsibilities of justice institutions and establishing relevant processes and protocols.

Medium/long-term recommendations

- Enhance mutual knowledge and co-operation between formal and Indigenous and intercultural justice; clearly define in law, in full consultation with Indigenous groups, the juridical frontier separating Indigenous and formal justice; and strengthen co-ordination capacity to promote access to formal, Indigenous and intercultural justice by all Peruvians, regardless of who they are or where they reside in the country.
- Enhancing accountability of the public sector by developing the administrative justice system. All administrative acts should be subject to judicial review, including public procurement and electoral administration. The court should be able to fully redress any violation of the law, including lack of competence, procedural unfairness, and abuse of power. Only laws adopted by parliament should fall outside the purview of the administrative justice and fall under the jurisdiction of the Constitutional Court.

1.3. Governance and management for a transparent and independent judicial system in Peru

While Peru has been taking steps to establish a comprehensive institutional framework to ensure sound governance in the justice sector, the fragmented institutionalisation of its justice system hinders an already complex management system with blurred lines of responsibility. This tends to generate overlap and duplication, and conflicts of authority and competence in the governance of the judicial system, while limiting accountability.

Mechanisms governing budget allocation to the justice sector, including co-ordination and negotiation arrangements, appear restricted. The judiciary engages in limited system-wide, medium-term strategic planning, including budgetary and financial planning. It has yet to develop monitoring and evaluation frameworks that can be used to demonstrate to itself, the Ministry of Economy and Finance (MEF) and the positive impact of its spending on legal and judicial outcomes for people.

Most importantly, there is a strong need to strengthen the existing institutional, legal and operational framework safeguarding the independence of judges. The most salient challenges are judges' ratification, performance appraisal schemes, the high number of judges under temporary employment and the possibility of the Ombuds Office interfering in individual judicial proceedings by direct injunctions.

The legal ambiguity and lack of precision surrounding the application of sanctions against judges allow for different interpretations of and criteria for what is sanctionable and how. The equal treatment of judges before the law is thus not guaranteed. Compared with many OECD Member countries' disciplinary bodies, Peru's various bodies with disciplinary roles, coupled with the vagueness of the law in this area, can undermine equal treatment before the law, lead to biased decisions concerning a judge's career and jeopardise the independence of judges.

1.3.1. Recommendations

In light of the above, the following recommendations are presented for consideration by Peru (presented in greater detail at the end of Chapters 3 and 4):

Key recommendations

- Take measures to ensure the constitutional guarantee of judicial independence, including the overhaul of the performance appraisal, ratification, and evaluation of sitting judges to avoid risks to their independence and impartiality.
- Continue to implement measures to reduce judges' and prosecutors' temporality (provisional and supernumerary), with a view to safeguarding their impartiality.
- Take measures to ensure fair, impartial, and merit-based treatment of judges regarding their selection, lifelong training, and sanctions, including by overhauling the selection system and strengthening pre-entry training of judges and prosecutors.
- Further clarify the roles and functions of the highest bodies of the judiciary to avoid overlap and duplication as well as conflicts of authorities and competences. This is of particular importance in the case of investigation and sanction of magistrates.
- Take steps to strengthen judiciary budgetary management and performance, including system-wide strategic planning, developing performance indicators, and designing and using monitoring and evaluation frameworks respecting judicial independence and the judiciary's needs to carry out its constitutional mandate successfully.

1.4. Towards an efficient and seamless justice system

Although significant reforms have been undertaken over the past years to improve the efficiency of the judicial system, court congestion remains significant in Peru compared to OECD averages and practices. This is reflected in slow clearance rates and case backlogs, the limitations and dysfunctions in alternative dispute resolution (ADR) mechanisms and limitations in enhancing an interoperable digital justice system across the country.

In addition, judicial resources, such as judges and budgets, could be better allocated across court districts through the implementation of better court and case management strategies and by improving the implementation and uptake of the e-filing system (*Expediente Judicial Electrónico*), respecting the principles of transparency, inclusiveness, accountability and accessibility. The efficient use of statistics and a data-based approach to case management and monitoring, when accompanied by the right information and communication technology (ICT) tools, infrastructure and training, are critical to clearing backlogs, improving case clearance rates and disposition times and enhancing the quality of justice delivery by improving courts' performance.

Popular arbitration could also be more widely used to alleviate court congestion. However, the use of ADR mechanisms is still underused in Peru. ADR mechanisms could thus be better promoted, implemented and evaluated, adapting them to people's needs. Further data and stronger information systems are also needed to measure the performance and impact of ADR mechanisms as a means to improve their efficiency.

1.4.1. Recommendations

In light of the above, the following recommendations are presented for consideration by Peru (presented in greater detail at the end of Chapter 5).

Key recommendations

- Improve the design, trustworthiness, and practical use of alternative dispute resolution (ADR) mechanisms by implementing a clear and detailed legal and regulatory framework for all ADR mechanisms and improving data collection with a view to measuring their implementation and impact.
- Take measures to develop comprehensive decongestion measures and new management structures to improve the efficiency of the courts, including digital tools. Improve the production and use of statistics and a data-based approach by implementing comprehensive data collection on the length of court proceedings and suggest recommendations about their application at all levels of jurisdiction in Peru.
- Implement mechanisms to enhance/bolster the collection of data with a view of designing and implementing a comprehensive, inclusive and integrated policy on access to justice.

Medium/long-term recommendations

- Take steps to establish a permanent, fully integrated system of justice digital interoperability that allows for the exchange of justice data and the processing of judicial processes in a comprehensive and seamless manner at the national level.
- Implement an integrated, co-ordinated national digital strategy for the justice system that enhances the use of digital tools to improve the efficiency and effectiveness of justice delivery. While doing so, define clear responsibilities, leadership, and co-operation mechanisms to ensure the strategy's implementation, monitoring and evaluation.

1.5. Towards a people-centred justice system in Peru

Peru has adopted a robust normative system to enhance vulnerable populations' access to justice. Indeed, the country has taken steps to enhance the number and types of justice services available to its citizens across the country, including expanding the presence of courts and diversifying judicial services; creating specialised courts and judicial mechanisms to improve an intercultural approach; and increasing the availability and presence of public defence and legal aid services to assist individuals who cannot afford legal representation.

However, the accessibility of these services, as well as their ability to respond to the needs of vulnerable populations and groups (women, including victims or potential victims of violence; Indigenous and rural people; and the LGBTQI community), can vary in practice as they face specific limitations when accessing each available service. These include regional disparities in the availability of justice services – with more remote areas facing challenges in accessing adequate legal representation and support. Indeed, Peruvian justice institutions face considerable challenges in guaranteeing access to justice to all people, vulnerable populations being more prone to experiencing them, as the main legal barriers they face are related to remoteness, system complexity, language barriers, and cost. These barriers could be better identified to improve justice services and to guarantee access for specific populations.

1.5.1. Recommendations

In light of the above, the following recommendations are presented for consideration by Peru (presented in greater detail at the end of Chapter 6):

Key recommendations

- Implement measures including assigning increased human and financial resources to overcome remaining geographical and system complexities, cultural, language, and financial barriers to access justice services.
- Strengthen public defence and legal aid services to ensure access to justice for all individuals and vulnerabilities. Strengthening the role of relevant institutions and establish clear justice pathways to facilitate people's access to justice services.

2 The rule of law and equal access to justice in Peru

This chapter analyses the importance of the rule of law and equal access to justice in Peru by identifying the linkages between the rule of law, access to justice, trust in public institutions and good governance, comparing Peru with OECD Member countries. It then highlights Peru's main justice reform initiatives and analyses how the protection of fundamental rights and access to justice is guaranteed in the country. Finally, it provides an overview of the methodology and structure of this review.

2.1. Introduction

This chapter briefly describes the rule of law and how most modern democracies within and beyond the OECD have adopted this principle as the main guarantor of people's equal treatment under the law and equal access to justice. It identifies key linkages between the rule of law, access to justice, trust in public institutions, and good governance and how levels of perceived corruption in a country affect citizen trust in public institutions, including those that form part of the justice system, and undermine a healthy and attractive business environment.

This chapter also presents the development of a people-centred approach, placing individuals and their needs and experiences at the centre when designing, delivering, implementing and evaluating public policies and services within the justice system. It then analyses recent justice reform policies and how fundamental rights and access to justice are guaranteed in Peru – including the progressive provision of Indigenous, women and environmental rights – and assesses how Peru's institutional arrangements protect these rights, while comparing them with OECD country experiences.

Finally, it presents an overview of the methodology and structure of this review, which comprises five chapters that examine the structure, roles and responsibilities; procedures and practices; governance, management and performance; digitalisation and effectiveness of the justice system of Peru; as well as the development and implementation of a justice system driven by people's needs.

2.2. The rule of law, public trust and good governance

The rule of law constitutes one of the core principles that define the like-mindedness of OECD Members. It reflects a foundational building block adopted by modern democracies. This values-based principle posits that everyone is equal under the law, with the same rules, procedures and principles applying to all people and institutions. Applying this principle underpins good governance: it finds expression in laws and regulations that guarantee people fair treatment under the law and equal access to justice.

The rule of law promotes the practice of democracy and supports inclusive growth by ensuring that those who are elected remain accountable to the people through a functional justice system:

- **Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial.** Judges must be free from any influence or pressure that can affect their impartiality and capacity to act freely as essential cogs in a people-centred justice system that protects all people's rights, including, most importantly, the rights of the most vulnerable (OECD, 2020[1]).
- **The consistent application of the rule of law constitutes the implementation mechanism to uphold and protect human rights**, as it requires that legal processes, institutions, and norms be predictable and consistent with human rights (UN Security Council, 2004[2]). Human rights, the rule of law and democracy are interlinked and mutually reinforcing (UNGA, 2012[3]).
- The rule of law and effective justice institutions have been recognised as key components to sustain a thriving business environment and improve long-term economic and social outcomes (OECD, 2018[4]). The OECD Policy Framework for Investment suggests that when conditions for effective access to justice are not guaranteed, companies may face barriers that limit their economic activities, which can adversely affect their country's economic growth (OECD, 2020[5]).

The United Nations (UN) Agenda 2030 Sustainable Development Goals (SDGs) calls upon governments through SDG 16 (Peace, Justice, and Strong Institutions) to enable the rule of law, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Main public governance values linked to the rule of law are described in Box 2.1.

Box 2.1. Public governance values linked to the rule of law

Integrity: The alignment of, and adherence to, shared values and ethics, principles and norms for upholding and prioritising the public interest over private interests in public sector behaviour and decision making.

Transparency: The accessibility of information and other public resources and the initiative-taking disclosure of information and data. Promoting this principle is critical to building accountability, including citizens in policy making and building trust in public institutions.

Public participation and inclusiveness: The engagement of the whole of society and the adoption by governments of specific measures to ensure the participation of all societal groups in decision-making processes. This includes the participation of marginalised groups traditionally under-represented in policy-making processes.

Accountability: Accountability frameworks ensure that the different branches of the state hold each other accountable on behalf of the people and that public officials are accountable for public services and their relationship with citizens. Accountability strengthens people's trust in public institutions and the government.

Source: (OECD, 2020[1]), *Policy Framework on Sound Public Governance: Baseline Features of Governments that Work Well*, https://doi.org/10.1787/c03e01b3-en.

Effective, responsive and efficient justice institutions (see Box 2.2) are essential enablers of the rule of law and trust in justice institutions, which in turn serve as a bedrock for the successful implementation of reforms and of socio-economic development (OECD, 2020[1]). Indeed, the OECD's work on trust in the justice system highlights that access to and satisfaction with justice services are important contributors to citizens' trust in government. According to the OECD Survey on Drivers of Trust in Public Institutions, the perceived independence of the courts is positively associated with public trust in courts and the legal system, following the relationship between effective institutions and trust in government (OECD, 2022[6]).

Box 2.2. Parameters of effective justice systems: The 2023 EU Justice Scoreboard

The EU Justice Scoreboard is a comparative information tool that assists EU Member States in improving the effectiveness of their national justice systems by providing an annual overview of indicators for the assessment of their efficiency, quality and independence, as follows:

- **Efficiency:** The main indicators to monitor efficiency are the **length of proceedings** (average number of days needed to resolve a case), the **clearance rate** (number of resolved cases to the number of incoming cases) and the **number of pending cases** (that remain to be dealt with at the end of the year).
- **Quality:** Indicators include **accessibility** (available legal aid and court fees, promotion of alternative dispute resolution [ADR] mechanisms, arrangements to support persons at risk of discrimination and older persons, specific arrangements for victims of violence against women and domestic violence, measures to ensure a child-friendly justice system, judicial control over acts and omissions of public administration), **sufficient resources** (financial resources, salaries of judges and prosecutors, gender equality in the judiciary, communication with vulnerable groups), **effective assessment tools** (use of surveys) and **digitalisation** (online information about the judicial system, digital-ready procedural rules, use of digital technology,

secure electronic tools for communication, online access to ongoing and closed cases, online access to court judgements).

- **Independence**: Perceived **judicial independence** (surveys of the public and companies), perceived **effectiveness of investment protection** by the law and courts, the **appointment** of Supreme Court Presidents and Prosecutors General, **powers and appointment** of the specialised bodies dealing with corruption, **solutions adopted** to ensure the protection of constitutional rights and the **guarantee of the independence** of lawyers.

Source: (European Union, 2023[7]), *The 2023 EU Justice Scoreboard*, https://commission.europa.eu/system/files/2023-06/Justice%20Scoreboard%202023_0.pdf.

In addition, access to justice is increasingly recognised as a critical dimension of inclusive growth and development and an effective means to tackle inequality. It is an important commitment under the UN 2030 Agenda, particularly an SDG related to it (SDG 16.3). People's legal problems and needs cover every aspect of their lives and are so common that people experience them often in their everyday lives (e.g., debt, neighbourhood issues, property issues, employment). To provide equal access to justice services, the justice system should understand and address the legal and justice needs of the population. This includes knowledge of the specific legal and justice needs of distinct groups across society.

Equal access to justice is an essential component of what defines a people-centred justice system. It requires countries to recalibrate their policy and programme focus in the justice area toward ever-greater people-centred design and delivery of legal and justice services, ensuring that all people have access to high-quality, responsive, targeted, timely, and cost-effective services. This approach flows from and reinforces the concept of justice as a public service, a concept that is guiding the modernisation efforts of the justice systems in OECD Member countries. It highlights governments' responsibility to provide and ensure full access to public services that effectively meet the expectations and needs of their people in all their diversity (OECD, 2021[8]).

Box 2.3. Access to justice and people-centred legal and justice services outcomes

Access to justice through the provision of people-centred legal and justice services has several types of measurable impacts:

- Effects on the legal and justice systems, as the diversion of cases away from courts, the prevention of court congestion, and the improvement of the allocation of existing resources, enhance the efficiency of the court process.
- The failure to deliver affordable and sustainable access to justice to citizens erodes their faith in their justice systems and trust in their democratic institutions. Improved, real access to justice will have a commensurate positive impact on improving people's trust in their democratic institutions.
- Economic growth, including individuals' and families' economic growth, thanks to the provision of legal assistance that turns into investment within local communities, which increases employment, the purchase of goods and services, and associated tax revenue.
- High-level socio-economic impacts, including socio-economic inclusion through effective universal access to social benefits (e.g. social security, healthcare, unemployment, child support, tax benefits).
- Sectoral impacts or benefits in different public policy areas (e.g. health, benefits, living conditions) impact economic growth.

All these impacts help contribute to inclusive growth and to reducing inequalities.

Source: (OECD, 2019[9]), *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, https://doi.org/10.1787/597f5b7f-en.

OECD Member countries are advancing towards justice systems that place people's needs at the core of the state's institutional decision making, reform efforts and actions in the justice area. This broader and more inclusive approach is reflected in the *OECD Recommendation on Access to Justice and People-Centred Justice Systems* [OECD/LEGAL/0498] (Figure 2.1), which the OECD Council adopted in July 2023. The Recommendation focuses on four main pillars that underpin people-centred justice systems: designing and delivering people-centred services; governance enablers and infrastructure; people empowerment; and planning, monitoring and accountability (OECD, 2023[10]). The pillars rest on a foundation that emphasises the importance of people-centred purpose and the culture of the justice system. These elements can also provide a basis for governments, judicial branches and other justice stakeholders to develop more detailed provisions reflecting country-specific differences and different population groups' legal and justice needs.

Figure 2.1. Framework on people-centred justice

Source: (OECD, 2021[8]), *OECD Framework and Good Practice Principles for People-Centred Justice*, https://doi.org/10.1787/cdc3bde7-en and OECD *Recommendation on Access to Justice and People-Centred Justice Systems, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0498*

Evidence suggests that legal needs surveys are the best means of obtaining the most representative understanding of legal needs from the people's perspective[1]. A people-centred legal and justice service design is based on understanding people's needs and experiences to meet these needs and contribute to inclusive growth and individual and community well-being (OECD, 2021[11]). Legal needs surveys seek to identify common obstacles to accessing justice experienced by individuals and businesses and pave the way for reforms to improve access to justice. For example, several surveys carried out in a wide range of OECD Member countries have demonstrated that only a small proportion of legal problems experienced by the population are resolved through legal processes (e.g. in Australia, only 3.4% of matters are resolved through courts and tribunals, and in Canada, only 7% of people use formal court processes to solve their

legal problems) (OECD, 2019[9]). This means that access to justice needs to be understood and assessed using a much broader perspective than simply focusing on access to courts.

2.3. The rule of law, trust and justice in Peru

Trust is essential for the effective functioning and legitimacy of democratic systems. Information on levels of trust in public institutions can offer valuable insights to public administrations about citizens' experiences with and assessments of policy and service delivery, including perceptions surrounding the justice system and the rule of law.

Box 2.4. Systematic planning for people-centred services

The design and delivery of efficient legal and justice policy involve systemic planning processes based on four basic questions posed and answered from the perspective of those with legal and justice needs:

- **Identification and measurement of legal need:** What types of legal and justice needs are experienced and by whom? What people/groups are most vulnerable and/or face the greatest barriers?
- **Mapping of legal needs:** Where and when are these needs experienced?
- **Design of services:** What works in designing services that meet these needs? What solutions/strategies/services work best for different people in different contexts?
- **Delivery of services:** Where to deliver services, and how should they be evaluated?

The approaches used to measure needs and formulate policies and services should be adapted and take into consideration specific populations, particularly those of vulnerable populations and those living in disadvantaged areas.

Source: (OECD, 2019[9]; OECD, 2021[8]).

However, evidence suggests that trust in public institutions is declining in Peru, in line with regional and global trends. According to regional studies, less than half of the population reported trusting their government (Latinobarómetro, 2021[12]), with only 18% of the population reporting trusting the judiciary (Figure 2.2). Similar trends are reported by other international indexes, such as the Rule of Law Index (World Justice Project, 2022[13]). The OECD's analytical and policy framework to understand and measure the key drivers of trust in public institutions suggests that governments can strengthen the reliability of public institutions and their responsiveness to people’s needs and expectations, as well as put in place political processes and public policies that follow the principles of openness, integrity and fairness (Brezzi et al., 2021[14]).

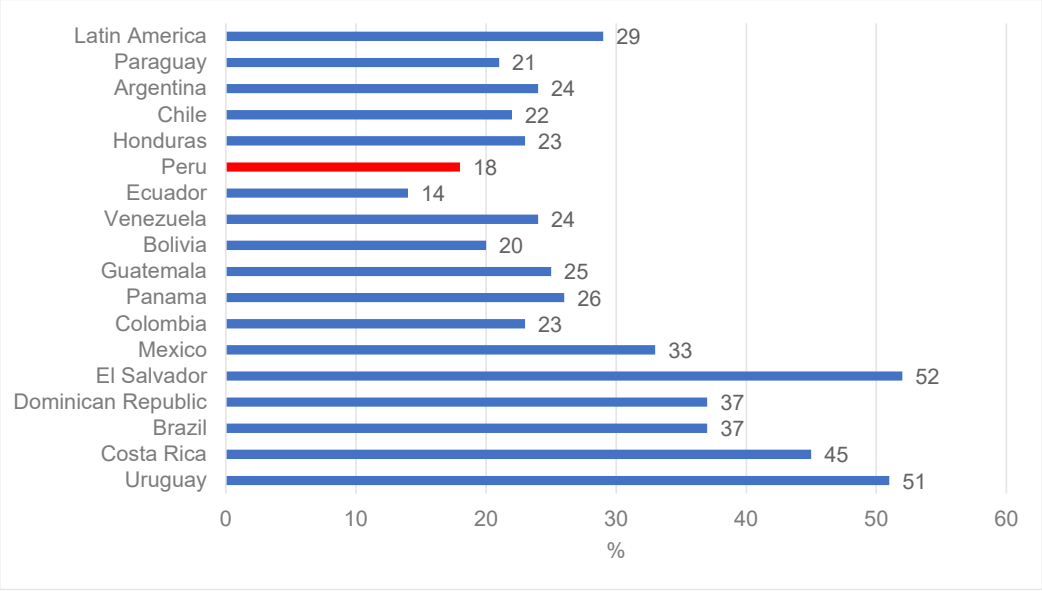
The notion of fairness as a driver of trust is particularly relevant in the context of the rule of law and justice, as the concepts are intrinsically linked. Like many other countries in Latin America, most Peruvians (more than 80%) (Figure 2.3) do not feel equal under the law (Latinobarómetro, 2021[12]). Moreover, for close to 90% of the population in Peru, equitable access to justice for all, notably for vulnerable populations, remains one of the main challenges facing the justice system (Latinobarómetro, 2021[12]). These barriers reflect the country’s socio-economic inequalities, as 72% of Peruvians listed income, geography and gender as the main factors generating inequalities (OXFAM and IEP, 2022[15]) (see Chapter 6).

The notion of equality under the law is also tightly linked to the perception of integrity in the country’s public sector, another public governance driver of trust within the OECD framework. While Peru is taking steps to strengthen integrity in the public sector, the corruption perception rate in Peru is historically high (OECD,

2023[16]). According to the Corruption Perception Index (where zero means highly corrupt), Peru scored 33 out of 100, descending three points from 2022 and its lowest score since 2012 (Transparency International, 2023[17]). When asked about the justice system, half of Peruvians perceive judges and magistrates as being corrupt (Latinobarómetro, 2021[12]), which could have been exacerbated by recent cases of corruption involving judges and prosecutors. Indeed, independence from undue influence remains a significant challenge in Peru's criminal justice system, mainly due to the use of provisional prosecutors and judges (OECD, 2017[17]). This issue will be examined in Chapter 4.

Figure 2.2. Peru's citizens' trust in the Judicial Power is one of the lowest in Latin America

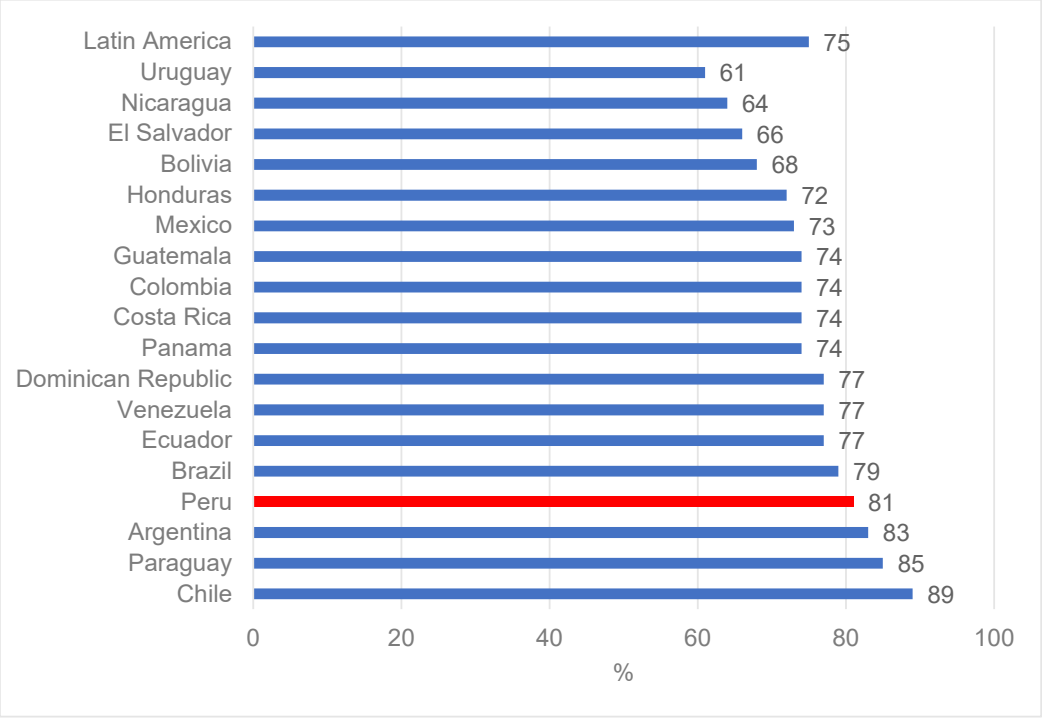
Citizen trust by country in Latin America, percentage, 2023



Note: This figure presents the percentage of citizens in Latin American countries who trust their justice system when asked: Please look at this card and tell me, for each of the groups, institutions, or people on the list, how much trust do you have in them?
Source: Latinobarometro (2023), *Online Analysis: Confidence in the Judiciary*, https://www.latinobarometro.org/latOnline.jsp, accessed 13 December 2023.

Figure 2.3. Peruvians do not feel equal before the law

Citizens' feeling of inequality before the law by country in Latin America, percentage, 2020



Note: This figure presents the percentage of citizens in Latin American countries who do not feel equal before the law when responding to the following question: Would you say that national citizens are equal before the law?
Source: (Latinobarómetro, 2021[12]).

Corruption is one of the most corrosive issues affecting social peace as it diverts public capacity to pursue private interests, harnessing public resources for private gain. In so doing, it widens economic and social inequalities, breeds political polarisation, reduces trust in institutions and undermines people's well-being (OECD, 2020[1]). Indeed, it is estimated that in Peru, corruption and functional misconduct in the public administration represents 13.6% of the executed national budget (approximately USD 6.3 billion (Contraloria de la Republica de Peru, 2022[18]).

Despite Peru's socio-economic development and its macroeconomic stability and growth in recent years, firms consider corruption as one of the most important obstacles to doing business in Peru and identify courts as a major constraint for business (OECD, 2017[19]; 2023[16]).

Corruption feeds citizens' perceptions that the public sector, including the justice system, is not serving the public interest properly, especially those citizens who need public services the most. In 2022, 86% of Peruvians believed that corruption had a negative impact on their daily lives, 59% that it is detrimental to the family economy and 58% that it results in lower economic growth (IPSOS and Proetica, 2022[20]).

Peruvian authorities recognise these challenges and are taking steps to implement a range of anti-corruption measures. These include integrating an anti-corruption unit (the Public Integrity Secretariat) within the Presidency of the Council of Ministries, applying an electoral reform to strengthen internal party accountability mechanisms, and the systematisation of public asset and interest declarations of politicians and public servants. In addition, these include the strengthening of the national control system and key efforts to improve corruption enforcement levels since 2017, particularly with the Lava Jato Special Team and the prosecution of many Peruvian politicians and high-level officials (OECD, 2021[21]; 2023[16]; 2023[22]). Peru has also articulated a policy objective to strengthen anti-corruption policies and disciplinary control in

the 2021-2025 Public Policy for the Reform of the Justice System (see Box 2.11) and in the reform of the human resource management of the judiciary (see Chapter 4).

In Peru, for close to 90% of the population, equitable access to justice for all, notably for vulnerable populations, remains one of the main challenges facing the justice system (Latinobarómetro, 2021[12]). These barriers reflect the country's socio-economic inequalities, as 72% of Peruvians listed income, geography and gender as the main factors generating inequalities (OXFAM and IEP, 2022[15]) (see Chapter 6).

The above-mentioned indicators have been further impacted by the coronavirus (COVID-19) pandemic as the crisis heightened pre-existing inequalities and a corresponding sense of vulnerability across population groups. The pandemic also prompted governments to rethink the state's role, assess their responsiveness, agility and digital resilience, and compelled them to develop digital solutions to ensure the continuity of public services across the country (UN DESA, 2022[23]). These issues are examined in greater depth in Chapter 5.

2.4. The protection of fundamental rights in Peru

The rule of law reflects a multidimensional concept encompassing diverse elements, including the protection and effective enforcement of fundamental rights and the adherence to and respect for human rights established under international law. By adhering to and ratifying international treaties, countries undertake obligations and duties under international law to respect, protect and fulfil human rights. Fundamental rights express the concept of human rights within a specific constitutional context. The Constitution of Peru recognises and guarantees the fundamental rights of all Peruvians (see Box 2.5).

Box 2.5. The Constitution of Peru

The Constitution of Peru recognises and guarantees the fundamental social, economic and political rights of people in Chapters I, II and III.

- **Chapter I of Title I recognises the fundamental rights of people.** It includes the rights to life, equality before the law, freedom of conscience and religion, freedom of expression, honour and reputation, freedom of movement, peaceful assembly, one's ethnic and cultural identity, nationality, and a balanced and appropriate environment, among others.
- **Chapter II of Title I recognises the social and economic rights of people.** It includes the rights to work, pension, health, education and property, among others.
- **Chapter III lists the political rights and duties.** It includes the right to vote, request political asylum, extradition, and participate in political life. Chapter III also regulates the use of a referendum. Articles 2(24) and 139 regulate the rights to due process and effective judicial protection. These are separated into six distinct categories: rights of dignity and personal freedom; freedoms of thought and intimacy; rights to political participation; economic rights; social rights; and procedural rights.

Source: Peru's Constitution from 1993.

The Constitution of Peru states that ratified treaties are part of national law, including the Universal Declaration of Human Rights (art. 55). The State of Peru has, therefore, the duty and obligation to protect these rights and implement legislation and other necessary measures that give effect to this obligation. The Constitution of Peru also grants the right to appeal to international courts or bodies to any person who

considers that his or her rights under the Constitution have been violated once domestic legal proceedings have been exhausted (art. 205).

In Peru, seven out of ten people believe that the degree to which their human rights are protected is either limited (55% of respondents) or non-existent (17%). In addition, 62% of respondents believe this situation will not improve in future years. The population groups that are perceived as facing the most discrimination include the LGBTQI communities (see Chapter 6) and people living with HIV. Regarding the role of the state in protecting human rights, 46% of respondents consider that the rights to justice and social security are the least likely to be protected by the state, while 53% of respondents identified corruption as the problem preventing respect for human rights (IPOS, 2019[24]).

2.4.1. Emerging rights and constitutional provisions in Peru

OECD Members have pursued successive approaches to constitutionalise rights beyond fundamental human rights to address critical issues arising from changing societal attitudes, including the respect for diversity and difference, both natural and cultural (OECD, 2022[6]). These emerging or "new" rights and their corresponding constitutional provisions include the rights of women and gender equality, the rights of children and young people, reproductive and family rights, rights protecting gender diversity and sexual orientation, environmental rights, Indigenous rights, and rights promoting citizens' participation in the life of the country, among others. Some resulting constitutional protections tend to be general and broad, while others are concrete and more detailed (Box 2.6). It is important to note that there is no single approach in OECD Member countries on which of these rights are to be included in a constitution and how. The decision as to which rights to include in the Constitution and how they should be structured should give due consideration to the context, the values and beliefs of the nation, the interconnectedness of the rights and the nations' other goals and priorities (OECD, 2022[6]).

Box 2.6. Provisions in selected OECD Members' constitutions

Indigenous rights

The Constitution of **Mexico** recognises specific protections for Indigenous peoples, including their right to self-determination, self-government and autonomy (art. 2). Regarding jurisdictional functions, it establishes that they can apply their own legal systems to regulate and solve their internal conflicts, in accordance with the Constitution and respecting fundamental and human rights and the dignity and safety of women (art. 2).

Colombia recognises and protects the ethnic and cultural diversity of the nation (art. 7); recognises ethnic groups' or Indigenous people's own languages and dialects as official in their territories (art. 10); establishes their lands as inalienable, imprescriptible and not subject to seizure (art. 63); and establishes that Indigenous peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws as long as these are not contrary to the Constitution and national laws (art. 246).

Rights of women and gender equality

The Constitution of **Portugal** establishes that a "fundamental task of the state" is to promote equality between men and women (art. 9). The Constitution of **France** states in its preamble that "the law guarantees women equal rights of those of men in all spheres" and that "statutes shall promote access by people to elective offices" (art. 1). The Constitutions of **Colombia**, **Finland**, **Germany** and **Switzerland** have an explicit declaration that people are equal. The Constitution of Colombia establishes that people are equal; that women cannot be subject to discrimination and, that during pregnancy and after giving birth, they would have special assistance and protection from the state

(art. 43); and that state authorities "will guarantee the adequate and effective participation of women in decision-making ranks of the public administration" (art. 40).

Rights to sexual orientation and gender identity

The Constitutions of **Bolivia**, **Ecuador** and the **United Kingdom** give constitutional rights to people regardless of their sexual orientation and gender identity. Bolivia's Constitution specifies that "the State prohibits and punishes all forms of discrimination based on […] sexual orientation, gender identity" (art. 14). The Constitutions of **Mexico**, **Portugal** and **Sweden** guarantee equality or prohibit discrimination on the basis of sexual orientation. Portugal establishes that no one may be deprived of any right for reasons of sexual orientation (art. 13).

Environmental rights

In **Portugal**, the Constitution establishes that "everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it" (art. 66[1]). **Mexico** states that any person has the right to a healthy environment and that environmental damage and deterioration will generate liability for whoever provokes them (art. 4). The Constitutions of **Colombia** and **Mexico** allow environmental rights to be enforced through streamlined individual claims (*tutela* or *amparo*). In Colombia, these can also be enforced through collective claims (such as *acción popular)*.

Source: (OECD, 2022[6]).

In the case of Peru, the Constitution does not explicitly include some of the aforementioned provisions; instead, it presents broad principles and goals that are to be protected:

- **Indigenous rights:** The Peruvian Constitution recognises some rights of Indigenous communities, referred to as rural and native communities, including the fundamental right of the person to their ethnic and cultural identity (art. 2[19]); their legal existence and the autonomy in their community organisation along with the right to use and dispose of their lands freely (art. 89); native languages as official languages where they predominate (art. 48); and the right to exercise jurisdictional functions in accordance with common law and the Constitution (art. 149).
- **Women's rights:** The Constitution includes one limited and short provision on the right to equality before the law and the prohibition of "sex-based" and "any other kind" of discrimination (art. 2[2]), but it does not include gender-specific provisions that promote gender equality. It also does not include specific articles that specifically recognise or protect women's rights in different spheres. On women's political participation, one provision promotes "gender representation" in regional and municipal councils by implementing quotas through law (art. 191).
- **LGBTQI rights:** The Constitution of Peru guarantees equality before the law and prohibits discrimination based on sex (art. 2[2]) but does not specifically guarantee equality or non-discrimination based on sexual orientation or gender identity, limiting the protection of these rights and advancing equality in practice.
- **Environmental rights:** The Constitution includes a general environmental right provision that identifies a fundamental right to a balanced and appropriate environment (art. 2[22]) to be enforced through contentious administrative, criminal, and civil procedures and other constitutional guarantees (art. 200), through the *amparo* procedures enabling the protection of fundamental rights[2] (Chapter 3).

In light of the broad and therefore implicit approach to protecting emerging or "new" rights in Peru's Constitution, specific ministries were created over time to ensure that these emerging fundamental rights are respected and given effect (e.g. the Ministry of Women and Vulnerable Populations was created in 1996 and the Ministry of the Environment in 2008). In addition, the judiciary and the Ombuds Office

(*Defensoría del Pueblo*) have established specialised commissions and offices and adopted laws, policies, and initiatives to protect these rights within their mandate and functions. By doing so, they have also strengthened vulnerable populations' access to justice, notably by adapting their work and services to new international standards, as seen later in this review.

Ministries have adopted human rights policies with different social approaches, most of which have a multisectoral approach and long-term planning until 2030.

2.4.2. Institutional arrangements for the protection of new fundamental rights

Both domestic and international bodies oversee the protection of fundamental rights in Peru. The fundamental responsibility to protect, respect and fulfil fundamental rights rests with the state, as detailed in the Universal Declaration of Human Rights, with key state institutions playing a predominant role in giving effect to this obligation in Peru. Some of these include the Constitutional Court, the judiciary, the Ombuds Office, the Ministry of Justice and Human Rights and the Congress Commission of Justice and Human Rights. In addition, since 1990, the Inter-American Court of Human Rights, as a regional mechanism, has become increasingly active in protecting and promoting human rights in Peru.

The Constitutional Court and the judiciary

Fundamental rights are justiciable rights and are therefore legally enforceable, including against the state. Elected representatives and public officials can go to court if they fail to meet their legal or constitutional obligations to protect and promote such rights. The Constitutional Court guarantees the protection of these rights and safeguards the supremacy of the Constitution over conflicting laws and governmental rules and regulations (art. 200). Thus, the responsibility for interpreting the Constitution and settling constitutional disputes lies with the Constitutional Court. The Constitutional Court protects the Constitution and interprets the constitutionality of laws, rules and regulations. It is also the constitutional body in charge of defending fundamental rights (Constitution, art. 201). As the final court of cassation, it defends the judiciary's integrity by settling appeals of cases passed on judicially by a constitutional or mixed judge, who hears the case in the first and second instance. Chapters 3 and 4 examine these protection mechanisms in greater detail.

The Ombuds Office

The Ombuds Office (*Defensoría del Pueblo)* is an autonomous institution responsible for defending people’s constitutional rights, notably by supervising the state’s administrative duties and the provisions of public services to citizens (Constitution, arts. 161-162). In so doing, this institution carries out several initiatives and functions, such as receiving complaints from citizens, providing legal or institutional support; and acting in emblematic cases where fundamental rights are being compromised through strategic litigation and acting as an *amicus curiae* (a professional or organisation that is not a party to a particular litigation but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question) and by filing constitutional claims (Organic Law of the Ombuds Office). For example, the Ombuds Office has filed protection claims (*recurso de amparo*) against government institutions related to the rights of Indigenous communities, the right to a dignified death and the right to a timely legal/judicial process (see Chapter 3).

The Ministry of Justice and Human Rights

As part of the executive, the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos, MINJUSDH) has jurisdiction over human rights issues and is responsible for creating, executing and supervising national policies on this matter (arts. 4 and 6 of the Law of Organisation and Functions of the MINJUSDH) (see Chapter 3). The General Directorate for Human Rights of the MINJUSDH is mandated to guide the formulation of public policies with a human-rights-based approach, with a special

emphasis on vulnerable populations (art. 84 of the Regulation of Organisation and Functions of the MINJUSDH).

The MINJUSDH formulates National Action Plans on Human Rights. Since 2006, three plans have promoted inter-institutional co-ordination on the elaboration, implementation and follow-up of the plan. The latest 2018-20-21 Plan identifies strategic actions to promote and protect civil, political, economic, social, cultural and environmental rights and proposes strategic actions in favour of vulnerable populations (see Chapter 6). Since 2022, a working group made of public and private actors, including civil society organisations and business representatives, has been working in a Multisectoral National Policy on Human Rights (Ministerial Resolution 0063-2022-JUS, from 19 March 2022), which has identified inequality and discrimination in the exercise and full enjoyment of people's human rights as a public problem (MINJUSDH, 2023[25]). This ministry also led the development and adoption of the National Action Plan on Business and Human Rights 2021-2025 (MINJUSDH, 2021[26]). This National Action plan contains ten actions that seek to design and strengthen mechanisms to ensure that people affected by human rights violations can access redress through judicial, administrative, legislative, or other measures. In addition, the MINJUSDH has promoted the approval of regional ordinances for the regional implementation of the National Action Plan on Business and Human Rights. To date, two Regional Governments (Ica and Piura) in Peru have approved these types of regulations.

Under MINJUSDH's leadership and through the co-ordination of a special commission (Special Commission for the Implementation of the new Criminal Procedure Code), the implementation of the new Criminal Procedural Code (Código Procesal Penal, CPP) at the national level is being pursued (Box 2.7). In July 2004, the new CPP was approved (through Legislative Decree 957) and, between 2006 and 2021, was gradually introduced in the courts in the different judicial districts of the country. Today, the new CPP has been implemented throughout the country. However, some pending cases are still being processed under the old criminal code (as they started before the new CPP entered into force). The judiciary is adopting measures to finish these cases (see Chapter 5).

In addition, it must be highlighted that in April 2021, the Supreme Decree N° 004-2021-JUS was approved, which created the Intersectoral Mechanism for the Protection of Human Rights Defenders. The Mechanism congregates nine public agencies of the executive branch, and the MINJUSDH co-ordinates its implementation. It aims to prevent, protect and offer access to justice for human rights defenders who face situations of risk as a consequence of their work via permanent monitoring of these situations. This Mechanism has installed Regional Boards as a territorial strategy to guarantee multilevel co-ordination in order to prevent and protect human rights defenders in high-risk territories.

Box 2.7. The implementation of Peru's new Criminal Procedural Code

The new CPP is a significant shift in Peru's criminal justice administration as it moves it from an inquisitorial to an adversarial system, where the public prosecutor plays a more key role in the investigation and the accusation, whereas before, the investigation and sanction were part of the judge's role. In this way, impartiality and quicker justice processes are promoted. It further provides a series of measures to increase the efficiency of the justice system:

- **It ensures uniformity in the legislation** as the whole country applies the same procedural code, which establishes a new criminal proceeding of three stages: preparatory investigation, intermediate stage, and judgement, separating the functions of investigation and judgement (now the investigation is a function of the public prosecutor and the judgement of the judge).
- **It redefines the role of judges and prosecutors,** giving the power to the prosecutor and not to the judge to open cases, besides the prosecutor's investigation and accusation role.

- **It promotes quicker criminal justice proceedings** in several ways. It introduces more oral hearings in the different stages of a process and makes trials open to the public rather than relying solely on written proceedings behind closed doors. It allows for alternatives to trial, such as the public prosecutor's discretion not to prosecute (*principio de oportunidad*) and compensation agreements *(acuerdos reparatorios)* between the parties. It implements mechanisms to streamline cases, like allowing the prosecutor to directly accuse *(acusación directa)* based on pretrial investigation findings and enabling early termination of cases when the defendant accepts charges in exchange for benefits. Another mechanism is effective collaboration (*colaboración eficaz*), where a person provides information in exchange for leniency in their own criminal proceeding or sentence.
- **It reduces the number of accused under preventive detention in prison facilities,** promotes inter-institutional co-ordination between the police and the Public Ministry to carry out investigations, and guarantees the fundamental rights of the accused and the victims during the entire criminal proceeding, including the presumption of innocence.

Source: The new Criminal Procedures Code, approved by Legislative Decree 957, published 29 July 2004.

The Justice and Human Rights Commission of the Congress

This commission is one of 24 congressional specialised working groups made up of members of Congress. Its role is to follow up and supervise the functioning of relevant public institutions and to study and issue opinions on draft legislation before debate and approval by Congress in plenary session (Regulation of the Congress, arts. 34 and 35).

The Inter-American Court of Human Rights

Peru adhered to the American Convention on Human Rights (also known as the San Jose Pact) in 1978 and has recognised the adjudicatory authority of the Inter-American Court of Human Rights, an autonomous judicial institution whose purpose is to apply and interpret this human rights treaty. Thus, Peru has two systems protecting fundamental rights:

- The constitutional justice system framed by the Constitution and Peruvian law.
- The Inter-American system for human rights protection, which allows cases against the state to be brought before its Inter-American Court once remedies under domestic law have been exhausted (American Convention on Human Rights, art. 46). Peru is the country with the most cases decided against it by this court, and currently counts 105 settled cases and a further 14 cases pending before it (IACtHR, 2022[27]). These relatively high figures somehow translate into the trust that Peruvians place in international justice regarding fundamental and human rights violations.

2.5. Main initiatives to reform Peru's justice system

In response to the key issues identified in the sections above, notably corruption in the justice system and its impact on perceptions regarding respect for human rights in the country, Peru has pursued several initiatives to enhance the efficiency of its justice system. Since the return to democracy in 2000, three major efforts to reform the justice system have been made:

- the National Plan for the Reform of the Administration of Justice (2004);
- the National Agreement on Justice (2016); and

- the Commission for Judiciary Reform (the Wagner Commission) (2018) and its Public Policy for the Reform of the Justice System (2021).

2.5.1. The National Plan for the Reform of the Administration of Justice (2004)

One of the most important reform initiatives undertaken since Peru's return to democracy was led by the Special Commission for the Integral Reform of the Administration of Justice (Comisión Especial para la Reforma Integral de la Administración de Justicia, CERIAJUS) created in 2003 (Law 28083). Chaired by the president of the judiciary, it consisted of 16 members from the justice system and civil society. In 2004, CERIAJUS approved the National Plan for the Reform of the Administration of Justice (Plan Nacional para la Reforma de la Administración de Justicia) (Box 2.8). As mentioned in the plan, this marked the first time that a forum was created to enable the participation and collaboration of different institutional justice actors and civil society representatives on the design of guidelines for a reform of the justice system. However, as CERIAJUS was mandated to create the national plan but not implement it, its work ended once the plan was presented to the President in 2004 (Comisión para la Reforma de la Justicia, 2018[28]). Of all its proposals, only the reform of the National Council of the Magistrature was implemented, and only once the Judiciary Reform Commission had recommended it in 2018, as will be explained later in this chapter.

Box 2.8. The National Plan for the Reform of the Administration of Justice

The plan was considered the most considerable effort ever made to think about the problem of justice in Peru and to formulate a comprehensive reform proposal.

The plan focused on eight areas of work: 1) access to justice; 2) anti-corruption policies; 3) modernisation of the judiciary and the Public Prosecutor's Office; 4) human resources; 5) governance, administration and budget; 6) predictability and jurisprudence; 7) criminal justice; and 8) regulatory adjustments.

The following reforms were proposed to Peru's 1993 Constitution:

- the impossibility for the executive to amend the judiciary's budget
- the recreation of the National Council of the Magistrature as an autonomous body in charge of the selection, appointment, promotion and disciplinary regime of judges and prosecutors
- the elimination of the ratification of judges and prosecutors every seven years
- the establishment of co-ordination relationships between the judiciary, the Public Ministry, the Constitutional Court, the National Council of the Magistrature and the Academy of the Magistracy
- the recognition of the conflict-resolution capacity of peasants, native, Indigenous communities, and peasant patrols (*rondas campesinas*)
- the recognition of the right to due process as a fundamental right.

Source: (CERIAJUS, 2004[29]; Lovatón Palacios, 2017[30]).

As CERIAJUS did not include mechanisms to implement its advice, and considering the fragmentation of the justice system, the plan was not executed in a co-ordinated manner, leaving each institution to pursue its own reform efforts in isolation. Notwithstanding, a considerable number of proposals made by CERIAJUS were later implemented or are currently being advanced by justice institutions; others were included in the justice reform initiatives that followed this effort, as presented in the next section.

2.5.2. The National Agreement on Justice (2016)

More than ten years after the creation of the National Plan for the Reform of the Administration of Justice, and with little progress in implementing the previous reform plan, a new effort was launched by President Pedro Pablo Kuczynsky's (PPK) government to promote dialogue and co-ordination on justice issues. This initiative, the National Agreement on Justice (Acuerdo Nacional por la Justicia), illustrated the high priority afforded justice reform by the PPK government; it was established in 2016 as an inter-institutional agreement between the judiciary, the Public Ministry, the National Council of the Magistrature, the MINJUSDH and the Academy of the Magistracy (Box 2.9).

Box 2.9. The National Agreement on Justice

The National Agreement on Justice focused on four thematic working areas and lines of action:

1. **Institutional reform**, including revising the legal framework, functioning of justice institutions, and implementing interoperability initiatives.
2. **The fight against corruption**, including revising the disciplinary system of the justice administration.
3. **Access to justice**, including the use of native languages; the strengthening of the Justice of the Peace and the relationship between ordinary justice and the district of the native and Indigenous peoples; the promotion of civil society participation; and transparency in the access to judicial resolutions.
4. **Training, capacity building and selection of judges and prosecutors**, including developing an inter-institutional training policy; improving magistrate-selection criteria; and co-ordination and collaboration with law schools in training lawyers; topics and reforms that CERIAJUS also considered.

Source: (Acuerdo Nacional por la Justicia, 2016[31]).

In this context, and to comply with one of CERIAJUS' recommendations, the executive branch (as part of the National Agreement on Justice) presented to Congress in 2017 a draft legislation that created the Interinstitutional Permanent Council for the Cooperation, Coordination and Follow-Up of the Public Policies on Justice (Consejo Interinstitucional Permanente de Cooperación, Coordinación y Seguimiento de las Políticas Públicas en materia de Justicia) also called Inter-Justicia, as a co-ordination mechanism between the institutions of the National Agreement on Justice. Its purpose and mandate were to implement the recommendations of CERIAJUS and other existing justice public policies and to function as a specialised body in developing and implementing future justice policies.

The bill was not voted into law, although the Justice and Decentralisation Commissions of Congress approved it. Thus, the co-ordination mechanism envisaged in the bill was never institutionalised (Consejo para la Reforma del Sistema de Justicia, 2021[32]) (Box 2.9).

In addition to its four thematic lines of action, the National Agreement on Justice established as an urgent matter the need to develop a justice service map (*Mapa de la Justicia*), with a review of the justice institutions and information about the initiatives, how much, how, where, and why human and financial resources should be assigned to institutions to implement the agreement.

Neither the National Plan for the Reform of the Administration of Justice nor the National Agreement on Justice included a co-ordination mechanism to monitor and evaluate the implementation of these initiatives and the decisions made during their meetings. Importantly, most of the activities related to these initiatives faded in 2017.

2.5.3. The Commission for Judiciary Reform (Wagner Commission) (2018) and its Public Policy for the Reform of the Justice System (2021-2025)

The current effort to pursue reforms to the justice system was launched as a result of a major corruption case (CNM audios Los Cuellos Blancos del Puerto) in July 2018, which involved judges from the Superior Court of Justice in the Callao district, including the former president of the court, a former magistrate of the Supreme Court and members of the National Council of the Magistrature (Consejo Nacional de la Magistratura). Evidence confirmed widespread influence peddling within the judicial system. In response, former President Martin Vizcarra established, in consultation with Congress, the Commission for Judiciary Reform (the Wagner Commission) (Comisión de Reforma del Poder Judicial) to put forward a comprehensive judicial reform.

This commission's report, which draws on CERIAJUS' 2004 Plan and the 2016 National Agreement on Justice, produced recommendations to promote the fight against corruption in the judiciary, including in the institutions and human resources management systems of the judiciary and the Public Ministry (see Box 2.10).

Box 2.10. Reforms recommended by the Commission for Judiciary Reform in 2018

This Commission for Judiciary Reform's report, which draws on CERIAJUS' 2004 Plan and the National Agreement on Justice, recommended the following reforms in 2018:

- Reform the National Council of the Magistrature.
- Reform the selection of supernumerary judges and provisional prosecutors.
- Further integrate information technologies to accelerate judicial processes and ADR mechanisms.
- Create the Council for the Reform of the Justice System.
- Create the National Specialised System of Justice for the Protection and Sanction of Violence against Women and Family Members.
- Promote lawyers' ethics.
- Create a procedural discharge plan.
- Create the Supreme Anti-corruption Prosecutor's Office.
- Create the Integrity and Control National Authority in the judiciary and the Public Ministry.
- Create the National Control Authorities of the Public Ministry and the National Control Authorities of the Judiciary to replace the Judicial Oversight Office.
- Create the National Specialised System of Justice to implement the Law to Prevent, Sanction and Eradicate Violence against Women and Family Members (Law 30364), including the implementation of the Women Emergency Centres and interoperability between the judiciary, the police and the Public Ministry.
- Include within the Transparency and Access to Public Information Law (Law 27806) a legal transparency framework for all institutions considered part of the Justice System.

Source: (Bazán Seminario, 2020[33]; Comisión para la Reforma de la Justicia, 2018[28]).

Following these recommendations, the National Council of the Magistrature was disbanded in 2019 and replaced with the National Board of Justice (Junta Nacional de Justicia). The Council for the Reform of the Justice System (Consejo para la Reforma del Sistema de Justicia, CRSJ) was also created; as part of its mandate, it prepared the Public Policy for the Reform of the Justice System 2021-2025 (Reforma del Poder

Judicial, Law 30942), which was approved in July 2021. This new policy broadened the definition of justice by emphasising the importance of enhancing access to justice for all.

The Public Policy for the Reform of the Justice System provides a diagnostic of the justice system, identifying its problems and challenges, and offers public policy proposals under nine objectives (Box 2.11). These build on several 2004 CERIAJUS recommendations detailed in the previous section (such as the improvement of data governance and the interoperability of the justice system, the promotion of access to justice, the improvement of human resources and human resources management in the justice administration's institutions and other reform initiatives) and for the first time adopts a gender perspective (see Chapter 6).

Box 2.11. Public Policy for the Reform of the Justice System (2021-2025)

Policy Objective 1: Promote data governance and the interoperability of the justice system, including by creating an inter-institutional Committee on Data Governance for the justice system; implementing the criminal and non-criminal Electronic Judicial Files (Expediente Judicial Electrónico, EJE) and the Electronic Prosecutor's File (Carpeta Fiscal Electrónica); and implementing the interoperability of the justice system in the National Interoperability Platform, among others.

Policy Objective 2: Guarantee access to justice for all, including improving basic justice modules in terms of infrastructure and logistics; promoting and strengthening itinerant justice (justicia itinerante); promoting access to justice in the original languages of different communities; providing justice services with a human rights, gender and interculturality approach, including for vulnerable populations; promoting intercultural justice, including by implementing co-ordination mechanisms and promoting access to justice to peasant, native and Indigenous communities; and strengthening and promoting ADR mechanisms, among others.

Policy Objective 3: Modernise non-criminal judicial processes in alimony, contentious administrative, civil and labour processes, including introducing measures for procedural disposition, such as by implementing the oral litigation civil model at the national level and implementing the Procedures Labour Law and jurisdictional labour bodies (órganos jurisdiccionales laborales).

Policy Objective 4: Modernise criminal justice processes and the penitentiary system, including by elaborating and updating policies for different crimes; strengthening police and prosecutor's investigation capacity; promoting interoperability, including between the prosecutors' offices and the police; implementing the PCC; strengthening the juvenile justice system; improving the quality and coverage of prison services, infrastructure and security equipment; and promoting alternative measures to prison and reducing overcrowding.

Policy Objective 5: Strengthen human resources management and planning in the justice system's institutions, including by reducing the number of provisional judges and prosecutors and increasing the number of tenured judges and prosecutors; reforming the Academy of the Magistracy; and increasing the number of trained security and justice operators.

Policy Objective 6: Improve legal education and practice by implementing the new model of lawyers' professional responsibility and promoting ethics and legal education.

Policy Objective 7: Strengthen anti-corruption policies and disciplinary and ethical control by creating a national system of transparency, access to public information and personal data protection; implementing the Internal Control System in the justice system's institutions; and strengthening the disciplinary control of judges and prosecutors.

Policy Objective 8: Fight violence against women and family members, including by increasing the coverage of the Integrated Judicial Modules (Módulos Judiciales Integrados) for violence against women and family members; improving police attention to cases; and improving the investigation and execution of protection measures for victims.

Policy Objective 9: Strengthen the predictability of judicial decisions (legal certainty) and legal adaptation, including by developing a study for the standardisation of precedents and revising and updating laws and regulations.

Source: (Consejo para la Reforma del Sistema de Justicia, 2021[32]).

To implement the reform, the CRSJ, supported by a technical body led by the MINJUSDH, was established to co-ordinate its implementation (Box 2.12). This was the first time a co-ordination mechanism for implementing justice reforms was established by law.

Despite efforts to create this implementation council through legislation, the execution of its mandate has encountered considerable challenges. In addition to budgetary considerations, a framework for monitoring and evaluation was not clearly defined. This prevented the institutions and the CRSJ from measuring progress and quantifying impact against strategic results and outcomes.

Most importantly, the CRSJ, which should have been convened by the President of the Republic and met once a month, did not meet until almost two years later, on 9 January 2024, partly due to the high level of political instability.

Box 2.12. The Council for the Reform of the Justice System

As detailed in Law 30942, the Council for the Reform of the Justice System's primary role is to formulate, co-ordinate and monitor the implementation of the Public Policy for the Reform of the Justice System 2021-2025 (art. 3). Reflecting a whole-of-state effort, the CRSJ is composed of the president of Peru, the president of Congress, the president of the judiciary, the public prosecutor, the president of the National Board of Justice, the National Comptroller General and the Ombudsperson (Law 30942, art. 2).

In terms of how to lead and properly implement the reform of the justice system, as detailed by Law 30942, the president of Peru is responsible for calling for the CRSJ and co-ordinating the election of the CRSJ president. The presidency of the CRSJ is expected to rotate among those who comprise it for a period of one year. The CRSJ is planned to meet once a month, and the extraordinary sessions are called by its president. Its decisions and agreements are to be adopted by consensus, and both the sessions and agreements are to be made public (Law 30942, art. 4).

The CRSJ is supported by a technical committee formed by the justice system institutions, whose role is to provide the CRSJ with permanent technical support and assistance. This committee includes representatives from the above-mentioned institutions and includes the police; the Academy of the Judiciary; the National Jury of Elections (Jurado Nacional de Elecciones); the Ministry of Economy and Finance; and a representative of the peasant patrols *(rondas campesinas)* (Law 30942, art. 6). The Technical Council for the Reform of the Justice System is required to publish quarterly reports on the progress of the processes of implementation and execution of the public policies for the reform of the justice system (Law 30942, art. 7).

Source: (Consejo para la Reforma del Sistema de Justicia, 2021[32]).

Despite Peru's efforts to reform its justice system, these reform initiatives developed in 2004 are yet to be implemented. Indeed, there has been limited continuity and co-ordination across institutions to drive the implementation of these reform projects, both due to the lack of institutionalised co-ordination mechanisms, as mentioned above, and the lack of political continuity, which is key to seeing through the implementation of such challenging, multidimensional, inter-institutional reforms.

Considering the complexities of reforming the justice system and the diversity of the actors involved, leadership and political commitment at the highest levels of the executive are of extreme importance. Indeed, the executive is the only branch capable of bringing together all actors, using effective and efficient governance mechanisms and sufficient economic resources, to ensure these reforms are effectively implemented to guarantee their sustainability over time. Furthermore, the MINJUSDH, as part of the executive branch and as established by law, is the competent institution mandated not only to lead the design of this policy but to play a key role in co-ordinating its execution.

However, the latest Public Policy for the Reform of the Justice System (2021-2025) has not been given effect, and the council overseeing its design and implementation has yet to adopt decisions and plan for its co-ordinated implementation. Meanwhile, institutional members of the CRSJ have been taking steps to advance justice reform policies and initiatives in a relatively isolated and fragmented manner and with limited co-ordination with relevant institutional partners, thus limiting the full impact of implementing the originally planned multidimensional Public Policy Reform. In addition, there has been little participation of academia and civil society organisations in implementing these reforms, which is required by law and important if these reforms are to respond and be seen to respond effectively to the needs of specific communities and population groups.

2.6. Access to justice: An implicit and narrow recognition in Peru's justice system

Although the Peruvian Constitution does not explicitly include a right to access to justice, it approaches this right by establishing rights to observance of due process and jurisdictional protection (art. 139). This is confirmed in the 2004 Constitutional Procedure Code (art. 4). The Constitutional Court has also subsumed the right of access to justice under the right of jurisdictional protection, limiting the concept of access to justice to accessing the judiciary (judicial procedures) while not including access to other justice services (Galicia Vidal and Mujica Coronado, 2017[34]). This way, the Constitution only further includes arbitration (art. 139). It establishes that the judicial branch exclusively exercises the power to administer justice (art. 138) and recognises the special jurisdiction of peasant and native communities (art. 149). This lack of an explicit right to access to justice and its narrow interpretation have focused access-to-justice matters on courts' and judges' services.

In 2010, the Executive Council of the Judiciary subscribed to the Brasilia Regulations regarding Access to Justice for Vulnerable People. According to Article 2 of the Brasilia Regulations, effective access to justice means: the application of a legal culture; access to legal assistance (specialised and cost-free); access to public defence; a right to interpretation; a review of procedures and procedural requirements; access to ADR mechanisms; and to a system to solve legal disputes within Indigenous communities. Under these rules, the Peruvian Executive Council of the Judiciary has recently implemented measures to strengthen the judiciary's institutional arrangements, so as to improve access to justice in Peru, with the creation of special commissions, the issuance of guidelines, protocols, activities and plans to implement human rights approaches, and to improve vulnerable groups' access to the justice system (see Chapters 3 and 6).

As mentioned above, the MINJUSDH's National Plan on Human Rights 2018-2021 had as one of its objectives (Strategic Objective 3) the guarantee of access to justice, limiting it to increasing the number of public defenders and promoting the quality of the public defence service with emphasis on poor and

vulnerable people. However, it does not establish mechanisms or strategies to guarantee access to justice services to these populations, considering their realities, problems or barriers to access to justice. However, it is important to mention that a new Multisectoral National Policy on Human Rights is being developed, now with a territorial and intersectoral approach, that will certainly shape how justice services are delivered to Peruvian citizens.

2.6.1. National Plan of Access to Justice regarding Vulnerable Populations (2022-2030)

Based on the judiciary's National Plan of Access to Justice for Vulnerable Populations in Peru (2016-2021) and the Brasilia Regulations on Access to Justice for Vulnerable People, signed by the judiciary and not by the state, the Executive Council of the Judiciary approved the National Plan of Access to Justice regarding Vulnerable Populations (2022-2030). This plan, applicable to the judiciary, aims to improve vulnerable populations' access to justice by integrating the various efforts that the judiciary has made to improve the co-ordination of such initiatives and measure their impact. Similarly to the 2016--2021 National Plan on Access to Justice mentioned above, the 2022-2030 Plan includes adopting a broader approach to access to justice than the one currently adopted by the Peruvian Constitutional Court. The Plan includes actions such as capacity-building activities with public officials from the judiciary, justice fairs, mobile services, the use of interpreters for Indigenous communities and the use of technology to improve access to justice services (provided by the judiciary) for vulnerable populations in Peru (Poder Judicial del Perú, 2022[35]) (see Chapters 3 and 6). Yet, there is scope to expand this approach to other issues.

2.7. The OECD Justice Review Project

Well-functioning justice institutions are crucial to supporting long-term social and economic outcomes, fostering legal predictability and generating an attractive environment for investment and business. The Government of Peru has demonstrated that it understands this paradigm through its successive justice reform initiatives and by asking the OECD for advice on modernising its justice system to move the country closer to OECD standards and practices in this area.

As requested by the Government of Peru and with the support of the European Commission, this review aims to support Peru on how best to advance its complex and challenging justice modernisation agenda by benchmarking Peruvian practice against OECD standards and recommending ways and means to close gaps between this practice and the OECD standards. Through its benchmarking analysis and advice, the review aims to support Peru as it seeks to design and deliver public justice policies that modernise its institutional and functional arrangements in a way that improves the administration of justice and its approaches to people-centred service delivery and, in so doing, support Peru in moving closer to OECD standards of practice in this area.

This review process consists of two components:

1. **Governance and institutional arrangements:** The first component involves a systemic examination of structures, roles and responsibilities, procedures and practices in the justice system (justice institutions, ADR, lawyers and other legal professionals) in Peru to support the country in developing a coherent, gender-sensitive and strategic approach to justice reform. It is divided into five chapters on: people-centred access to justice and the rule of law (this chapter, Chapter 2); the justice system (Chapter 3); the governance, management and performance of the justice system (Chapter 4); a digital, seamless and efficient justice system (Chapter 5); and a people's needs-driven justice system (Chapter 6).
2. **Access to justice:** The second component analyses specific delivery mechanisms and modalities of legal assistance and justice services for vulnerable groups, including Indigenous peoples and women, and in particular, women who are victims of gender-based violence. It aims to promote

access to justice for all and foster legal and justice service delivery models to be more responsive and targeted to specific vulnerabilities and priority areas. This component was conducted in two pilot regions (Lima and San Martin). It included the measurement and mapping of people's needs, experiences and costs in accessing justice, considering the experiences of vulnerable groups in remote areas. While findings under this second component are reflected in all chapters, they are presented in greater detail in Chapter 6.

To develop a deeper understanding of access to justice issues in Peru, this review presents a "journey mapping" of legal needs in two regions (Lima and San Martin), set out in Chapter 6. This methodology tracks the pathways to justice used by individuals, families, and small businesses to address legal problems, as well as the pathways established by numerous services and agencies for this purpose. The approach considers various levels of justice systems and journeys based on a legal problem (OECD, 2020[5]). This methodology enables the identification of two crucial factors:

- **People's perceptions of, and trust in, the justice system** as a key enabler for people-centred justice services and pathways. In fact, people need to feel a minimal degree of trust in institutions that can deliver justice services to them and reach out to them to solve their problems.
- **Designing pathways and services for all by paying particular attention to the experiences of marginalised and vulnerable groups**. It is not enough to improve physical access to justice services; there is also a need to improve services and pathways to enhance people-centred justice systems.

The methodology used for writing this review was a combination of conducting research and interviews, gathering data and reviewing documentation provided by the Peruvian institutions. In-person interviews with governmental institutions took place from 28 March to 1 April 2022, during the OECD fact-finding mission to Lima, and virtual meetings with justice institutions, academia and civil society organisations, all of which provided the OECD team with knowledge and understanding of the justice system in Peru and its functioning. A second mission was organised in October 2023 to better understand people's access to justice on the ground by focusing on two regions: Lima and San Martin.

Desk research, including laws, policies, regulations, academic articles, journals and newspaper articles, jurisprudence, and information shared by the justice institutions, helped ensure that the review was informed with relevant and updated laws, regulations, and policies.

The analysis and advice presented in this review benefitted from policy advice based on good practices that have been proven to improve justice outcomes in OECD Member countries. This review also benefitted from the participation of a Country Peer – a justice expert from Colombia – who engaged during the fact-finding mission and in meetings held periodically throughout the review with different institutions across Peru's justice system. The Country Peer shared knowledge and good practices in Colombia that could be implemented in Peru.

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Notes

[1] At least 50 legal needs surveys have been conducted in more than 30 OECD Member countries and jurisdictions, including in Australia; Canada; Colombia; Japan; the Netherlands; New Zealand; the Slovak Republic; England and Wales, Northern Ireland, and Scotland (United Kingdom); the United States, and in such non-Member economies as Hong Kong (China); Chinese Taipei; and Ukraine. Legal needs surveys have been conducted at the sub-national level as well, for example, in the People's Republic of China, Indonesia, the Russian Federation and Yemen; and smaller surveys have been run in Bangladesh

and Egypt (OECD, 2019[9]). Within the Latin American and Caribbean region, Colombia has implemented one of the most comprehensive legal needs surveys anywhere.

[2].The writ of *amparo* sees cases of violations of individual fundamental rights except the protection of a person's freedom from illegal detentions, which is dealt by *habeas corpus*, and the protection of privacy and personal data and the right to access to information considered of public importance, which is dealt by *habeas data*.

3 Institutional set-up and co-ordination in Peru’s justice system

This chapter focuses on the constitutional framework defining the separation and balance of powers between Peru's executive, legislative, and judicial branches and their relationship with the constitutionally autonomous institutions. It then defines the institutions that are part of the justice system, first as detailed by the Constitution, then from a people-centred approach, and lists their responsibilities and scope of services they are responsible for delivering, including their relationship with intercultural justice. Finally, this chapter evaluates the existing inter-institutional co-ordination and co-operation mechanisms Peru has implemented to provide quality people-centred justice services and compares them with OECD Members’ experiences and good practices.

3.1. Introduction

The previous chapter highlighted the rule of law as a core principle defining justice systems in OECD Member countries, the steady progress towards people-centred access to justice, and the degree to which this principle applies in Peru.

This chapter assesses the institutional set-up of the justice system in Peru and the degree to which inter-institutional co-ordination strengthens the system's efficiency and transparency, hallmarks of the rule of law and people-centred access to justice in OECD Member countries. For these purposes, this chapter first presents an overview of what is constitutionally defined as part of the justice system in Peru. It then describes the constitutional framework defining the separation of powers as existential to sustaining the rule of law and presents the strengths and challenges framing how this principle is given effect in practice in Peru. Finally, it analyses the co-ordination systems that have been implemented to ensure better coordination and co-operation across justice institutions.

This review adopts a holistic people-centred approach; hence, the scope of this analysis is broader than the judiciary itself as defined by Peru's Constitution. The term "justice system" used in this chapter and throughout this review is more comprehensive and takes a justice service deliverable approach by assessing arrangements beyond the judiciary or the judicial branch as such. This review covers institutions in the executive branch, the autonomous constitutional institutions, alternative dispute resolution (ADR) mechanisms and the specialised justice frameworks, including Indigenous justice.

As noted in Chapter 2, since 2003, Peru has put forward a series of major justice reform plans whose implementation has been partial, unco-ordinated, and fragmented and has had limited system-wide impact on the current justice system. These include the latest justice reform initiative (2021-2025). Indeed, its full implementation has yet to be achieved, and challenges remain in terms of the justice system's efficiency and effectiveness in serving all Peruvians.

3.2. Institutional set-up

3.2.1. The separation of powers in Peru

As in most modern democracies, Peru's state is arranged pursuant to the principle of separation of powers (art. 43). As stated in Peru's Constitution (1993), the state comprises three core branches: the executive, legislative and judicial branches. Each branch is assigned separate powers with specific functions that help balance them (see Box 3.1).

Box 3.1. Roles and responsibilities of the different branches of power as defined in Peru's 1993 Constitution

- **Executive branch:** Responsible for enforcing the law. The President is elected for a single five-year term, with no right to immediate re-election (art. 112). As Head of State and Government, the President is the guarantor of the executive power and the leader of the Armed Forces and the National Police. Among other functions, the President observes and enforces the Constitution and laws, represents the state, manages the general policy of the government, ensures domestic order, can regulate laws and issue decrees and resolutions, manages the public treasury, and can promulgate emergency decrees (art. 118). The direction and management of public services are entrusted to the Council of Ministers, comprised of 18 ministries, and chaired by the President of the Council of Ministers, who is mandated to

co-ordinate across ministries and is the spokesperson for the Government, all of whom are appointed by the President of the Republic (art. 121-122).

- **Legislative branch:** The Congress is vested with the legislative power. It is unicameral and is comprised of 130 members elected for a five-year term by the citizens (art. 90), who, according to the Constitution, are not responsible to any authority or jurisdictional body for votes cast or opinions expressed in the exercise of their suffrage (art. 93). This branch adopts laws and legislative resolutions, and interprets, amends, or derogates existing laws, ensures respect for the Constitution and the laws, and exercises authority to enforce the responsibility of those who break the law; approves treaties; approves the budget and the general accounts; and exercises all other powers indicated in the Constitution and that properly rest within the legislative function (art. 102).
- **Judicial branch** (also referred to as the judiciary): The Constitution assigns responsibility for the administration of justice to the judiciary, which is comprised of jurisdictional bodies: the Supreme Court of Justice, the Superior Court, *Jueces Especializados o Mixtos* (Specialised or Mixed Courts)*, Jueces de Paz Letrados* (Justices of the Peace Courts) and *Jueces de Paz (*Justices of the Peace); and governance bodies that exercise their administration (art. 143). The Constitution also defines five additional autonomous constitutional justice institutions. These include: the Constitutional Court, the National Board of Justice (*Junta Nacional de Justicia*), the Public Prosecutor's Office (*Ministerio Publico*), the National Jury of Elections (*Jurado Nacional de Elecciones*) and the Ombuds Office (*Defensoria del Pueblo*). The President of the Supreme Court is the head of the judicial branch (art. 144). The Constitution expressly enumerates the principles and rights of the jurisdictional function, including, among other things, the principle of judicial independence, the unity and exclusivity of the jurisdiction function, the observance of due process, the public nature of proceedings, the plurality of the jurisdictional level, the principles of never failing to administer justice, the principle that no one should be punished without judicial proceedings, the principle of not being deprived of the right of defence, the principle of free administration of justice and free defence of persons of limited means and other cases, and the participation of the people in the appointment and removal of judges (art. 139). The independence of the judiciary, whose observance is guaranteed by the state, is enshrined in the Constitution and will be presented in Chapter 4.

Source: The Constitution of Peru (1993).

As a guarantor of the separation of powers between the branches and autonomous institutions, the Constitution defines a system of checks and balances to secure a balance of powers and the state's accountability in ensuring each branch holds the other accountable to Peruvians. The Constitution places a strong emphasis on the balance of powers, especially between the executive and the legislative branches. In this regard, it establishes several key constitutional tools, especially between the executive and the legislative branches. These checks and balances are also mentioned in the regulations governing the functioning of Congress. However, these constitutional powers have not been subject to further specification or delimitation through laws and regulations. This has allowed for various interpretations of these constitutional mechanisms. In some cases, it has led to their abuse for political reasons. Those more frequently used over the past five years include the presidential vacancy for moral incapacity, the motion of censure (*moción de censura*) and the constitutional accusation (Box 3.2).

Box 3.2. Constitutional tools to ensure the balance of powers between branches

- **The "motion of confidence" or "no confidence"** (*cuestión de confianza*), in ministerial initiative and its related **"motion of censure"** (*moción de censura),* can be adopted by Congress. These are the mechanisms by which Congress validates and makes effective the political responsibility of the Council of Ministers or an individual minister (Constitution, art. 132). A motion of censure is presented by at least 25% of the congresspersons, while a motion of confidence is by ministerial initiative. In the event of the adoption of a motion of censure, following a debate by Congress and the approval of more than half of the representatives, the Council of Ministers or the indicted minister(s) are required to resign and be replaced (Regulation of the Congress, arts. 82 and 86). In a single year (July 2021 to July 2022), four ministers were censured or forced to resign by Congress using the mechanism of a censure motion against ministers *(moción de censura*).
- **The presidential power to dissolve Congress:** The President of the Republic has the power to dissolve Congress and call for new elections if Congress censures or denies confidence in two Councils of Ministers (Constitution, art. 134).
- **The Constitutional accusation (acusación constitucional):** The Permanent Assembly of the Congress can accuse the President of the Republic, a member of the Congress, a minister, a member of the Constitutional Court, a member of the National Council of the Judiciary (now the National Board of Justice), a Justice of the Supreme Court, Supreme Prosecutors, the Ombudsperson, and the Comptroller General for any violation of the Constitution or any crime committed during their duties (Constitution, art. 99; Regulation of the Congress, art. 89). Following a constitutional accusation, a "Political Pre-trial" (analogous to an impeachment trial in the US House of Representatives) is held in Congress to decide whether Congress will suspend the accused official, declare them ineligible for public service for up to ten years or remove them from office. In the case of a formal criminal accusation, the Public Prosecutor files criminal charges before the Supreme Court (Constitution, art. 100). During President Pedro Castillo's government (2021-22), the constitutional accusation was presented six times against former President Castillo, former Vice President Dina Boluarte, and the President of the National Jury of Elections (Jurado Nacional de Elecciones, JNE). Likewise, in 2023, it was filed against the former Public Prosecutor Zoraida Ávalos, who was ultimately disqualified for five years from holding public office..
- **The power to request information from public entities:** Congress can request ministries and other public institutions to provide reports on the issues they consider meaningful for executing their functions. It can create special commissions that investigate any matter of public interest (Constitution, arts. 96 and 97; Regulation of the Congress, arts. 87-88).
- **Approval by Congress of the executive's Budget Law.** The execution of the Budget Law, as presented by the executive, requires negotiation and approval by Congress. Each year, the President of the Republic sends the draft Budget Law to Congress as prepared by the Ministry of Economy and Finance (MEF). The draft bill is debated, reviewed and approved by Congress, which can amend it. Hence, budget allocations and spending depend first on the executive branch, which prepares the budget and then on the approval of the Budget Law by the legislative branch (Constitution, arts. 78 and 80; Regulation of the Congress, art. 81) (see Chapter 4).
- **The declaration of presidential vacancy:** Congress can declare the position of President of the Republic vacant if a majority of its members finds that the President presents permanent physical or moral incapacity. (Constitution, art. 113[2]); Regulation of the Congress, art. 89[A]). The legislative branch has also used this as a means of control. Since 2017, a motion of

presidential vacancy for moral incapacity has been used at least seven times against three presidents: Pedro Pablo Kuczynski (2018), who resigned after a second vacancy motion; Martín Vizcarra (2019 and 2020), whose vacancy was declared by Congress after two attempts; and three times against Pedro Castillo (2021 and 2022), whose vacancy was ultimately approved in 2022. After the destitution of former President Martin Vizcarra, the Constitutional Court was given the opportunity through a referral to the Court to regulate the definition of "moral incapacity," which has been broadly interpreted and used by Congress to control the executive (Landa Arroyo, 2020[1]). However, the Court declined to regulate, declaring the request inadmissible, thereby forfeiting the opportunity to define objective parameters that would define how this mechanism is to be applied (Tribunal Constitucional, 2020[2]). This prompted the Inter-American Commission of Human Rights to publicly express its concern over the repetitive and arbitrary use of this tool (Inter-American Commission of Human Rights, 2022[3]; Inter-American Commission on Human Rights, 2023[4]).

Source: (Landa Arroyo, 2020[1]), "Crisis constitucional en el Perú: tres presidentes en siete días [Constitutional crisis in Peru: three presidents in seven days]", *Agenda Estado de Derecho*, https://agendaestadodederecho.com/Peru-tres-presidentes-en-siete-dias/; (Tribunal Constitucional, 2020), "Caso de la vacancia del presidente de la República por incapacidad moral [Case of vacancy of the President of the Republic for moral incapacity]", Judgement 0002-2020-CC/TC, 19 November 2020; (Inter-American Commission of Human Rights, 2022), "CIDH reitera preocupacion por la inestabilidad politica en el Peru y su impacto en los derechos humanos [The IACHR reiterates its concern at the political instability of Peru and its impact on human rights]", OEA Press release, 25 March 2022, https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/063.asp; (Inter-American Commission on Human Rights, 2023), "Situación de Derechos Humanos en Perú en el contexto de las protestas sociales [Situation of Human Rights in Peru in the Context of Social Protests]", OAS, Washington, DC, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/083.asp.

This has led the Constitutional Court, the autonomous institution in charge of interpreting the Constitution and resolving inter-branch conflicts, to interpret and further develop the ways and means that can be used to apply some of these tools. However, the lack of a proper regulatory framework to ring-fence the application of the constitutional control mechanisms described in Box 2.3 has allowed for their frequent and arbitrary use, undermining the balance and separation of powers.

The role of the Constitutional Court has been fundamental in interpreting the Constitution and allocating powers properly when problems associated with governance have arisen between the different branches. This reinforces the importance of this tribunal's independence and impartiality in guaranteeing constitutional stability.

The incidences of misuse of these constitutional mechanisms have affected the political landscape more broadly. The country has experienced several challenges, leading to disagreements between political groups and parties within both the legislative and executive branches. This environment has resulted in conflicts between public powers, extending even to constitutionally autonomous institutions within the justice system. Several commentators indicate that these dynamics have had a detrimental effect on Peru's governance and ability to implement strategic reforms (Alessandro, Lafuente and Santiso, 2014[5]; Levitsky, 2016[6]; Tanaka, 2017[7]). This dynamic was most recently illustrated in December 2022 when former President Castillo attempted to dissolve Congress and rule by decree. This culminated in Vice President Dina Boluarte assuming the presidency, amidst peaceful and violent protests resulting in multiple deaths, mostly civilians, between December 2022 and January 2023 (Defensoria del Pueblo, 2023[8]).

This has led the Inter-American Commission of Human Rights (IACHR) to express its concern over the repetitive and arbitrary use of the constitutional accusation against the other branches of power and constitutionally autonomous institutions, the presidential accusation based on permanent moral incompetence, and the dissolution of the Congress once the legislature refuses twice to approve proposed councils of ministers. The IACHR has called on the State of Peru to regulate and define these mechanisms

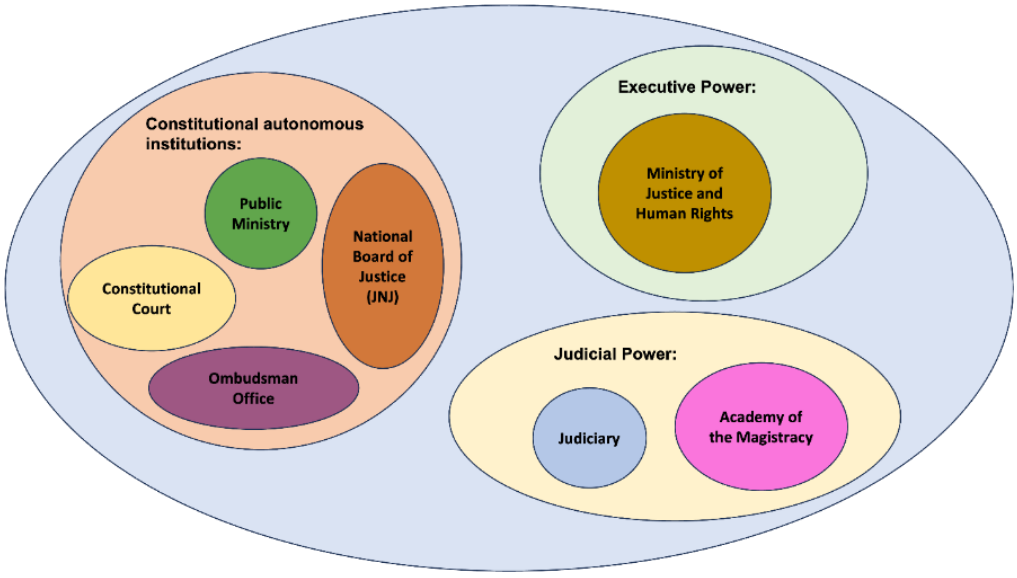
(Inter-American Commission of Human Rights, 2022[9]; Inter-American Commission on Human Rights, 2023[4]).

Political instability has also degraded the quality and delivery of public services, including justice services, partly due to the lack of long-term planning, worsening institutional fragmentation, and a corresponding absence of effective inter-institutional co-ordination, all fundamental for properly designing and delivering these services to the people.

3.2.2. Mapping Peru's justice system

As stated in Peru's Constitution (Figure 3.1), the administration of justice is exercised by the judicial branch and its jurisdictional bodies (Table 3.1). The Constitution also mandates additional constitutionally autonomous institutions to play a role in ensuring access to justice and in the administration of the justice system across the country: The National Board of Justice (arts. 150-157), the Public Ministry (arts. 158160), the Constitutional Court (arts. 201-205) and the Ombuds Office (arts. 161-162), which even though is not a jurisdictional body, is mandated to protect the constitutional rights of citizens (as part of the Judicial Power), the judiciary and the Academy of the Magistracy and (as part of the executive power) the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos, MINJUSDH).

Figure 3.1. Peru's justice system institutions recognised by the Constitution



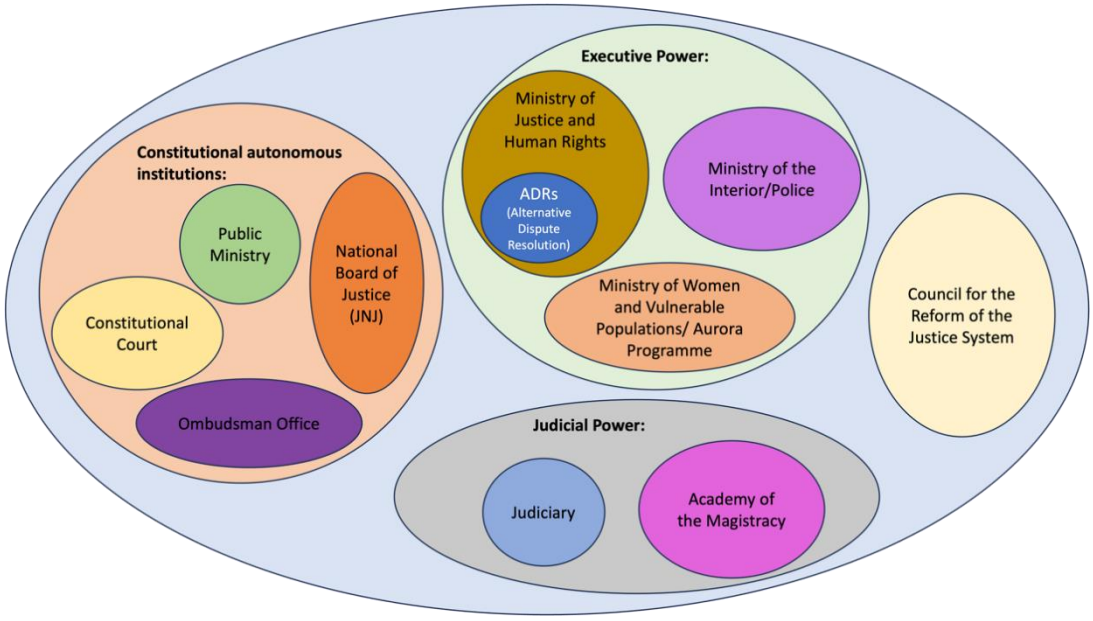
Source: OECD elaboration

Peru has adopted broader approaches to defining its justice system in its latest justice reform initiatives by including the institutions that play a role in access to justice. As detailed in Chapter 2, the National Plan for the Reform of the Administration of Justice (2004), prepared by the Special Commission for the Integral Reform of the Administration of Justice (Comisión Especial para la Reforma Integral de la Administración de Justicia, CERIAJUS), adopted a systemic approach in its analysis of the justice system. It identified as part of the judicial system: the Public Ministry, the National Council of the Magistrature (now the National Board of Justice), the Constitutional Court, the Academy of the Magistracy, the Ombuds Office, the MINJUSDH and the Justice Commission of the Congress (CERIAJUS, 2004[10]).

The current justice reform initiative, the Public Policy for the Reform of the Justice System (2021-2025), defined its scope even more broadly by adding the Ministry of the Interior, the National Police, the National Jury of Elections, MEF and the peasants' self-defence groups (*rondas campesinas)* (Law 30942, art. 2).

Taking into consideration Peru's latest initiatives for justice reforms and using the OECD people-centred approach, Peru's justice system could be summarised as follows (Figure 3.2) to which should be added the above-mentioned bodies: the Constitutional Court as part of the constitutional autonomous institutions, the Ministry of Interior/the Police and the Ministry of Women and Vulnerable Populations through the Women's Emergency Centres of the AURORA Program (see Box 3.6 further below) as part of the executive power, and the Council for the Reform of the Justice System (Consejo para la Reforma del Sistema de Justicia, CRSJ) as the latest council created to formulate, co-ordinate and monitor the implementation of the 2021-2025 Reform of the Justice System (Chapter 2).

Figure 3.2. Mapping of Peru's justice system from a people-centred approach



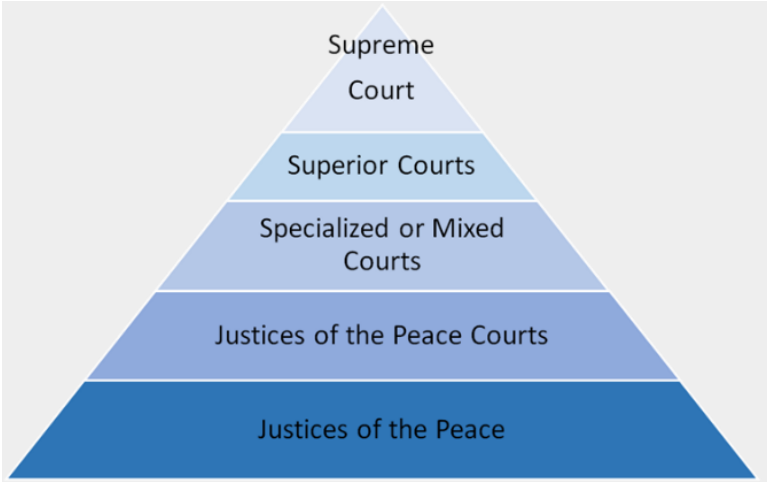
Source: OECD elaboration.

3.3. Judicial Power within Peru's justice system

3.3.1. The judiciary

An integral part of the justice system in Peru, the judiciary or judicial branch presents a pyramidal structure comprising the Supreme Court, Superior Courts, Specialised or Mixed Courts, the Justices of the Peace Courts, and the Justices of the Peace (Figure 3.3).

Figure 3.3. The judicial branch



Source: OECD elaboration with information from Poder Judicial (2022), *Organization Chart of the Supreme Court and Governance and Control Bodies*.

In each of the 35 judicial districts of Peru, management responsibilities are assigned to the Presidents of the Superior Courts, the Executive Councils of the Judiciary, and the Plenary Chambers of the Courts (Organic Law of the Judiciary, art. 72), as further detailed in Chapter 4.

The structure and summary of the competencies of Peru's courts are summarised in Table 3.1.

Table 3.1. The jurisdictional bodies in Peru: Structure, presence and competences

Type of court	Number	Main powers
Supreme Court *(Corte Suprema)*	1	The highest level of the judicial system and the last instance before which people can appeal the sentences of all judicial processes coming from any Superior Court of Justice in the country. It is organised in chambers or panels (*salas*) or fields of law (e.g. civil, criminal) and a Sala Plena (Plenum). Based in Lima, the capital of Peru.
Higher or Superior Courts *(Cortes Superiores)*	35	They are in each judicial district. They hear appeals from specialised courts within the judicial district or regions. It is organised in specialised or mixed chambers (e.g. criminal, civil, and labour, according to the needs of the judicial district).
Specialised or Mixed Courts (*Juzgados especializados o mixtos*)	1 951	Depends on the Superior Court and functions in local areas. Jurisdiction for a specialised area of law (e.g. civil, criminal, administrative, constitutional, commercial, labour). In geographical areas with a scarce number of cases and no specialised courts, they are called courts of mixed or combined jurisdiction, dealing indistinctly with all types of legal cases (*juzgados mixtos*). Solve the appeals on the sentences handed down by the Justices of the Peace Courts.
Justices of the Peace Courts (*Juzgados de paz letrados*)	651	They were created to administer justice in rural areas and usually represent one or more districts. They refer their sentences according to the respect of the national law. They see cases for small fines and fast resolution (on alimony, child support payment, violence against women and enforcement of payments and debts). They see conciliation cases (an ADR mechanism created to find an agreement between both parties and avoids the need to go to trial). They depend on the Superior Court, which determines where they can exercise their functions. They solve appeal cases of Justice of the Peace (Jueces de Paz). First-instance judges, their decisions are appealed before the specialised courts. The Justice of the Peace judge must be a lawyer and adjudicate according to the national law.
Justices of the Peace (*Jueces de paz*)	5 966	The first level of the judicial system. Located in remote places in rural areas. The competence of the Justice of the Peace on disputes related to ownership rights, is limited to cases under 30 Unidades de Referencia Procesal (Procedural Reference Unit; around EUR 3 700).

Type of court	Number	Main powers
		Elected by rural, mostly Indigenous, communities for four years, with the possibility of prolongation for unlimited four-year periods. The person must be respected by the community and is not required to be a lawyer. Their decisions are made according to their local culture and knowledge with respect for the Constitution and the customs of the community. They depend on their respective Superior Court of Justice, which ratifies their nomination. They are oriented to conciliation cases (an ADR mechanism created to find an agreement between both parties and avoids the need to go to trial). The most frequent disputes are small alimony and child support payments, tenancy evictions, and land property demarcation. They apply equity criteria to adjudicate, not the national law. Their decisions can be appealed in front of the Justice of the Peace judge or the Specialised or Mixed Judge. In places where there are Justices of the Peace and Justices of the Peace judges with similar competences, the claimant can go to either one. It is not a mandatory jurisdiction to present a case before the Justice of the Peace Courts or other courts. Their function is not remunerated.

Source: OECD elaboration with information provided on 16 October 2023 through Oficio. 610-2023-GP-GG-PJ, and from the Organic Law of the Judiciary and Law 29824, Peace Justice Law, and Peru Judicial Power, https://www.pj.gob.pe/wps/wcm/connect/CorteSupremaPJ/s_Corte_Suprema/as_Conocenos/historia.

At the national level, the judiciary is managed by the Chief Justice of the Supreme Court, the Plenary Chamber of the Supreme Court, and the Executive Council of the Judiciary (Consejo Ejecutivo del Poder Judicial, CEPJ). The Supreme Court is the highest jurisdictional organ of Peru, and its competence extends across the country:

- The Chief Justice presides over the entire judicial branch (*poder judicial)* (art. 144). The president is elected by the 25 members of the Judicial Power on a two-year rotating basis.
- The Plenary Chamber of the Supreme Court (Sala Plena de la Corte Suprema) is the highest-level deliberating body of the judiciary. It is chaired by the president of the judiciary and the Supreme Court of Justice and comprises all the Tenured Supreme Judges. The Plenary Chamber of the Supreme Court approves the General Policy of the Judiciary and takes decisions on institutional matters, including the selection of the representatives of the judiciary on other bodies (Organic Law of the Judiciary, art. 80). The role of the Plenary Chamber is addressed in the law in very general terms with no clarity on its specific functions.
- The CEPJ manages the Judicial Power. It assumes the technical-administrative direction of the judiciary and of the organisations indicated under the judiciary by law. It also formulates and executes the General Policy and the Development Plan of the Judiciary, as well as approves its Budget Project, and exercises disciplinary assessment and evaluation, among other functions (Organic Law of the Judiciary, art. 80). The governance and management of the judiciary will be addressed in detail in Chapter 4.

To simplify its structure and eliminate the duplication of functions of its organs, a new organisational structure of the judiciary came into effect on 1 December 2023, as approved by the Executive Council (Regulation of Organisation and Functions of the Judiciary, approved through Administrative Resolution 000341-2023-CE-PJ, from 18 August 2023). It also creates the Office of Access of Information and Data Analysis, which depends on the CEPJ.

At the regional level, Higher (Superior Courts) are based in each judicial district in Peru, which usually corresponds to the number of regions. There are currently 35 Superior Courts of Justice across the country. Each Superior Court comprises a certain number of chambers according to the procedural load it manages. The Specialised Courts, in turn, are subdivided according to their speciality (civil, criminal, labour, commercial). The courts that deal with issues of more than one speciality are known as Mixed Courts and are usually situated in local areas. The number of Specialised or Mixed Courts varies in each district, depending on the number of inhabitants. The Justices of the Peace Courts are created to administer justice

in certain rural and urban areas with no or limited Specialised or Mixed Courts, and their scope of action is one, two or more districts. These courts also resolve appeals from the Justices of the Peace. As a multicultural country with important and diverse Indigenous and rural populations, ordinary justice co-exists with various levels of Indigenous, peasant and community justice, reflecting these groups' cultural values, forms of co-existence and social relations (Brandt, 2013). Indeed, it is estimated that there are more than 55 Indigenous communities in Peru, 51 of which are in the Amazon region and 4 in the Andes (Ministerio de Cultura, 2023[11]). The Justices of the Peace, who are not lawyers and are elected by the community, base their decisions on their best knowledge and beliefs in respect of the culture and customs of the community and the Constitution. There are 6 000 Justices of the Peace (*jueces de paz*) across the country.

In exercising its mandate to guarantee rights and access to justice to all populations, the judiciary also includes offices, commissions and programmes that have specialised functions to implement the general policy and plans of this branch, such as intercultural justice, gender-related justice, access to justice and environmental justice. In view of their relevance in securing access to justice, the following sections of this chapter provide an in-depth description of each of these bodies.

The National Office of Justice of Peace and Indigenous Justice

To promote intercultural justice, understood as a justice system in which ordinary justice co-exists with the various levels of Indigenous justice, the judiciary created in 2004 the National Office of Peace and Indigenous Justice (Oficina Nacional de Apoyo a la Justicia de Paz y a la Justicia Indigena, ONAJUP). The ONAJUP is part of the CEPJ and oversees the activities that the judiciary implements to develop and strengthen the *Justicia de Paz* (Peace Justice) (Regulation of Organisation and Functions of the Executive Council of the Judiciary, art. 30).

Even though the Constitution recognises the right of the native and peasant communities to exercise jurisdictional functions with the support of the peasant patrols *(rondas campesinas)* (art. 149) (Box 3.3), no law regulates or further develops this right and co-ordinates the co-existence of these two justice systems. Only a Plenary Agreement from 2009 recognises jurisdictional functions to the peasant patrols and establishes the limits of this special jurisdiction (Acuerdo Plenario No. 1-2009/CJ-116, from November 2009).

Box 3.3. Peasant patrols or *rondas campesinas*

The *rondas campesinas* or peasant patrols was the name that people gave to the type of communal defence organisation that emerged autonomously in Peru's rural and Indigenous areas in the mid-1970s as an informal response to the lack of justice services and state protection in rural areas. The members of the Andean communities use their own methods to administer justice and impose sanctions on people who threaten the security of their people. Among its original functions was to patrol trails, roads and pastures, as well as to end theft and rustling, which is one of the most condemned practices among Andean communities, as it has severely affected the livelihood of the populations. Although peasant patrols have existed for many years, they were only officially recognised in the Constitution of 1993. The 1993 Constitution granted peasants and native communities the right to perform jurisdictional functions within their territories with the support of patrols, in accordance with customary laws. This is apart from violations of fundamental rights (art.149). Their activity is regulated by Law No. 27908 and its regulations, which recognise their right to participate in the country's political life, conciliation capacity and the general administration of justice.

Source: (Yrigoyen, 2002[12]).

In this regard, while the Law of Peace Justice (Law 29824) mentions co-ordination between the Justices of the Peace and such other community justice actors in peasant and native communities as Indigenous leaders and peasant patrols (*rondas campesinas*), the Law of the Rondas Campesinas (Law 27908) establishes that the ordinary and formal justice authorities should create co-ordination relationships with the peasant patrols, but it does not further develop this in detail.

Some protocols and regulations have been developed by the ONAJUP and the Commission on Intercultural Justice of the Judicial Power but in a very general manner, with no detail on the scope of Indigenous justice, on how to resolve conflicts between justice systems or on institutional co-ordination mechanisms that could contribute to resolving such conflicts (Co-ordination Protocol between Justice Systems [Protocolo de Coordinación entre Sistemas de Justicia]). According to these regulations, special justice systems have competence in the areas and topics that have traditionally fallen within their purview, based on their traditional, ancestral laws and systems. However, exercising their jurisdiction cannot contravene the fundamental rights of the Constitution or human rights.

Additional protocols have been created to ensure the use of an intercultural approach by justice system officials, the use of interpreters and translators of Indigenous languages in judicial proceedings, and co-ordination between formal and intercultural justice.

According to the OECD interviews organised in the context of this project with stakeholders, it appears that there has been reluctance on the part of formal justice to recognise and enforce the decisions of intercultural justice, as sometimes the Justice of the Peace and the peasant patrols act outside the legal framework and not according to formal justice but following their cultural values, knowledge and ancestral practices. For example, this tension has made it difficult to co-ordinate the implementation of protection measures for victims of violence with the police. Also, even though the co-ordination protocol establishes the implementation of intercultural dialogue mechanisms, judges have shown resistance or lack of capacity to follow it. The same applies to the other justice institutions. A good practice has been implemented by the Superior Court of Justice of Cusco, which has created an inter-institutional co-ordination and dialogue mechanism on intercultural justice (Mesa Descentralizada de Coordinación de Justicia Intercultural de la Region Cusco), where the judiciary, the Public Ministry, the police, the Ombuds Office, the Ministry of Culture, universities, Justices of the Peace, peasant patrols, peasants' communities and civil society organisations participate. However, this is not a practice replicated in all judicial districts and depends on the political will of the Superior Courts. On the other hand, the peasant patrols organise regional congresses in the different regions, where the different peasant patrols from the region and other regions participate, as well as civil society organisations, public institutions, the judiciary, the Women Emergency Centres, the Ministry of Culture, the police, the majors, the regional government, and others.

The relationship between the Justices of the Peace and the peasant patrols and other Indigenous justice actors can be uncertain and vary in each region of Peru depending on their presence or where these groups have more power in the communities, and more legitimacy regarding problem solving and as providers of intercultural access to justice. This makes it difficult to separate the roles and functions of both institutions and services, avoid overlap of functions and guarantee intercultural justice and the respect of both justice systems.

The Specialised Commissions

As mentioned in Chapter 2, to ensure a more inclusive justice system, the judiciary created four specialised commissions to promote the institution's work in the key priority areas of gender justice, access to justice of vulnerable people, intercultural justice, and environmental justice.

The creation of these commissions and offices points to an awareness of the importance of a people-centred approach because it is predicated on prioritising people's needs, problems and the protection of fundamental rights in the Peruvian context and reality, including for the most vulnerable groups. These

specialised bodies aim to facilitate co-ordination on issues between different institutions to meet specific people's needs and provide inclusive, appropriate and co-ordinated people-centred services. The progress achieved and the challenges of these commissions are assessed in Chapters 4, 5 and 6.

a) Commission on Gender Justice

The Constitution of Peru does not include gender-specific provisions that explicitly promote gender equality and women's rights beyond the non-discrimination provisions relating to sex (not gender) or "any other distinguishing feature" (art. 2[2]) and to the representation of women in regional councils (art. 191). Other constitutions in OECD Member countries, including countries in the region, do include specific dispositions and constitutionalised rights that promote gender equality; these tend to illustrate the underlying values and beliefs of the nation and its commitment to achieving and protecting women's rights, as mentioned in Chapter 2.

The role of the Commission on Gender Justice (Comisión de Justicia Género) is to promote the guarantee of equal access to justice for the population and to strengthen the judiciary's work towards this objective through the establishment of policy on gender to be applied at all levels and organisational structures. It was created in 2016 to support the implementation of the 2015 Law to Prevent, Sanction and Eradicate Violence against Women and Family Members (Law 30364). The commission comprises a Supreme Court Judge, a Superior Court Judge and a Specialised Judge; a Consultive Council of two Superior Court Judges and two Specialised Judges; and a Technical Team.

Since 2016, the commission has implemented several initiatives and policies that have advanced gender equality in the judiciary in the resolution of cases related to gender-based violence, including: the implementation of legal-proceeding interpretation standards, which recognise the importance of including a gender approach in judicial reasoning and increasing the number of female judges; the creation of specialised jurisdictional bodies on violence against women and family members in 22 judicial districts; and the reinforcement of the work and preparation of Justices of the Peace to deal with cases of violence against women and family members.

b) Commission on Access to Justice of Vulnerable People

To promote access to justice on the part of vulnerable populations, the judiciary created in 2017 the Permanent Commission for Access to Justice of Vulnerable People and Justice in Your Community (Comisión Permanente de Acceso a la Justicia de Personas en condición de Vulnerabilidad y Justicia en tu Comunidad, CPAJPCV). This commission oversees the implementation of relevant treaties that Peru has ratified, such as the Brasilia Rules on Access to Justice for Vulnerable People (approved in March 2008 by the XIV Ibero-American Judicial Summit, which Peru ratified for implementation in 2010). It promotes access to justice for vulnerable groups through the implementation of the 2016-2021 National Plan for Access to Justice of Vulnerable Persons of the Judiciary (approved by Administrative Resolution No. 090-2016-CE-PJ) (Poder Judicial del Perú, 2022[13]) and the draft of the 2022-2030 National Plan, which has not yet been approved. The commission comprises its president, two Supreme Court judges and two Specialised Court Judges.

Since 2017, the commission has implemented a series of services and trainings to increase and ameliorate access to justice for vulnerable people. Some of these initiatives include: the creation of protocols, guidelines and capacity-building activities for judicial personnel when dealing with cases with vulnerable populations (including children and people with disabilities, among others); capacity building for judges and judicial personnel on mobile justice services (*justicia itinerante*), which travel to remote places where vulnerable populations are located to provide justice services; legal justice fairs and campaigns (*Llapanchikpaq Justicia*), which take justice services from different justice institutions to remote areas to provide the population with information related to their fundamental rights; a judicial warning system (*Sistema de alerta judicial*), which identifies people in vulnerable conditions so their legal process can be monitored more closely (especially for elderly people); the creation of the accreditation of legal counsellors

(*orientadoras judiciales*), who are leaders within their communities who have been trained to guide people on issues related to gender-based and inter-family violence.

c) Commission on Intercultural Justice

As part of the judiciary's efforts to promote the rights of the Indigenous, native and peasant communities and the peasant patrols (*rondas campesinas)* and their cultural values, practices, and ways of co-existence, the Commission on Intercultural Justice (Comisión de Justicia Intercultural) was created to implement a concrete roadmap for improving intercultural justice in Peru (Administrative Resolution 499-2012-P-PJ, from 2012). The roadmap's main objective was to promote the communication and co-ordination between the different justice systems (including the creation of the ONAJUP, as seen above) and develop intercultural training, research and capacity-building activities on the different intercultural justice systems available in the country.

To increase the co-ordination between formal and intercultural justice, the commission has implemented several training and capacity-building activities for judges and other justice public servants on existing protocols and regulations to promote its recognition and acceptance for effective co-ordination and access to justice for all. The same approach has been taken with the Justices of the Peace, the peasant patrols and other social leaders to train them on human rights and the formal justice system. Other institutions, such as the Ombuds Office, the Ministry of Women and Vulnerable Populations and non-governmental organisations (NGOs), have also trained the peasant patrols and other social leaders on formal justice and fundamental rights.

d) Commission on Environmental Governance

The Constitution of Peru includes a general provision on the fundamental right to a balanced and appropriate environment (art. 2[22]). The right to environmental justice is established by the General Law of the Environment (Law 28611 from 15 October 2005), which recognises the principle of environmental responsibility (art. 9) and the principle of environmental governance (art. 11).

The existent judicial mechanisms for environmental justice are provided through existing procedural laws. Environmental justice is enforced through ordinary judicial mechanisms (contentious administrative, criminal, and civil procedures) and constitutional judicial mechanisms (*habeas data*, the *writ of mandamus*, the wright of unconstitutionality, popular action), but through ADR and *amparo* procedures (see Chapter 4 for further description of these mechanisms). In addition, there are Public Prosecutor's Offices specialised in environmental matters (Fiscalías Especializadas en Materia Ambiental, FEMA), an environmental specialised court in the city of Puerto Maldonado, and courts with environmental competence in ten additional judicial districts.

As part of the justice reform efforts and modernising the judiciary, the Plenary Chamber created the Commission on Environmental Governance (Comisión Nacional de Gestión Ambiental) in 2016. Since then, the first environmental specialised court was established in Puerto Maldonado in 2018, and ten other criminal courts with environmental competences have been created across the country. Eco-efficiency committees have been created in the Superior Courts, and guidelines on eco-efficiency measures in the judiciary and capacity-building activities have been created for judges and justice personnel on environmental-related crimes.

3.3.2. The Academy of the Magistracy

The Academy of the Magistracy (Academia de la Magistratura, AMAG), responsible for the education and training of judges and prosecutors at all levels, benefits from administrative, academic and economic autonomy from the judiciary (Constitution, art. 151; Law 26335, art. 1). The AMAG is responsible for developing an integrated and continuous system of capacity building for judges (including their certification

and accreditation) and prosecutors of the Public Ministry (Constitution, art. 151). Training and capacity building of judges is addressed in Chapter 4.

The AMAG co-operates with the National Board of Justice (Junta Nacional de Justicia, JNJ) (which will be described in detail in the next section) on the performance appraisal or evaluation process of judges and public prosecutors that it carries out every three and a half years, according to which the JNJ may ask the judge or prosecutor to participate in a training programme from AMAG. To do so, AMAG and the JNJ design and co-ordinate evaluation processes to pursue these capacity-building activities (Regulation of Judges and Prosecutors Performance Appraisal, approved by Resolution No. 515-2022-JNJ).

Several additional institutions also provide training and continuing education for their staff on gender, violence against women, and Indigenous and multicultural justice, among others, including the judiciary for its judges through its specialised commissions and the Public Ministry for its public prosecutors. AMAG is the institution in charge of training and upskilling judges and public prosecutors (Organic Law of the Academy of the Magistracy, art. 2). This fragmentation in capacity building and overlap of mandates create various levels of capacities of legal professionals, as the training programmes depend on the availability of resources in these institutions, on the institution's specialisation and the priority given to training and upskilling. This situation is not conducive to fostering an institutionalised, integrated, co-ordinated, professionalised and sustainable system of continuing education for judges, prosecutors and other personnel involved in the administration of justice.

3.4. Constitutionally autonomous institutions within Peru's justice system

3.4.1. The Constitutional Court

In addition to the judicial branch and situated outside its structure, the Constitutional Court, an autonomous and independent body, exercises jurisdictional functions over the justice system by overseeing adherence to the Constitution (art. 201). The Constitutional Court consists of seven members (not necessarily professional judges) who are elected for five-year terms by Congress (with no immediate term renewal). The protection of constitutional rights can be invoked before the courts of the judicial branch and the Constitutional Court. Peru has adopted a mix of concentrated and dispersed approaches to constitutional review, as this function is shared between the Constitutional Court and the judiciary (Box 3.4).

Box 3.4. Models of constitutionality assessment: Parliamentary, continental and diffuse

Three models of constitutionality assessment frame the discussion around the constitutional review:

- **Parliamentary sovereignty model:** According to this model, judicial review of constitutionality is either forbidden (art. 120, Constitution of the Netherlands) or limited (Canada, Finland, New Zealand, Switzerland and the United Kingdom). In some countries, the legislature stands on an equal or superior footing to the courts regarding constitutionality review, as in the "new Commonwealth model of constitutionalism": Canada, New Zealand and the United Kingdom. The reasoning is that while courts play a significant role in protecting fundamental rights, they should not be the only institutions capable of interpreting those rights. This way, the articulation and enforcement of constitutional norms, as well as the responsibility for implementing constitutional values, are vested in parliamentary sovereignty. While courts interpret and enforce the constitution, the legislature decides and determines what will be law.
- **European continental (or Kelsenian-Austrian) concentrated and abstract model:** The centralised Kelsenian system is based on two pillars: 1) it concentrates the power of constitutional review in one judicial body, typically a Constitutional Court; 2) it situates that court

outside the structure of the judicial branch. Because of the hierarchy of laws, constitutional judicial review is seen as incompatible with the work of an ordinary court. The *abstract review*, as employed in France, involves political institutions requesting the court to provide an interpretation of the text of the constitution from a real, concrete dispute. The *concrete review*, as in Germany and Spain, asks the court to deal with a specific case in which a constitutional question is raised. Notwithstanding, there are different approaches by which the separation between the constitutional court and the judiciary has been blurred, as the Constitutional Court can interfere with judicial decisions and participate in the resolution of individual cases, creating conflicts of competence between both bodies (such as *amparo* in Spain or *tutela* in Colombia).

- **Diffuse or dispersed judicial review model:** Also called the American model, as it originated from case law of the US Supreme Court (Madbury v. Madison). By this model, judicial constitutional review can be dealt with by any judge or court and under ordinary court proceedings whereby the Supreme or High Court provides uniformity of jurisdiction through the appeals system. Each judge can apply the Constitution in their own way, and the questioned law will not be applied in the case nor subsequent cases, but it is not expelled from the legal system. Canada, Denmark, Estonia, Ireland, Norway, Sweden, the United States and many Latin American countries have adopted this system. Others, such as Colombia, Mexico and Peru, have a mixed system of concrete and diffuse constitutional review.

Source: (OECD, 2022[14]), *Constitutions in OECD Countries: A Comparative Study: Background Report in the Context of Chile's Constitutional Process*, https://doi.org/10.1787/ccb3ca1b-en.

The Constitutional Court is responsible for hearing and adjudicating cases in final instance (constitutional matters are first heard in ordinary courts), including those that deny petitions of cases related to civil action against the state; the protection of a person's freedom from illegal detention; privacy and personal data and the right to access to information of public importance; for cases of violations of individual rights that fall outside the scope of the two previous procedures or cases of authorities or public officials who question their obedience to a legal rule or administrative act.

The Constitutional Court is responsible for passing on judicially, in first instance and without appeal, writs of *unconstitutionality* concerning laws and regulations that might contravene the Constitution and to hear jurisdictional disputes concerning a public institution that may have exceeded the powers assigned to it under the Constitution, in accordance with the law (Constitution, art. 202). As mentioned above, the process of constitutional review in Peru establishes that the Constitutional Court has the final word on constitutional matters and that judges must interpret and apply the law according to the Constitution and the jurisprudence of the Constitutional Court (art. VI Preliminary Title of the Constitutional Procedures Code).

In some cases, lower court judges have set aside judicial interpretations made by the Constitutional Court (Landa Arroyo, 2006). This has led to the Constitutional Court issuing final judgements that declared these lower court decisions invalid and, in the process, establishing as final and binding its own decisions on all other organs of the state, including the ordinary courts. This means that, in effect, lower courts cannot contradict Constitutional Court decisions and jurisprudence. This has created considerable friction with the lower courts, as some consider that the Constitutional Court has been heavy-handed and has acted in a disproportionate way that could hamper the independence of lower court judges (Espinosa-Saldaña Barrera, 2007[15]; Malpartida Castillo, 2011[16]).

While constitutional unity is necessary, co-ordination mechanisms to discuss and achieve basic consensus on these topics and the willingness of both institutions to work together have been lacking. The CRSJ could be a mechanism that brings both institutions closer. However, in July 2019, the Constitutional Court

decided not to participate in it, declaring that it was "autonomous, independent and responsible for the control of the Constitution" (Tribunal Constitucional, 2019[17]).

3.4.2. The National Board of Justice

The JNJ (also called the *Junta*) is an autonomous institution that oversees the human resource management of the judiciary and the prosecutorial service and is responsible for the selection, appointment, evaluation or performance appraisal and disciplinary actions of judges and prosecutors (Constitution, art. 154; Law 30916, art. 1).

The *Junta* was established by the Judiciary Reform Commission to replace the National Council of the Magistrature (Consejo Nacional de la Magistratura, CNM) in response to the Callao corruption case within the Peruvian judicial system. More specifically, former President Martin Vizcarra (2018-20) established a commission with a core mandate to create a comprehensive reform of the justice system, which included the reform of the CNM as one of its first measures (see Chapter 2). The *Junta* counts seven members; these are selected by a Special Commission composed of the Ombudsperson, the president of the judiciary, the Public Prosecutor, the president of the Constitutional Court, the Comptroller General, a dean from a public university and a dean from a private university, through open public competition for a single non-renewable five-year term. The selection criteria are detailed in the Constitution (arts. 155 and 156) and the Organic Law of the National Board of Justice (Law 30916 from February 2019) and include professional merit and an evaluation of professional competency and knowledge, as assessed by the ad hoc selection special commission. Congress can remove members for gross misconduct before the expiry of the term (Organic Law of the National Board of Justice, art. 6).

The *Junta* is responsible for the selection and appointment of judges and prosecutors at all levels, except for Justices of the Peace, who are chosen by popular election, following a public competitive examination and personal evaluation (Organic Law of the National Board of Justice, arts. 28-34 and 51[b]). It ratifies whether judges and prosecutors can continue in their positions every seven years and executes their partial performance evaluation or performance appraisal jointly with AMAG every three and a half years. Those not ratified may not re-enter the judiciary or the Public Ministry (Organic Law of the JNJ, arts. 35-40). It is also incumbent upon the JNJ to apply sanctions to judges and prosecutors, which include dismissal/removal, reprimand or suspension (Organic Law of the JNJ, arts. 2 and 42) (see Chapter 4).

Since January 2020, when it launched operations, the *Junta* has implemented several measures and initiatives, including the restructuring of the institution; the amendment of its regulations regarding its functions, procedures and competence; the revision of appointments, ratifications, evaluations and disciplinary proceedings executed by the former CNM; and the appointment of tenured judges and prosecutors, to reduce the number of provisional judges.

The functions of the *Junta* require that it communicate constantly with other justice institutions, such as the judiciary, the Public Ministry, and AMAG, to contribute to the promotion of effective justice services.

3.4.3. The Public Ministry or Public Prosecutor's Office

The Public Ministry, also officially called the Prosecutor's Office of Peru, is an autonomous constitutional body. It has a representative and independent role in defending those who have seen their rights affected within the national legal system.

The Public Ministry is directed by the National/Public Prosecutor, who is elected by the Board of Supreme Prosecutors for a three-year term and may be re-elected for two additional years (Constitution, art. 158). The Public Ministry or Public Prosecutor's Office (*Fiscalía*) is headed by the Public Prosecutor (*Fiscal de la Nación*), which is the main institution in charge of investigating and prosecuting crimes and protecting the interests of society (Constitution, art. 159). As the hierarchical structure of the judiciary, this body

consists of the Public Prosecutor, the Supreme Prosecutors (*Fiscales Supremos*), the Superior Prosecutors (*Fiscales Superiores*), the Provincial Prosecutors (*Fiscales Provinciales*), the Deputy Prosecutors (*Fiscales Adjuntos*) and the Boards of Prosecutors (*Juntas de Fiscales*) (Organic Law of the Public Ministry, art. 36; Prosecutors' Career Law, art. 3).

The Public Ministry has Public Prosecutor's Offices specialised in violence against women and family members, environmental matters, corruption crimes, organised crimes, money laundering, illicit drug trafficking, human trafficking, fiscal/tax crimes and customs offences.

As seen in Chapter 2, the new Criminal Procedures Code (in force since July 2006 and implemented at the national level in 2021) strengthens the role of the Public Ministry and its prosecutors in criminal proceedings. It places this institution squarely in charge of criminal proceedings as it is now the prosecutor assigned the mandate to conduct criminal investigations (art. 60). Thus, the prosecutor conducts the preparatory investigation, decides the strategy of the investigation and intervenes in all stages of the process (art. 61). To conduct the investigation, the Public Ministry may require the intervention and support of the police (art. 330); it formalises and regulates the co-ordination mechanisms with the police as an institution (art. 69).

The Public Ministry is one of the justice institutions that participates in more inter-institutional co-ordination spaces, which promotes joint work and co-ordination with other justice institutions on topics that require their participation and agreements (e.g. violence against women, the implementation of the new Criminal Procedures Code and their co-ordination with the police in criminal cases). Furthermore, bilateral co-ordination with other institutions, such as the police, regarding the investigation of cases and specialised crimes has also been implemented, fostering constant and mutual communication, joint work, protocols delimiting responsibilities, articulation and co-ordination, and a better assessment of these issues. In these co-ordination spaces, authorities from the Public Prosecutor's Office and the police participate with decision-making power and lead specialised teams focused on particular crimes (see the section on the national police).

This becomes especially evident in the co-ordination and planning between the Public Ministry and the judiciary on the provision of justice services where, for instance, more Public Prosecutor's Offices specialised in violence against women were created, thus generating more cases than the courts could handle (and without a corresponding increase in the number of courts needed to hear them). This has impacted the ability to resolve legal needs in an effective and timely manner. The same problem exists between the Public Ministry and the judiciary as more Public Prosecutor's Offices on environmental issues were created than existing courts to see the cases, which generated a case load that the existing courts are unable to manage. The non-participation of the judiciary in the above-mentioned co-ordination mechanisms may explain part of the issue.

3.4.4. The Ombuds Office

The Ombuds Office (*Defensoría del Pueblo*) is responsible for defending people's fundamental constitutional rights. It oversees the state's administration and performance of its duties and supervises the delivery of public services to citizens (Constitution, art. 162). It is an autonomous body headed by the Ombudsperson (Defensor del Pueblo), whom Congress elects for a five-year term (Constitution, art. 161). Its efficiency depends on the prestige and good image of the Ombuds Office and its advocacy work, as its decisions and recommendations are not binding, and it cannot sanction institutions for non-compliance.

The Ombuds Office is entitled to intervene in constitutional processes; prepares reports on topics within its sphere of competence, including an annual report to Congress; investigates acts and resolutions of the public administration; presents draft legislation before Congress; promotes the signing and ratification of, and accession to, international human rights treaties; and initiates or participates in administrative

proceedings in representing a person or group of people for the defence of constitutional and fundamental rights (Organic Law of the Ombuds Office, art. 9) (see Chapters 3 and 4).

This institution organises its work around strategic and thematic areas: public management; human rights and people with disabilities; the environment, public services, and Indigenous populations; constitutional matters; women's rights; children and adolescents; the fight against corruption, transparency, and the efficiency of the state; and prevention of social conflicts and governability.

Its functions include constant communication with public institutions, including for the provision of recommendations and their follow-up and implementation. The Ombuds Office also co-ordinates with other justice institutions, including the judiciary and the Public Ministry, and supports the provision of mobile services through joint fairs and campaigns.

It has 40 offices at the national level and in all regions and departments of the country. It visits communities and populations in remote places through mobile campaigns, collecting people's complaints on public administration and public services issues, advising them on their problems or concerns, and building capacity on people's fundamental rights. It is important to note that a lack of financial resources limits its work in the regions and its capacity to reach local populations in the regions.

This public institution also intervenes in national social conflicts as a mediator, participating in dialogue spaces and providing early warnings and recommendations to the government. This and its advocacy work on protecting and promoting people's rights has allowed them to have good relationships with diverse groups of vulnerable populations and has strengthened its powers of persuasion with the government (see Chapter 6).

3.5. The executive branch and Peru's justice system

3.5.1. The Ministry of Justice and Human Rights

As part of the executive branch, the role of the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos, MINJUSDH) is, among other things, to promote and disseminate human rights and access to justice, with emphasis on vulnerable populations; formulate policies and proposals of legislation on matters within its jurisdiction; provide the judicial defence of the state and oversee the penitentiary policy (Law of Organisation and Functions of the MINJUSDH, arts. 4-5).

It is headed by a minister, who is supported by a Vice-Ministry of Justice (art. 11) and a Vice-Ministry of Justice and Human Rights and Access to Justice (arts. 7 and 12). The latter is responsible for people's access to justice, which is promoted through public defence services and ADR mechanisms (see Box 3.5).

Box 3.5. Public defence services and ADR mechanisms

The **public defence service** is provided by 2 057 public defenders throughout Peru and guarantees the following services: public criminal defence (counsel and sponsorship); the defence of victims (counsel and sponsorship); legal assistance (counsel and sponsorship in civil law and family, labour, administrative law matters) (Public Defence Service Law, art. 6). It also provides other multidisciplinary services, including experts (*peritos*), social workers and health services. This service is provided in the 34 Public Defence District Directions (Direcciones Distritales de Defensa Pública), located in each one of the judicial districts, and in another 390 offices at the national level, including the 40 free legal assistance centres (Centros de Asistencia Legal Gratuita, ALEGRAs) and 6 mega ALEGRAs. However, as mentioned by the MINJUSDH and other public institutions, the number of public defenders is insufficient considering the number of cases that the public defence service receives [see also (Defensoria del Pueblo, 2022[18])]. The ALEGRAs offer public defence for victims, legal assistance and

extrajudicial conciliation services, with 46 at the national level. The mega ALEGRAs offer the same services as the ALEGRAs, as well as multidisciplinary services; there are five in different judicial districts (Lima, Lima East, Callao, Arequipa and Ayacucho). The Fono Alegra 1884 is a free legal assistance line for poor and vulnerable people. Their assistance is mainly related to family matters (child support, alimony, custody, visiting arrangements, paternity recognition, intestate succession, among others) and domestic violence.

Through public criminal defence services, it provides free legal advice and assistance to people who have been investigated, denounced, detained, accused or sentenced in criminal proceedings, as well as to adolescents in conflict with the law, through sponsorships, consultations and free investigations. The public criminal defence and defence of victims' services are also provided in the Flagrancy Units (*Unidades de Flagrancia*), which are created to provide fast and co-ordinated services from the police (the detention, custody and investigations), the Public Ministry (leads the investigation, the accusation and forensic medicine), the MINJUSDH (public defence) and the judiciary (the hearing, judgement and the decision) in cases of *flagrante delicto* (Legislative Decree 1194). There are six functioning Flagrancy Units, four of which are in Lima.

Alternative dispute resolution (ADR) mechanisms refer to the diverse ways people can resolve disputes without going to trial and involve an impartial third party who assists the parties in reaching a resolution satisfactory to both sides. Various ADR methods are used, **including conciliation, mediation and arbitration**. The ADR process is assessed in Chapter 5. While the Constitution of Peru recognises arbitration as a mechanism for access to justice, constitutions of other Latin American countries, including Mexico, recognise other ADR mechanisms as well, such as conciliation and mediation, defending a broader notion of access to justice and the promotion of these mechanisms (Nylund, 2014[19]). The MINJUSDH, under the Directorate of Extra-judicial Conciliation and Alternative Dispute Resolution Mechanisms, is responsible for implementing ADR mechanisms, which are free of charge to vulnerable sectors of the population, as is the public defence service. The public ADR mechanisms include conciliation, arbitration and popular arbitration and mediation:

- **Extrajudicial conciliation** is conducted by a conciliator. In some civil cases, it is mandatory to start a court proceeding (Conciliation Law, arts. 6 and 9), but disputes relating to the commission of crimes or offences cannot be conciliated. The Directorate authorises and oversees the issuing of education and training courses for conciliators. A conciliation decision, which reflects the will of the parties, is not a jurisdictional act (Conciliation Law, art. 4) but is enforceable through the corresponding enforcement proceeding (Civil Procedures Code, art. 688). The MINJUSDH conducts virtual joint conciliations called *Conciliatión*. The General Directorate of Public Defence of MINJUSDH manages around 2 821 private conciliation centres, 93 free conciliation centres (including the 40 ALEGRAs and 6 mega ALEGRAs) and 95 extrajudicial conciliators at the national level. The conciliation services can be virtual or in person. The most common cases relate to family issues, especially alimony. Justices of the peace and lawyers' Justices of the Peace judges can also function as conciliators (Conciliation Law, arts. 33-34).
- **Mediation** is developing as an alternative to prosecution, especially for youth criminality. Since 2018, the MINJUSDH has provided a diversion mechanism from prosecution based on the principle of opportunity and reaching a reparation agreement with the victim of the crime.
- Through **arbitration**, parties decide to solve their conflicts voluntarily, submitting to the decision of an arbitrator or expert tribunal in the matter of the dispute. Arbitration awards are final (Arbitration Legislative Decree, arts. 62-65) and, as in the case of conciliation, decisions are binding and enforceable through an enforcement proceeding (Civil Procedures Code, art. 688). The Directorate of Extra-judicial Conciliation and Alternative Dispute Resolution Mechanisms of the MINJUSDH exercises arbitration roles through the Popular Arbitration Centre (*Arbitra Perú)* (Supreme Decree 016-2008-JUS), located in Lima, which counts 179 arbitrators, who only hold

virtual hearings. The Directorate oversees the National Registry of Arbitrators and Arbitration Centres (Registro Nacional de Arbitros y de Centros de Arbitraje, RENACE) (see Chapters 5 and 6).

Source: (Defensoria del Pueblo, 2022[18]; Nylund, 2014[19]).

The State Attorney's Office (Procuraduría General del Estado), attached to the MINJUSDH and in existence since 2020, is responsible for "the defence of the state's interests" (Constitution, art. 47). For this purpose, it, among other things, promotes and guarantees the defence and judicial representation of the state; promotes conflict resolution; and works together with co-operation mechanisms to locate and recover goods, instruments and earnings generated by illegal activities (Legislative Decree 1326, art. 12). The State Attorney is appointed by the President and proposed by the Minister of Justice and Human Rights. There are also national, regional and municipal *Procuradurías Públicas*, which are the judicial defence organs of the public institutions (art. 25). The Specialised *Procuradurías* are assigned special crime cases, including illicit drug trafficking, terrorism, money laundering, crimes against public order, corruption, environmental crimes, and in constitutional matters, others that might be created. The Ad Hoc *Procuradurías* are created for specific cases and are temporary (art. 25). The Lava Jato Ad Hoc *Procuraduría* has begun prosecuting many Peruvian politicians and officials at the highest levels involved in cases related to the Brazilian construction company Odebrecht, many of which are related to foreign bribery. It has investigated and charged several senior public officials for corruption, including five former presidents, cases that are still ongoing. It has also promoted effective collaboration and reparation agreements for cases it has conducted (OECD, 2021[20]).

It is important to note that other institutions provide public defence and ADR/mediation services. Lawyers from the State Attorney's Office, part of the MINJUSDH, also provide public defence and representation of the state (Constitution, art. 47) and the executive in court. The Ministry of Women and Vulnerable Populations (Ministerio de la Mujer y Poblaciones Vulnerables, MIMP) provides legal advice and judicial defence services to victims of violence against women in the Women Emergency Centres (Centros de Emergencia Mujer, CEM). The Public Ministry, through the Central Unit of Protection and Assistance of Victims and Witnesses (Unidad Central de Protección y Asistencia a Víctimas y Testigos, UDAVIT) and its district units, provides multidisciplinary assistance to victims and witnesses, including of violence against women, as part of the implementation of the Protection and Assistance of Victims and Witnesses Program. Private arbitration, which does not depend on the MINJUSDH, exists and is financed by its users.

Overall, co-ordination across institutions providing conciliation services regarding both public defence and ADR/mediation appears limited. There are no co-ordination mechanisms on ADR mechanisms, including between the judiciary and the MINJUSDH; this is problematic given that the judiciary ends up enforcing conciliation decisions or allowing the start of a court proceeding when the conciliation was not successful. There also appears to be limited co-ordination capacity between the MINJUSDH and the other institutions in the executive and in the justice system that offer public defence services. This raises important issues relating to the efficiency with which public human and financial resources are expended on public defence services, as well as to the level and quality of the public defence service being delivered to the people who need these services the most (this is illustrated most clearly in the next section on the services provided to battered women – women victims of violence). Finally, the small number of public defenders does not guarantee effective access to justice for vulnerable populations.

3.5.2. The national police

The national police (Policía Nacional del Perú, PNP), which falls under the purview of the Ministry of the Interior (Ministerio del Interior), is considered part of the justice system given its criminal investigation functions:

- The PNP is the institution that receives the most citizen complaints through police stations.

- The PNP guarantees internal order, public order and public safety; guarantees law enforcement and the protection of public and private property; prevents and investigates crimes and offences; and fights against crime and organised crime (Law of the PNP, art. 3).
- It has directorates specialised in specific crimes, including environmental, drug trafficking, terrorism, money laundering, human and migrant trafficking, corruption, tax/fiscal, order and security, state security, people security, transit and transport, and tourism, among others.
- The role of the police in investigating a crime is regulated by the Criminal Procedures Code. The police are obliged to support the Public Ministry in undertaking preparatory investigations. The police shall, even on its own initiative, become aware of the crimes, inform the Public Prosecutor, perform urgent proceedings to prevent consequences, identify the perpetrators and secure the evidence (Criminal Procedures Code, Section IV, Chapter II Title I).

Because of the role of the police in the investigation of crimes, the protection of people against illegal acts and their role as first responders to a crime scene, this institution should co-ordinate with the other public institutions that also have a complementing role to play in these topics, which often involve multiple jurisdictions and a range of players. Co-ordination spaces have been identified between the police and other public institutions, such as the judiciary, the Public Ministry, the MINJUSDH and MIMP, on topics related to violence against women and family members (see below on the National System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members, SNEJ), the implementation of the new Criminal Procedures Code, including the investigation of cases.

On the latter, co-ordination between both institutions is important for the effective investigation of crimes and access to justice, as well as coherence between the institutional mandates and arrangements of both entities to deal effectively with the challenges of investigating different crimes. In this regard, it is important to mention that the Public Ministry and the police have offices specialising in the same crimes, except violence against women, which provides better capacity for both institutions to co-ordinate, plan, and work together on investigating crimes. Since violence against women is considered a priority issue by the government, a specialised office or directorate focused on this topic could promote effective co-ordination and access to justice for gender-based violence cases. There has been co-ordination on capacity building and training and joint development of protocols on case analysis by MIMP and the police.

A significant challenge facing the police, impacting effective duty performance, is their relationship with citizens and communities. This is largely due to perceived corruption and mistrust, especially in rural and Indigenous areas. Indeed, 76% of the population is said to mistrust the police (INEI, 2022[21]). Lack of trust can impact the effectiveness of public policies to promote access to justice and security for people. The PNP highlighted language barriers as one of the main challenges they face when consulting with the population and doing their work properly, as most officers do not speak native languages, which not only is an obstacle to people's access to justice but hampers building trusting relationships with the communities they serve.

3.5.3. The Ministry of Women and Vulnerable Populations and the AURORA Program

MIMP is considered part of the justice system as justice service provider through its National Program for the Prevention and Eradication of Violence against Women and Family Members (Programa Nacional para la Prevención y Erradicación de la Violencia contra las Mujeres e Integrantes del Grupo Familiar, AURORA) (Supreme Decree 018-2019-MIMP). Through this programme, it provides justice services and other specialised services to women and other family members victims of violence (see Box 3.6).

Box 3.6. Services provided by the AURORA Program

The AURORA Program provides the following services:

- **Women Emergency Centres** (CEM): The CEM are free specialised public services that provide comprehensive and multidisciplinary attention to victims of violence against women and family members, including women, children and adolescents, elderly people and people with disabilities (according to Law 30364). The services provided are legal assistance; legal public defence, in co-ordination with the MINJUSDH; psychological attention, in co-ordination with health centres and the Ministry of Health; and social assistance. There are 431 CEM at the national level, 245 of which are in the regional or municipal governments, which, through agreements, provide the physical space to implement them; 184 are in police stations, and 1 is in a health centre.
- **Hotline 100** (Línea 100): This is a 24-hour free phone call service which provides victims of violence with counselling, orientation, referral to other services and emotional support in Spanish, Quechua and Aymara (native languages).
- **Chat 100:** A 24-hour Internet service through which professionals provide information on violence against women and orientation to women and family members and offer psychological assistance to help identify warning signs and patterns of violence.
- **Institutional attention centre** (Centro de atención institucional, CAI): Its role is to re-educate men who committed acts of violence against women with the support of a multidisciplinary team of psychologists, re-education professionals and social workers. The judiciary might also refer men who have been sentenced or are serving their penalties to these centres.
- **Urgent attention service** (Servicio de atención urgente, SAU): It provides urgent attention to victims wherever they are or where the acts occurred, especially in cases of moderate and grave risk for the victim. The services include those related to access to justice, protection and recovery, provided in articulation with other areas of the MIMP and other institutions.
- **Rural strategy** (Estrategia rural): Sixty-three teams, including mobile and fixed services, that provide prevention, attention and protection services in rural and remote areas and Indigenous communities in all the departments of Peru but Lima. This strategy also trains and strengthens the capacity of the local authorities, local leaders and community organisations on women's empowerment and mechanisms of violence prevention, pathways and how to respond to cases of violence.
- **Community temporary shelters** (Hogares de Refugio Temporal, HRT): They provide protection, shelter, food and multidisciplinary attention to victims of violence.

Most services, including the Hotline 100, the Chat 100, the urgent attention service and the rural strategy, refer victims to the CEM.

Note: The Ministry of Women and Vulnerable Populations is not strictly considered part of the justice system; however, through the services of the AURORA Program, it provides justice services, such as legal defence to victims of violence.
Source: (Ministerio de la Mujer y Poblaciones Vulnerables, 2021[22]).

MIMP oversees the formulation, planning, direction, co-ordination, execution, supervision and evaluation of public policies on women's issues and the promotion and protection of vulnerable populations (Law of Organisation and Functions of the MIMP, Legislative Decree 1098). According to Law 30364 (Law for the Prevention, Sanction and Eradication of Violence against Women and Family Members, from November 2015), it is also the lead agency in the implementation of this law, including the prevention, protection and

attention of and to cases of violence, and the co-ordination with the other institutions for its implementation (art. 35).

As seen above, duplication of services on violence against women and family members is widespread, illustrating a lack of effective co-ordination between institutions. These include:

- Legal defence services for victims of violence against women and family members, provided by the Public Defence of the MINJUSDH and the CEM.
- Legal orientation and advice, provided by several services of the AURORA Program, the Public Defence of the MINJUSDH and UDAVIT of the Public Ministry (see the relevant subsection above on the MINJUSDH).
- Multidisciplinary services, including psychological and social services, provided by the AURORA Program, the MINJUSDH in the mega ALEGRAs, UDAVIT of the Public Ministry and the Integrated Modules on violence against women of the judiciary, women legal counsellors from the rural strategy of the AURORA Program and the Commission on Access to Justice of the Judiciary.

Even though these services are not delivered across the country, notably in rural areas, there are duplications of efforts in several parts of the country, with little co-ordination between them, which does not allow them to function as an integrated service system. Rather than services being complementary and mutually reinforcing, they tend to compete for clients. This overlap and duplication are also confusing for users, who have little information about them, and about which service may be more suitable to solve their problems and needs (see Chapter 6).

3.6. Co-ordination and co-operation in the justice system

3.6.1. Co-ordination trends and good practices in OECD Member countries to advance people-centred justice

OECD Member countries have implemented partnerships and co-ordination mechanisms to address specific justice objectives and needs with a whole-of-government approach. This involves the collaboration of different government departments, institutions, and justice agencies and actors across various levels and sectors to deliver comprehensive and integrated services. This approach recognises the interconnectivity of people's needs. Also, many OECD Member countries incorporate the participation of NGOs, other community organisations, and the private sector in these co-ordination spaces and initiatives. The agencies that take the lead vary from country to country, including the centre of government, finance departments or ministries, or justice departments (OECD, 2021[23]). The *OECD Recommendation on Access to Justice and People-Centred Justice Systems* [OECD/LEGAL/0498] establishes that the promotion of people-centred justice through whole-of-state and whole-of-society approaches include co-ordination with regional and local governments, justice stakeholders, civil society, and service organisations, including private sector providers

The OECD recommends the establishment of processes and protocols within this co-ordination mechanism to facilitate the collaboration of the different institutions and organisations to deliver whole-of-government services (see Box 3.7 and Box 3.8). The National Specialized System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members (SNEJ) is a successful example of access to justice (see Box 3.11, further below).

Box 3.7. OECD practices of formal, institutionalised co-ordination mechanisms across the justice system

In the United States, the White House Legal Aid Interagency Roundtable (LAIR), with support from the Department of Justice's Office for Access to Justice, is a co-ordination strategy created in 2012 that brings together 22 US government agencies and works with civil legal aid partners, including NGOs, law schools and the private bar. LAIR discusses and delivers access to justice to vulnerable populations by: 1) leveraging resources to strengthen federal programmes by incorporating legal aid; 2) developing policy recommendations that improve access to justice; 3) facilitating strategic partnerships to achieve enforcement and outreach objectives; and 4) advancing evidence-based research, data collection and analysis (OECD, 2021; White House Legal Aid Interagency Roundtable, 2022).

In Canada, the Access to Justice Secretariat, housed in the Department of Justice, facilitates interaction with other departments to identify ways to anticipate and address the legal and justice needs across different sectors. It works together with a broader range of partners and stakeholders within various sectors, including justice, health, social services and education, and with Indigenous law organisations, courts, legal professionals, legal aid and public legal education and information organisations, academics and front-line services providers (Canada Department of Justice, 2022; OECD, 2021).

Source: (OECD, 2021[23]), *OECD Framework and Good Practice Principles for People-Centred Justice*, https://doi.org/10.1787/cdc3bde7-en.

Box 3.8. Co-ordination processes and protocols with a whole-of-government approach

Key steps and actions to establish co-ordination processes and protocols with a whole-of-government approach to advancing people-centred justice may include:

- Strengthen co-ordination and co-operation mechanisms across government bodies and agencies, as well as levels of government, regional and local governments, public service sectors, and the justice system, including justice stakeholders, service organisations and private sector providers.
- Establish and maintain interdepartmental and intergovernmental co-ordinating teams that focus on specific legal, and justice needs or priority groups, including co-ordinating intersectoral action for early detection, anticipation, prevention and rapid response to legal issues.
- Establish appropriate financial and resource-sharing mechanisms and facilitate processes to ensure the delivery of the most appropriate mix of services to meet legal and justice needs. Central governments and treasury departments play a key role in developing these mechanisms.
- Establish collaborative planning mechanisms to allow services to plan together – incorporating government and community service organisations – to achieve a co-ordinated approach.
- Create mechanisms to allow the sharing of information to ensure needs assessment, triage, referral and service provision to people.
- Establish, where appropriate, integrated and co-ordinated services, such as health-justice partnerships (integrating legal services with health services providers) and other arrangements.

- Ensure the implementation of technological, information technology (IT) and data-sharing mechanisms to ensure a whole-of-government approach and remove barriers to access for all in the community.

Source: (OECD, 2021[23]), *OECD Framework and Good Practice Principles for People-Centred Justice*, https://doi.org/10.1787/cdc3bde7-en; (OECD, 2023), *Recommendation of the Council on Access to Justice and People-Centred Justice Systems*, OECD/LEGAL/0498.

Moreover, effective implementation of people-centred justice benefits from engaging and partnering with the private sector and non-governmental institutions to provide legal, justice and related services, which could increase overall sector capacity to meet people's legal and justice needs. This could be achieved through appropriate financing and investment and enabling infrastructure and environment for private sector development and NGOs' growth (OECD, 2021[23]).

For instance, in Australia, private practitioners fill gaps or streamline legal assistance in the provision of legal aid services. Depending on each state, legal aid services are being delivered both by "in-house" legal aid lawyers and by private lawyers receiving grants of aid funding to support approved clients. This is especially relevant in regional and remote areas, where, for example, the lack of high population numbers means that sometimes no in-house legal aid providers in the relevant area of law specialisation are available, and so private practitioners need to be engaged (OECD, 2021[23]).

3.6.2. Co-ordination mechanisms in Peru

Co-ordination across the branches of power

The principle of the separation of powers does not imply that the three branches of the state are to operate in complete isolation from each other. Rather, they should engage with one another in full respect of each other's autonomy. Thus, in Peru, the Constitutional Court, as the main interpreter and guarantor of mandates and relations between the different branches and the constitutional autonomous institutions, has found that the principle of the separation of powers should not be understood in a rigid or absolutist way but should be conceived as a principle that encompasses co-ordination and co-operation between the three powers (Tribunal Constitucional, 2006, STC N 00006-2006-CC). The checks-and-balances principal characterising relations between the powers was found to have been articulated in a way that keeps each power accountable to the people; and not be applied arbitrarily for purely political motives.

That said, while the 1993 Peruvian Constitution does not explicitly entrench inter-branch co-operation and co-ordination, as a principle to promote democracy and protect the human rights of citizens, it does mention co-ordination and co-operation between branches as a means to guarantee constitutional compliance in performing the duties of the state. Hence, the Constitutional Court's interpretation of these functionalities is broad.

Examples exist in OECD Member countries of constitutional promotion of inter-branch co-operation and co-ordination in performing the duties of the state. For example, the Constitution of Colombia explicitly recognises the principle of co-operation across the three branches of the state and other public authorities, this principle acts as a constitutional guide in the design and delivery of public policies and services and in relations between state institutions (see Box 3.9).

Box 3.9. The principle of co-operation in Colombia's Constitution

Article 113 of the Constitution of Colombia states that the branches of the government are the legislative, the executive and the judiciary, and, in addition, there are other autonomous and independent organs and that they "have separate functions but co-operate harmoniously for the

realisation of their goals". Furthermore, Article 209 recognises that the "administrative authorities must co-ordinate their actions for the appropriate fulfilment of the purposes of the state".

This principle has also been recognised in Law 489 on the Organisation and Functioning of National Entities. Article 6 establishes that according to the principle of co-ordination and collaboration, the administrative authorities should guarantee harmony in the exercise of their functions and that they should collaborate with other institutions.

Source: Constitution of Colombia; Law 489 from 29 December 1998, by which norms are established on the organisation and functioning of national entities, and dispositions, principles and general rules are created for the exercise of the attributions contained in Article 189, Paragraphs 15 and 16 of the Constitution.

Vertical and horizontal co-ordination mechanisms between public institutions and the government

Several generic horizontal and vertical co-ordination mechanisms have been established and have evolved over time in Peru, both horizontally across the executive and beyond and vertically with the lower levels of government.

- Horizontal mechanisms linking public entities across the same level of government, at the national level between sectors, and at a decentralised level between regional and local governments) include the Inter-ministerial Commissions (*Comisiones Interministeriales*), Inter-regional Co-ordination Boards (*Juntas de Coordinación Interregional*), Decentralised Government Associations, and the co-ordination and articulation of spaces between ministries of the executive power, in which institutions from other branches and autonomous institutions can participate, including the Multisectoral Commissions (*Comisiones Multisectoriales*) and working groups. These can be temporary or permanent, and civil society organisations can be invited to participate (Presidencia del Consejo de Ministros, 2022[24]).
- Vertical mechanisms between entities across levels of government include the Intergovernmental Co-ordination Council, National Councils, and Regional and Local Co-ordination Councils.

However, both iterations of the National Policy on the Modernization of the Public Administration highlight the need to improve availability, efficiency and effectiveness of existing inter-governmental and intersectoral co-ordination mechanisms, including by overcoming siloed approaches to policy and service design and delivery.

In recognition of this need, in 2003 Peru created CERIAJUS to advise on the reform of the justice system (see Chapter 2). In particular, it was to propose a constitutional reform to establish formal co-ordination relationships across the institutions of the justice system as a means to facilitate the design, delivery, monitoring and evaluation of justice reforms, and of justice policy and services more generally. Yet the reforms proposed by CERIAJUS were not pursued due to the absence of a formal institutional co-ordination mechanism to advocate for, design, implement and monitor the implementation of these proposals. Indeed, as discussed in Chapter 2, uneven legislative support to approve reform proposals, limited political leadership from the executive branch to promote them, and ongoing political turbulence have meant that justice reforms have been implemented slowly and in a fragmented way when they have been implemented at all. These reforms require effective communication and co-ordination across institutions to be implemented effectively.

Beyond CERIAJUS, institutional co-ordination challenges have been flagged as problematic in Peru's first National Policy on the Modernization of the Public Administration (Supreme Decree No. 004-2013-PCM, from 2013) and in its more recent National Policy on the Modernization of the Public Administration (Supreme Decree No. 103-2022-PCM, from 2022), approved by the Presidency of the Council of Ministers

(PCM), whose role is to manage the co-ordination of national policies, the modernisation of the public administration and relations with the other branches of the state and institutions (Organic Law of the Executive Power, Law 29158, arts. 17 and 19).

Furthermore, apart from the CRSJ and the SNEJ, no specific co-ordination mechanisms have been established between justice system institutions for people-centred justice policy and services formulation and design, delivery, performance monitoring and evaluation (see section 3.6.8).

When co-ordination arrangements are established, they tend to lack monitoring and evaluation capacity to ensure their effective implementation and functioning.

In response to the co-ordination challenges raised by the two National Policy strategies, more than 400 ad hoc co-ordinating bodies were established within the executive by 2018 (Presidencia del Consejo de Ministros, 2022[24]). This has generated several significant governance challenges, including:

- a lack of clarity on the roles and responsibilities of the members
- absenteeism and suspension of the meetings due to the unavailability of the tenured member (from the executive branch)
- duplication of functions between co-ordination bodies
- a lack of monitoring and evaluation of these co-ordination mechanisms by the executive power (Presidencia del Consejo de Ministros, 2022[24]).

There have been attempts to address these challenges, such as re-establishing a Co-ordinating Committee within the PCM to steer intersectoral co-ordination. However, frequent changes in the PCM's senior positions have limited the effectiveness of these mechanisms (Alessandro, Lafuente and Santiso, 2014[5]). Furthermore, the nature of these efforts, as illustrated notably by a lack of prioritisation of what exactly needs to be co-ordinated at any given time through these different mechanisms and the lack of implementation of a systemic approach to whole-of-government co-ordination on the part of the PCM, have helped perpetuate the dysfunctional nature of these co-operation mechanisms (Franco Mayorga, 2018[25]).

Co-ordination and engagement with external stakeholders

Co-ordination with external stakeholders that promotes citizen participation in the policy cycle and in the design and delivery of services is limited in Peru. In this connection, the OECD *Recommendation of the Council on Open Government* recognises that open government promotes the principles of transparency, integrity, accountability and stakeholders' participation in support of democracy and inclusive growth. This is crucial to achieving different policy outcomes, improving the evidence base for policy making and reducing implementation costs; it also taps wider networks for innovation in policy making and service delivery (OECD, 2017[26]; 2021[23]).

The *Recommendation on Open Government* [OECD/LEGAL/0438] establishes that open government involves the participation of the government and citizens as the main stakeholders in the policy cycle and in service design and delivery, including information, consultation and engagement (OECD, 2017[26]; 2022[27]).

The OECD recommends various methods to engage citizens, including open meetings/town hall meetings, public consultations, civic monitoring, participatory budgeting and representative deliberative processes, among others (OECD, 2022[27]).

Citizen participation in justice policy and services design, delivery and evaluation promotes people-centred justice. It ensures social accountability by holding the government accountable, functioning as a watchdog and providing information (OECD, 2021[23]).

According to an analysis carried out by the National Centre for Strategic Planning (Centro Nacional de Planeamiento Estratégico [CEPLAN], part of the PCM), of the 34 national policies approved between 2018

and 2022, only 3% resulted from effective citizen participation, while 6% had no participation and 91% saw limited participation (Centro Nacional de Planeamiento Estratégico, 2023[28]).

The CEPLAN analysis identified four stakeholders: the public sector, organised civil society, non-organised citizens, and the private sector; it also included four levels of participation: informative, consultive, decision making, and co-management. There is effective participation when citizens have decision-making or co-management involvement, while participation is limited when it is just informative or consultive. Participation is ineffectual if it does not include the population affected by the public problem at the national level (Centro Nacional de Planeamiento Estratégico, 2023[28]).

As noted by CEPLAN, some of the reasons for this limited participation include a fragmented and unequal society; lack of alignment between legal and regulatory frameworks that facilitate citizens' participation; multiple and non-effective mechanisms and spaces for citizen participation; lack of political will to implement engagement processes in public policy; weak state management and organisation capacity to guarantee it and a weak civil society to demand it; and the state's lack of knowledge of methods and ways to garner citizen participation and engagement in policies (Centro Nacional de Planeamiento Estratégico, 2023[28]).

The national legal framework does not explicitly recognise or regulate citizen participation in public administration and public policy making. In recent years, some guidelines have been included as part of the public policy cycle and have established elements for its effective implementation; however, the implementation of this process is not regulated, and it depends on the commitment of the public institutions that lead the implementation of a national policy.

The Constitution recognises citizen participation in public administration by stating that people have the right to participate in the nation's political, economic, social and cultural life (arts. 2-17), in public issues through referendum, legislative initiatives, authorities' revocation and demand for accountability (art. 31) and in the municipal government (arts. 31 and 197).

The Organic Law of the Executive Power (Law 29159) recognises the principle of participation and transparency, by which people have the right to monitor and participate in the management of the executive and have access to information (art. IV); however, it does not further develop this principle, neither does it explicitly recognise citizens' participation in public policy.

Some regulations and guidelines that regulate public administration and the cycle of national policies include some elements for effective citizen participation in public policy processes (Guideline of National Policies, Resolution 0030-2023/CEPLAN/PCD, from 2023; and the National Policy on Public Management Modernization), but do not regulate this process.

That said, citizen participation in public administration is explicitly recognised in the laws that promote the decentralisation of the government. These include the Decentralisation Law (Ley de Bases de la Descentralización, Law 27783, from 2022), the Organic Law of Regional Governments (Law 27867, from 2002) and the Organic Law of Municipalities (Law 27972, from 2003). Furthermore, the Prior Consultation Law (Law 29785) regulates the law of prior consultation of the Indigenous communities.

In the justice area, the government has not implemented an approach of engagement or partnership with non-governmental and private sector providers to develop and provide legal, justice, and related services. Partnerships for the provision of related services as community centres are implemented with local governments. The government could benefit from this kind of co-ordination and partnership for the provision of justice services, such as legal counsel and representation, conciliation and other ADR services.

3.6.3. Co-ordination mechanisms to promote people-centred justice in Peru

Justice policies and services in Peru are designed and executed within a complex and fragmented institutional landscape with limited clarity of roles in the delivery of people-centred justice. Many public institutions have competencies on different justice issues, and some of them potentially have overlapping or closely related responsibilities in terms of legal counsel, legal representation, multidisciplinary-related services, training and capacity building. Peru has also yet to adopt an institutional architecture that effectively sustains co-ordination for integrated coherent justice policy and service design and delivery, including effective co-ordination mechanisms across the public sector.

In recognition of the importance of co-ordination, Peru is taking steps to design a range of mechanisms. For example, some protocols and guidelines exist to facilitate the working together of some institutions that provide similar or complementary justice services. These include, for example, the Action Protocol between the CEM and the Public Defence services (provided by the MINJUSDH) or the Protocol on the Performance in Judicial Processes that involve members of peasant patrols or native communities. Yet, a report of the Ombuds Office still highlighted limited co-ordination between the public defenders and the CEM in cases of violence against women, as established in the Action Protocol between the CEM and the Public Defence (Defensoría del Pueblo, 2020[29]). Furthermore, stakeholders noted that the implementation of these regulations should be strengthened and that co-ordination between institutions could be improved.

More broadly, Peru could benefit from adopting a clear and system-wide institutional and planning architecture that includes definition of clear roles and responsibilities of different institutions, and effective co-ordination, accountability, planning and oversight mechanisms for the delivery of legal and justice services. There are some existing initiatives that can provide a foundation for these efforts. For example, although the CRSJ was not intended to engage in detailed service delivery coordination and planning, it could be a good starting platform to co-ordinate the alignment of policy objectives and institutions' responsibilities to advance people-centred justice. Likewise, the Public Policy for the Reform of the Justice System could also play a useful role in this regard, as it has as one of its main objectives to guarantee access to justice to all and across the country, including for the most vulnerable, and approaches this from the point of view of unsatisfied legal needs and the creation or updating of justice services toward this aim (see Chapter 2). Importantly, MINJUSDH could play a leading role in the implementation of such mechanisms. This would likely require a strategic rebalancing effort accompanied by strengthening key system wide planning and co-ordination responsibilities and resources to the MINJUSDH (see Chapter 6).

Co-ordination within the justice system in Peru: The example of the National System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members

In broad terms, in Peru, co-ordination across institutions within the justice sector and with institutions from other sectors or other levels of government is, in most instances, conducted through the general co-ordination mechanisms mentioned in the previous section (e.g. the development and implementation of policies, programmes and initiatives). Some of the most frequent mechanisms are multisectoral commissions and working groups, chaired by the executive (on justice issues by the MINJUSDH). Co-ordination across levels of government is pursued through local representatives and offices of the national public institutions. Besides these existing mechanisms or the creation of specific co-ordination bodies by law to implement specific policies or co-ordination functions that may be added to specific institutions' regulations, there is little information from stakeholders on other co-ordination practices between these institutions.

Specifically in violence against women, the Law 30364 (Law to Prevent, Sanction and Eradicate Violence against Women and Family Members, from November 2015) established a specific co-ordination mechanism involving different institutions from different sectors and levels. This mechanism consists of

two co-ordination bodies that form the National System for the Prevention, Sanction and Eradication of Violence against Women and Family Members, and whose purpose is to co-ordinate, plan, organise and execute integrated and coherent action plans to implement the law. The most important body in this National System is the High-Level Multisectoral Commission (Comisión Multisectorial de Alto Nivel, CMAN). It meets periodically to approve action strategies, follow up and monitor the national plans, and co-ordinate with MEF to allocate the budget to the different sectors to implement the law. It has a whole-of-government approach, chaired by the MIMP, and composed by the Ministries of the Interior, Justice and Human Rights, Education, Health, Labour and Employment Promotion, Culture and Defence. The Public Ministry, the judiciary, and the Ombuds Office are also part of it.

The Regional, Provincial and District Consultation Mechanisms (Instancias regional, provincial y distrital de concertación) are regional and local co-ordination bodies at various levels of government, whose purpose is to develop, implement, monitor and evaluate at the local level the implementation of the law. These consultation mechanisms are integrated within the local representatives from offices or bodies from the public institutions of the High-Level Multisectoral Commission, the local governments, representatives from civil society organisations and Indigenous peoples' organisations.

In addition, and within the implementation of this law on violence against women and family members, the National Specialized System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members (Sistema Nacional Especializado de Justicia para la Prevención, Sanción y Erradicación de la Violencia contra las Mujeres y los Integrantes del Grupo Familiar, SNEJ) was created as a specialised co-ordination mechanism regarding justice issues and with the participation of institutions of the justice system (see Box 3.10).

Box 3.10. Co-ordination mechanism on violence against women: The National Specialised System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members (2018)

The SNEJ was created in July 2018 to implement Law 30364 (Law to Prevent, Sanction and Eradicate Violence against Women and Family Members, from November 2015) concerning protection measures, precautionary measures and criminal proceedings. The judiciary, the Public Ministry, the national police, the MINJUSDH, and MIMP are part of this specialised system, where the Ombuds Office also participates as a guest. There is no participation of civil society organisations, community groups or private actors.

The SNEJ pursued a National Implementation Strategy 2016-2021 (Supreme Decree No. 011-2021-MIMP). To implement Law 30364, in 2019, a temporary Multisectoral Working Group was created, where the PCM, the Ministries of Economy, Development and Social Inclusion, Health, Education, Women and Vulnerable Populations, Work and Employment Promotion, Culture, Justice and Human Rights, Interior, and as guests, the Public Ministry, the judiciary and the Ombuds Office participated and designed a Results-oriented Budgeting Programme for the Reduction of Violence against Women (Programa Presupuestal Orientado a Resultados de Reducción de la Violencia contra la Mujer, PPoR) (Resolución Suprema No. 024-2019-EF from 30 December 2019) with its own financial resources. The SNEJ is part of and responsible for the implementation of some products of this PPoR regarding justice services for women victims and protection measures. This is established through collaborative planning between the institutions. The SNEJ shares information with the public about the SNEJ, the services provided and progress in the implementation via a webpage. However, the information is not updated.

The SNEJ has only been implemented in 8 judicial districts out of the 35. In these, there are Integrated Modules of protection and sanction on violence against women (from the judiciary), Public Prosecutor's

Offices specialised in violence against women (from the Public Ministry), CEM (from MIMP), and public defenders specialised in violence against women (from the MINJUSDH).

Some achievements

- Some 3 064 officials received capacity building during 2020 and 2021 (47.9% were judges, 80.7% were jurisdictional personnel, 55.8% were multidisciplinary teams, and 15.5% were administrative and technical personnel).
- From the 22 specialised jurisdictional bodies/modules on violence against women and family members, Integrated modules of protection and sanction on violence against women and family members have been implemented in 8 judicial districts as part of the PPoR. In these modules, there are family judges specialised in violence against women and family members, who provide protection measures and sanctions. These are better equipped than the normal jurisdictional bodies and have multidisciplinary teams, including psychology and health services, and social assistance.
- The approval of the Protocol "The granting of protection and precautionary measures of the Law 30364" (Administrative Resolution 071-2022-CE-PJ).
- The implementation of the Registry of Victims and Perpetrators (Registro Único de Víctimas y Personas Agresoras, RUVA) in eight judicial districts, which allows the judiciary, the Public Ministry, the police and MIMP to interoperate, integrate and articulate with the aim of consolidating information during investigations of cases of violence.
- There are 29 Public Defence District Directions (in 29 judicial districts) with public defenders specialising in violence against women and providing legal assistance and victims' defence.
- There are 431 CEM at the national level and in all judicial districts.
- There are Public Prosecutor's Offices specialising in violence against women and family members in 21 judicial districts.

Source: Supreme Resolution No. 024-2019-EF that approves the PPoR, from 30 December 2019; Legislative Decree No. 1368 that creates the SNEJ, from 27 July 2018; Digital Platform of the State (Plataforma Digital Única del Estado), https://www.gob.pe/.

Even though the creation of the SNEJ is a step in the right direction, according to stakeholders, this system also reportedly generated duplication and incoherence in terms of roles and services. For instance, despite joint strategic planning between the institutions, and more Public Prosecutor's Offices specialised in violence against women were created, this was not accompanied by a subsequent increase in courts and public defenders. This created a situation in which more cases were generated than the courts could manage, and more Public Prosecutor's Offices and courts were created than public defenders could use to manage their caseloads in this area. Some overlaps were also identified, such as justice-related multidisciplinary services for women victims of violence, which the MINJUSDH provides through the Public Defence offices, the ALEGRAs, and the CEM in police stations and municipalities. As such, there is clear scope for the SNEJ to strengthen its co-ordination processes to reduce overlap and duplication and streamline caseload management. Furthermore, effective communication and co-ordination is required to implement the SNEJ in all 35 judicial districts.

Other initiatives undertaken by the institutions part of the SNEJ have been implemented to give effect to this law across sectors. Some examples include the Interoperability Plan between the Judiciary and the Family Specialized Police Stations of the National Police of Peru (*Plan de Interoperabilidad entre el Poder Judicial y las Comisarías especializadas de familia de la Policía Nacional del Perú*), a digital interoperable system linking police stations and the family courts at the national level and the implementation by the judiciary with the support of the police of the "panic button", which allows people with protection measures to contact the police so they can provide timely relief and assistance in case of danger (see Chapter 6).

Furthermore, the SNEJ could benefit from the implementation of a whole-of-society approach and promote the participation of external stakeholders, either at the national or regional/local levels, which means that citizens participate in the design, delivery, monitoring or evaluation of the justice services provided by the SNEJ, including by the AURORA Program. This could promote and strengthen social accountability as a key element to ensure the efficiency and effectiveness of the SNEJ.

According to the law, some civil society organisations can participate in the SNEJ (on implementing Law 30364). Citizen participation is considered at the regional/local levels but not at the national level, and it does not mention the participation of other stakeholders, such as the private sector, community groups, or academia, limiting the approach of citizen participation.

However, even though the role of the local co-ordination mechanisms is the promotion of policies, plans and other initiatives on the topic and informing the national commission (among others), it could play a role in the design, delivery, monitoring and evaluation of policies and services, promoting and improving the effectiveness of the participation of non-governmental stakeholders.

3.6.4. Judicial control over the administration

Judicial control trends in OECD Member countries

The notion that all public authorities are subject to and operate under the law is widely understood across all OECD Member countries and modern democracies to constitute a critical condition to ensure the rule of law. In this regard, a well-functioning justice system governing the public administration, which refers to judicial control over and review of executive branch decisions, is an essential element of good governance, helping executive branches perform better, lawfully and accountably. It helps protect both the public interest by preserving the legal order and individuals' private interests by protecting their rights and interests from abuse.

Judicial control and review can help control the legality of administrative decisions. It also ensures that public authorities are effectively subjected to the law and protects the rights of individuals. Judicial control systems differ across OECD Member countries, shaped by each country's culture and political history. That said, increasing similarities have emerged over time, with countries borrowing elements from each other in a constant interactive process.

In most European OECD Member countries, the process of building judicial control over the administration dates to the 19th century. Some European countries set up a sort of independent judicial review of the administration as a mechanism to give effect to the principle of the separation of powers between the executive and the judiciary:

- In France, this occurred with the creation of the *Conseil d'État* (1799-1806). Similar institutions responsible for administrative justice were set up in Belgium (1831), Italy (1865), Spain (1845), Portugal (1875), Türkiye (1868) and several *Länders* in Germany (between 1819 and 1900).
- Austria created in 1875 a single administrative court for the whole Austro-Hungarian Empire.
- In the United Kingdom, this function was fulfilled to a limited extent by the Westminster courts.

Supranational judicial systems such as the Inter-American Court of Human Rights, the European Court of Justice, and the European Court of Human Rights have also decisively contributed to harmonising administrative justice across borders by initiating actions conducive to the emergence of an international administrative law framework.

In most OECD Member countries, administrative justice (which regulates the disputes between an individual, the state or a public administration) falls within the judiciary (Woehrling, 2009[30]). This approach underlines the organisational and functional separation between administrative actions and judicial control (as recommended by art. 6 of the European Convention on Human Rights and by the European Court of

Human Rights). Some countries have established a separate administrative jurisdiction (most of them are called administrative courts), and others have integrated these functions into the general judicial system (e.g., Norway) or do not have administrative courts at all (e.g., Denmark). In Norway, for example, administrative cases are treated as civil cases and are, as such, subject to the court's jurisdiction. Likewise, Denmark has no administrative courts. In Denmark, administrative questions are subject to judicial review by the courts at any level.

For countries with separate specialised administrative jurisdictions, two strands appear:

- **One is based on specialising certain courts of general jurisdiction in judicial control over the administration** (e.g., in the Netherlands, Spain, the United Kingdom and the United States; Peru could also be included in this group, to a certain extent). These courts remain within the general statutory and organisational system of the judiciary. Under this model, there are often specialised judges responsible for administrative litigation, specialised chambers in general law courts, special administrative appeals commissions with judicial functions, or other types of bodies specialised in administrative litigations.
- **Another strand recognises that administrative justice jurisdiction fundamentally differs from the general judiciary** and places it as a separate organisation within the justice system (found in Austria, Finland, France, Germany, Greece, Italy, Portugal and Sweden).

Nevertheless, no OECD Member country brings all the litigation involving public administration before specialised administrative jurisdictions. In some cases, economic or patrimonial activities of the administration, as well as lawsuits seeking compensation of tort (compensation for personal injury and damage to property), fall under the purview of civil law courts.

The definition of public law litigation is also varied. Depending on the country, social assistance or social security measures come under either administrative or private law litigation.

Judicial control in Peru

In Peru, the judicial control of public authorities through a system of administrative justice is recent. The first law regulating administrative justice proceedings was enacted on 15 April 2002 (Law 27584). Since then, the notion of administrative justice has evolved in Peru and has generated an emerging specialised jurisdictional order. The current legal framework on administrative justice includes the main elements that enable individuals and corporations to challenge administrative decisions. Yet, the intervention of the Public Prosecutor is still mandated by arts. 159-163 of the Constitution to represent society in legal proceedings when referring to fundamental rights. As noted in the previous section, this can potentially lead to abuse and arbitrariness. One of the most concrete implications of this duality is that administrative justice has been viewed as a more tedious and complex alternative to constitutional justice, especially for cases related to human rights violations, which has limited the development of administrative justice in Peru (Vivas and Javier, 2020[31]).

Three main reasons could explain why Peruvians turn to constitutional *amparo* instead of the administrative justice framework when defending their fundamental rights:

- **Effectiveness:** The length and delays, since administrative justice has not been developed as a full jurisdiction, explain in part why citizens choose the constitutional justice framework to protect their rights.
- **Obligation of justice remedies**: In constitutional proceedings, the plaintiff is not obliged to exhaust administrative remedies prior to lodging a complaint in court. Interim relief measures are limited, whereas in administrative disputes, they can be more easily requested but not necessarily awarded. The plaintiff is little concerned with bringing evidence to court, whereas, in administrative justice proceedings, the applicant shall provide sufficient evidence to sustain its application.

- **Sentences of full reinstatement of rights and interests:** Sentences produced in constitutional proceedings create compulsory jurisprudence and are published in the Official Gazette (*El Peruano*), whereas sentences in administrative proceedings are not always made public.

Indeed, it was Peru's Constitutional Court that, in 2005, deflected landmark cases from constitutional *amparo* towards the nascent administrative justice. These cases dealt with pension rights, public employment and municipal disputes, which, according to a report of the Ombuds Office, still represent the bulk of administrative cases: 67% of them are disputes on pensions; public employment disputes represent 12% of cases; and the other 21% are miscellaneous cases, such as municipal building permits, taxation, transports, public order, etc. (Defensoría del Pueblo, 2007[32]).

The deflection of pension cases from the constitutional *amparo* procedure to the administrative justice flooded the ordinary courts with pension-related cases; these courts were unprepared for the development of administrative justice and may have contributed to a significant backlog of cases. The development of administrative justice seems to have mostly been focused on cases of annulment or implementation of administrative acts, but almost no cases on liabilities of public bodies and recognition and repair of individual rights violations (Vivas and Javier, 2020[31]).

Administrative justice provides for the annulment of the piece of offending legislation, as opposed to the restoration of a violated right, which would be the applicant's preferred outcome. The public administration body is not obliged to forward the administrative dossier to the court and, if requested to do so, faces no consequences in cases where it ignores such a request. This creates an imbalance between the parties to the administrative litigation, favouring the public administrative institution over the applicant.

Peru could benefit from considering and further developing administrative justice as a full jurisdiction. This may help explain, in part, citizens' preference to use the constitutional *amparo* rather than the administrative justice channel when addressing human rights issues.

Matters excluded from judicial review in administrative justice in Peru

In addition to the issues identified above, key elements in Peru's justice framework are, in fact, excluded from the purview of the administrative justice framework, which is not the case in Member countries, as seen below.

First, **public procurement** contracts for the acquisition of goods, services and concessions are not challengeable under the administrative justice framework (contentious-administrative procedure). In Peru, the legal framework on public procurement mandates that public bodies entering public procurement contracts shall agree to arbitration or conciliation mechanisms with their contractors or concessionaires to settle conflicts (art. 52 of the Ley de Contrataciones del Estado).

This provision represents an exception to the constitutional principle of exclusivity of administrative justice in controlling the acts of the public administration and has been validated by the Constitutional Court (art. 193). Expropriations and compulsory purchases can also be subjected to voluntary arbitration or the judicial system (art. 70).

As stated in the Constitution, **decisions of the National Election Board** concerning election matters are not subject to review, nor are **those of the National Board of Justice** regarding the evaluation and ratification of judges (art.142).

In relation to electoral matters, there is no legal provision in the Peruvian legal order defining precisely what electoral matters are. Consequently, all issues arising from an electoral process are deemed unchallengeable before ordinary courts. This provision obliges those affected by the decisions of either body to use the *amparo* process rather than the administrative justice framework.

This represents a departure from practice in OECD Member countries. For instance, deflecting all electoral matters to constitutional justice under the banner of the protection of fundamental rights is problematic because the National Election Board is first an autonomous public administration body whose decisions should be challengeable under the administrative justice framework and then reviewed by the Constitutional Court if there appears to be some fundamental constitutional rights affected. This is the standard practice in most European OECD Member countries (Venice Commission, 2020[33]).

There are countries allowing electoral complaints before the Constitutional Court or an equivalent body in the first and final instance. In electoral matters, as in other fields, the judiciary, including a specialised electoral jurisdiction, guarantees the complete process's impartiality if it offers enough guarantees of independence decisions on complaints and appeals in the electoral field. This can be explained by the necessity to issue a swift decision. Apart from such cases, the composition of the body deciding on complaints and appeals in electoral matters should preferably be collegial. Moreover, the Venice Commission regularly recommended providing clear and consistent complaints and appeals procedures to avoid any conflicts of jurisdiction.

Constitutional justice vs administrative justice in protecting the rights of citizens

As seen in Chapter 3, the Constitution of Peru establishes constitutional procedures for protecting individual rights and for the abstract control of the constitutionality of laws and regulations. However, constitutional proceedings related to protecting individual human rights may overlap with administrative justice as there is no national – whole-of-the-territory – judicial jurisdiction to protect individual rights, which can confuse citizens. For example, in Lima and El Callao, these proceedings are assigned to specialised judges in public law. In other judicial districts, criminal courts exercise authority over these proceedings, and they fall under the purview of the civil courts. In this context, Peru could benefit from re-appraising the respective roles of administrative and constitutional justice.

3.6.5. The implementation of judicial decisions against public authorities

Judicial decision implementation: Trends in OECD Member countries

An important indicator of the quality of judicial control is the extent to which a judicial ruling against a public institution is guaranteed and effectively implemented. Indeed, as detailed in the Council of Europe recommendation, in cases of non-implementation of a judicial decision by an administrative authority, an appropriate procedure should be implemented to seek execution of that decision through an injunction or a coercive fine (Council of Europe, 2003[34]). This implies that governments are responsible for ensuring administrative authorities are held accountable for cases in which they refuse or neglect to implement judicial decisions.

In most OECD Member countries, the court has substitutive powers over the administration: they can step in and provide administrative action so judgements with substitutive content will take effect in the administrative body. At a minimum, courts can invalidate the unlawful administrative act and instruct the administrative authority to create a new one in conformity with the law. Courts also tend to oblige the administrative authority to act when it shows passivity before an appellation or request. However, the nature and scope of substitutive powers vary across countries. Most countries have some degree of substitutive decision making as part of the powers conferred on their administrative courts. This power is circumscribed to differing degrees depending on the country. For example, Belgium, Canada, Finland, Ireland, Norway, Poland, and the United Kingdom preclude any form of substitutive decision making of the courts on administrative matters. In France, the claimant can request from any administrative court the issuing of injunctions for an administrative body to comply with the judicial ruling, but the judge cannot replace the administration in operationalising the implementation of the ruling.

Implementation of judicial decisions against public authorities in Peru

In Peru, the responsibility for overseeing the implementation of a judicial ruling is assigned to the judge who issued the sentence. This means that the most senior official in the hierarchy of the offending public institution is deemed to be the official legally responsible for executing the judicial ruling but may delegate its implementation to a civil servant. In addition, the resignation, dismissal or termination of the service of the senior official does not exempt this official from the obligation and corresponding liabilities for non-compliance. The judge shall clearly specify who is the addressee, who is obliged to implement the ruling, who is the civil servant in charge, the deadline to implement it and the conditions under which the obligations imposed under the ruling will be considered to have been met (Civil Procedural Code, consolidated text of 2022, art. 122).

Despite these statements of principle, several obstacles can limit the effective implementation of judicial rulings in Peru (Defensoría del Pueblo, 2007[32]):

- First, the budget legislation requires that the expenditure for paying for the sentence be foreseen in the budget, and often it is not.
- Second, regulations governing whether public goods can be seized and auctioned to pay the public debt resulting from a ruling remain unclear; furthermore, in such a ruling, the question of which public goods may be seized also remains unclear.
- Finally, a simple, speedy procedure to execute monetary sentences against public bodies is non-existent.

The result is that a ruling issued by a court in a contentious administrative procedure may remain unimplemented for many years and could even remain so forever. Indeed, the Ombuds Office reports that 7% of complaints refer to lack of implementation of judicial rulings (Defensoría del Pueblo, 2007[32]). Public institutions regularly refer to the lack of budget apportionment to explain the non-execution of payment resulting from a judicial sentence. The Ombuds Office, in its Report 121 of 7 June 2007, suggested several measures that have yet to be considered by the executive and legislative branches. Some academics and practitioners have raised concerns over the difficulties of implementing judicial rulings against public institutions (Fox Velarde, M. A., 2021[35]).

3.7. Summary assessment

The Peruvian justice system comprises many institutions whose roles and justice functions and services have not been clearly defined. This, together with the shortage of effective communication and co-ordination across institutions, has led to considerable overlaps in mandates, services and initiatives implemented, with limited clarity in allocation of resources or staff. Improving clarity in roles and justice functions and services could avoid confusion among users regarding services and pathways, so they know where to go or to whom to refer to prevent legal issues and seek their resolution. Most importantly, it could further improve the efficiency in resource allocation (public funds that could be used to fulfil other important needs) and the delivery of justice services.

The fragmented nature of the Peruvian justice system also leads to a compartmented approach to law enforcement, in which the institutions work as separate entities with little co-ordination between them in implementing laws and policies that require their joint work. Tackling the fragmentation and the dispersed responsibility for justice services across institutions could enhance their capacity to understand people's justice needs. This issue reflects the broader challenges associated with a fragmented yet highly centralised state, which in recent years has operated in a context of political instability. Improving stability could facilitate the effective implementation of justice reforms.

There have been some positive examples of co-ordination mechanisms in areas such as violence against women and family members, which was defined as a priority by the government and led to the direct allocation of resources for their implementation. However, this example notwithstanding, inter-institutional co-ordination could benefit from a clear political commitment and leverage, the necessary authority for decision making in existing co-ordination structures, and the commitment and participation of a leader agency to manage co-ordination processes.

As seen in Chapter 2, most of the justice reform efforts reveal a primary focus on the judiciary and its needs, which could mean less focus is given to non-court-based services and processes, which can address many legal needs (see Chapter 6). There is scope to address this structural imbalance (see Chapter 4), including via empowering MINJUSDH to lead the planning and co-ordination of justice services and reforms for a people-centred system of providing access to justice.

In Peru, a clear and integrated people-centred approach to justice has also yet to be applied. In addition, Peru has yet to design and pursue a sector-wide planning process that co-ordinates and monitors the delivery of legal services. Rather, separate, independent and fragmented planning appears to occur. As noted, the MINJUSDH could be mandated to take on more responsibility for leading the process with the support of proper funding (see Chapter 4) to avoid complex service design and delivery that breed overlaps and duplication. Implementing the Public Policy for the Reform of the Justice System through the co-ordination of the CRSJ could be a good starting point for co-ordinating and aligning policy objectives and institutions' responsibilities and implementation of services to advance people-centred justice in Peru.

Finally, administrative justice is still underdeveloped and tends to be overshadowed by the system of constitutional justice, which limits its capacity to represent a true legality control of the administrative acts of public authorities and an effective protection of individual rights. These gaps can represent deterrents to investment and economic development in Peru. In addition, it appears that administrative justice is still to be developed as a full jurisdiction, which may help explain citizens' preference to use the constitutional *amparo* when both proceedings are open to them rather than administrative justice channels to have their rights protected. Importantly, there is scope to reconsider the inclusion of public procurement and election-related matters as part of judicial review through the administrative justice system, in line with practices in many OECD Member countries.

3.8. Recommendations

In light of the above, Peru could consider implementing the following recommendations:

3.8.1. Key recommendations

Take measures to fully implement Peru's legal framework on safeguarding the Constitutional Separation of Powers by clarifying procedures and circumstances under which the system of checks and balances is applied. This should include specifying the roles and powers of each branch of government in overseeing and checking the others. To facilitate the implementation of this recommendation, Peru may consider:

- ***Better defining and regulating constitutional checks and balances to ensure a healthy and functioning justice system.*** Protecting Peru's balance of powers and accountability would reduce risk of misuse of the existing constitutional tools, reduce political instability and guarantee the independence of the justice system.
- ***Ensuring that the Constitutional Court plays a key role*** in interpreting the Constitution in this matter and promoting governability and democracy.

Take measures to empower the executive branch to lead and co-ordinate the design and implementation of system-wide justice policy reforms, through a people-centred approach. To facilitate the implement of this recommendation Peru may consider:

- ***Empowering the Ministry of Justice and Human Rights (MINJUSDH) to lead and promote the design and implementation of access to justice policies with a people-centred approach***. In addition, strengthening the role, commitment and capacity in the implementation and leadership of coordination mechanisms for the implementation of these policies. This includes the CRSJ. This may include resourcing the MINJUSDH to improve the skills and capability of its staff to progressively take on the leadership role across the sector.
- ***Consider increasing the budgetary allocation to the MINJUSDH with a view to strengthening its capacity to lead system-wide justice reforms.*** Adequate resourcing will be important for the executive to lead and co-ordinate across the branches of powers and other actors of the justice system all existing and future justice system reforms and initiatives, including a transition to a people-centred justice system.

Take steps for designing and implementing co-ordination mechanisms that focus on responding to justice needs with a whole-of-government approach, including clarifying roles and responsibilities of justice institutions and establishing relevant processes and protocols. To facilitate the implementation of this recommendation Peru may consider:

- ***Designing and implementing co-ordination mechanisms that focus on specific objectives and justice needs with a whole-of-government approach***. To facilitate co-ordination between institutions, strengthen and consolidate processes and protocols that define co-ordinating teams that focus on specific legal and justice needs or priority groups, appropriate financial and resource-sharing mechanisms to ensure the delivery of services, collaborative planning mechanisms to achieve a co-ordinated and integrated approach, mechanisms that allow sharing of information, integrated and co-ordinated multidisciplinary services, and the implementation of technology, IT and data-sharing mechanisms.
- ***Defining a clear co-ordination mechanism*** led by the MINJUSDH to design, lead and implement the elements of the people-centred justice system in Peru. This could be implemented in the context of the Public Policy for the Reform of the Justice System. This could fall under the responsibility of the MINJUSDH to establish or enhance service-level planning and co-ordination mechanisms to facilitate co-ordination and information-sharing strategies and mechanisms.

3.8.2. Medium/long-term recommendations

Strengthening the capacity of the relevant agency within the Presidency of the Council of Ministers. This could be done in the promotion, design, follow-up, monitoring and evaluation of existing and future co-ordination mechanisms and may include its active participation in the co-ordination mechanism cycle and the monitoring of agreements, tasks, progress and challenges, as well as in the institutional promotion of a “culture” of co-ordination for the implementation of policies and services. The political instability and the changes in senior positions of the institutions should not limit the functioning and effectiveness of these mechanisms.

Enhancing accountability of the public sector by developing the administrative justice system. All administrative acts should be subject to judicial review, including public procurement and electoral administration. The court should be able to fully redress any violation of the law, including lack of competence, procedural unfairness, and abuse of power. Only laws adopted by parliament should fall outside the purview of the administrative justice and fall under the jurisdiction of the Constitutional Court. To facilitate the implementation of this recommendation Peru may consider:

- ***Further developing judicial control over public authorities***. A more robust system of administrative justice would entail that administrative acts are subject to judicial review, including on public procurement and electoral administration. By administrative act, it is understood that any act, both individual and normative, and factual acts made by administrative authorities in exercising public power may affect the rights or interests of natural or legal persons. The court should be able to fully redress any violation of the law, including lack of competence, procedural unfairness and abuse of power. Only laws adopted by Parliament should fall outside the purview of administrative justice and fall under the jurisdiction of the Constitutional Court.
- ***Better regulating the jurisdiction of administrative justice and that of the Constitutional Court by giving a more active and broader role to administrative justice*** on ordinary litigation of individuals and corporations with the public authorities and reserving only the truly constitutional cases to the Constitutional Court. Further reduce or remove the participation of prosecutors in administrative justice litigation.
- ***Granting the power to administrative justice organs to redress unlawful administrative acts***. This could be done through interim relief (interim suspension of the effects of an administrative decision) and reinstating the factual and legal situation prior to the unlawful administrative act (full jurisdiction), including monetary compensation for damages or loss of property. At a minimum, the court should be empowered to quash the unlawful administrative act and instruct the administrative authority to dictate a new one that conforms with the law (sheer protection of legality). The court should also be able to oblige the administrative authority to act when it shows passivity in front of an application or request. The execution of the court's rulings should be guaranteed, including through the crime of contempt of court. Unnecessary obstacles for the execution of judicial rulings against public authorities (e.g. claiming budgetary legality as an excuse) should be removed from legislation. Judges and courts must have mechanisms at their disposal that are sufficient for enforcing their rulings in front of public authorities.

Enhance mutual knowledge and co-operation between formal and Indigenous and intercultural justice; clearly define in law, in full consultation with Indigenous groups, the judicial frontier separating Indigenous and formal justice; and strengthen co-ordination capacity to promote access to formal, Indigenous and intercultural justice by all Peruvians, regardless of who they are or where they reside in the country. To implement this recommendation Peru may consider:

- ***Implementing co-ordination mechanisms that promote access to formal, Indigenous and intercultural justice***. This includes the regional and local levels between the local actors and institutions that promote access to formal, Indigenous and intercultural justice to promote both jurisdictions' co-existence, respect and effective implementation. At the regional level, this includes, among others, the judiciary, the National Office of Peace and Indigenous Justice (ONAJUP) and Local Offices in Charge of Supporting Peace Justice (ODAJUP), Justices of the Peace, the MINJUSDH, the peasant patrols or other community justice actors, the Public Prosecutor's Office, the police, the regional and local governments, and civil society.
- ***At the local level, implementing co-ordination mechanisms*** between Justices of the Peace and the peasant patrols or other community justice actors, and other justice institutions, such as the police, to articulate and work together on providing access to justice for Indigenous and native people in particular cases, including the resolution of conflicts between both jurisdictions and the enforcement of decisions.
- ***Providing capacity building to justice delivery officials***, including judges, Justices of the Peace, the police, public prosecutors on Indigenous and intercultural justice and the respect of this jurisdiction; and peasant patrols *(rondas campesinas)* and other community justice actors on human and fundamental rights, the Constitution and formal justice.

- ***Investing in training police officers on human and fundamental rights*** (including Indigenous, environmental and gender-related rights and specifically related procedures) and implementing actions to build trusting relationships with the population, including effective and people-oriented access to justice services. National stakeholders could consider the design and implementation of a national plan.

Expand the strategic scope of the justice system to embrace a people-centred approach. To implement this recommendation Peru may consider:

- ***Considering strengthening the implementation of a people-centred justice system and access to justice as a human right.*** Key members of the justice system demonstrate a solid commitment to the constitutional, legal and institutional mandates they have been given. However, work needs to be done to ensure these mandates become "people-centred". Adapting these mandates to be more people-centred will, over time, see the progressive shifting of attitudes and actions towards people-centred approaches. This will be a challenging and long-term task and may involve constitutional amendment – or at least the reinterpretation of "the administration of justice".
- ***Committing resources*** to review how the justice system and its key institutions can achieve more people-centred mandates. A step in the right direction would be reviewing and better defining the roles and functions of justice institutions, including their roles in the provision of justice services, to prevent overlap and duplication of mandates, services and initiatives and allocate resources more efficiently.
- ***Reactivating the Council for the Reform of the Justice System (CRSJ)*** and the implementation of the Public Policy for the Reform of the Justice System. Integrate people-centred and whole-of-government approaches to provide holistic and integrated justice services.

-**Conducting a systems-wide review of all justice services to identify overlaps and duplication, address gaps in service availability, and guarantee quality and effective access to justice for all.** To implement this recommendation Peru may consider:

- ***Considering reviewing the existing justice services and co-ordination mechanisms*** to avoid duplication and overlap of mandates and the continuum of services. This should include the duplication and overlap of services, including legal advice, legal defence, and multidisciplinary services; co-ordination to establish appropriate financial mechanisms and allocation of resources to ensure the implementation and continuum of services; the planning of effective integrated services and joint strategy; and follow-up and monitoring.
- ***Strengthening co-ordination between the MINJUSDH and other institutions*** providing similar or complementary services with the Women Emergency Centres (Ministry of Women and Vulnerable Populations). This includes public defence services and legal advice concerning cases of violence against women, with the judiciary on conciliation and enforcement of decisions.
- ***Promoting co-ordination between the judiciary and the Public Prosecutor's Office***. It is important to co-operate with other institutions regarding better planning for providing complementary services for access to justice. The imbalance between the number of Public Prosecutor's Offices and judges that deal with cases of violence against women and environmental issues has an impact on the ability to resolve legal needs in an effective and timely manner.
- ***Promoting the independence and the work of the Ombuds Office as an accountability mechanism***. Considering their presence and work at the national level, especially in regions where the most vulnerable populations face the need of the presence of the state and its services and where there is presence of social conflicts. This may include better co-ordination with the Ministry of Economy and Finance on budget allocation.
- ***Strengthening capacity of public defence to provide services across the country***. Provide them with training in different topics and legal and justice needs (including gender and Indigenous

communities' rights and justice), and the allocation and expense of sufficient financial resources to promote this work.

- ***Fostering an institutionalised, integrated, co-ordinated, professionalised and sustainable system of continuing education*** for judges, prosecutors and other personnel involved in the administration of justice to prevent and solve the fragmentation in capacity building and overlap of mandates on this issue. The Academy of the Magistracy should lead this in co-ordination with the other justice institutions.

Promote the participation of external stakeholders in the justice policy cycle and in service design and delivery. To implement this recommendation Peru may consider:

- ***Integrating external stakeholders in designing, delivering, monitoring and evaluating public policies and services***. Include them in the existing and future co-ordination mechanisms of policies. This includes the review of the existing regulatory framework and policies on this issue. This could be promoted in the National Specialized System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members (SNEJ) and the CRSJ.
- ***Considering implementing a whole-of-society approach to resolving legal issues***. This includes partnering with the private sector, legal professionals, trade unions, academia, civil society and individuals for the development and provision of legal, justice and related services. For example, the training of the judicial and legal counsellors on violence against women issues could be done through local NGOs, which may know the local context.

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4 Governance and management for a transparent and independent judicial system in Peru

This chapter focuses on the structure and functioning of Peru's judiciary system and compares it with OECD Member countries. It deals with the governance of the judicial systems, the institutionalisation of judicial self-governance arrangements underpinning independent judiciaries, court management and mechanisms for protecting the independence and impartiality of sitting judges. It also highlights the administrative justice system in Peru, which is one of the main safeguards of the rule of law and protection of private investments and economic development in OECD Member countries. Finally, it analyses key aspects of the judiciary's management, such as human resource management, including budget, selection and appointment of judges, discipline and integrity, and gender parity within the judiciary.

4.1. Introduction

The principle of judicial independence is given effect through the ability of judges and courts to perform their duties and administer justice with impartiality, free of influence or control by other actors; it also finds expression in the capacity of the judiciary as an institution to function autonomously, without the interference of other branches of government. Judicial independence is critical to maintaining the integrity of the judiciary and the transparency of the judicial function as hallmarks of the rule of law and equal access to justice.

External independence refers to independence from the legislative and executive branches, as well as other forces. Internal independence refers to individual judges – whether judges are influenced by their colleagues and superiors. This chapter analyses how Peru has enforced judges' independence, detects the main bodies and practices that can interfere with it (such as the Ombuds Office or the National Board of Justice, judges' appointment or temporality, renewal, performance and remuneration), and compares it with OECD Member experiences.

This chapter also highlights the importance of implementing judicial decisions against public authorities as a mark of judicial independence and as a guarantor of the respect of the rule of law in the country for the people of Peru. Then, it assesses the budgetary allocation process in Peru and negotiations between the justice sector and the Ministry of the Economy and Finance (MEF) and how this budgetary process can limit the efficiency of the justice system.

Finally, this chapter refers to the Commission on Gender Justice (*Comisión de Justicia Género*) and highlights the important advancements made towards gender equality and achieving gender parity in the justice system towards a more inclusive and representative governance and management of the Justice system.

4.2. Institutionalisation of judicial self-governance: The pursuit of an independent justice system

4.2.1. Judicial independence

Judicial independence in OECD Member countries

Chapter 2 underscored that in OECD Member countries, judicial independence emanates from and constitutes a fundamental hallmark of the rule of law. An independent judiciary is necessary to ensure that public authorities are subject to the law and that the abuse of power and the arbitrary application of the law are constrained.

Judicial independence is at the heart of various international standards (e.g., the UN 1985 Basic Principles for the Judicial Independence, the European Convention on Human Rights [art. 6] and the Inter-American Convention of Human Rights [art. 8]), which enshrine the fundamental human right to be heard by an impartial judge predetermined by the law.

Judicial independence of a sitting judge adjudicating based on law (i.e., internal independence) can also be understood as the absence of undue influence. The principle of judicial independence has been recognised and given expression in several international legal instruments, such as the Universal Declaration of Human Rights (General Assembly Resolution 217 A, 10 December 1948); the American Convention on Human Rights or Pact of San José (OAS, 22 November 1969), ratified by Peru in 1980; the International Covenant on Civil and Political Rights (United Nations General Assembly Resolution 2200 A, 16 December 1966), ratified by Peru in 1978; and the Basic Principles on the Independence of the Judiciary adopted by the United Nations General Assembly on 6 September 1985.

To safeguard judicial independence, including from overreach by other branches of government, different institutional, legal and operational measures have been designed, including procedures for the appointment and promotion of judges, the introduction of councils of the judiciary to manage the career of judges, the concept of judicial tenure, the financial, administrative and management autonomy of the courts, and frameworks governing judicial conduct and discipline. For example, many OECD Member countries have created Councils of Judiciary or their equivalents to ensure the self-management of the judiciary and the effective delivery of justice. These councils and their equivalents are autonomous bodies independent of the executive and legislative branches. In addition to safeguarding judicial independence, some councils were established to improve the quality of justice and assist judges in adopting new forms of accountability in court administration. This was achieved by transferring responsibilities from the executive (from ministries of justice) to the judiciary itself to prevent the politically motivated staffing of judicial offices (Table 4.1).

Table 4.1. The main responsibilities usually assigned to judicial councils

Main matters	Content
Personnel	Selection of judges, promotion, discipline, impeachment, dismissal relocation/reassignment, salaries and perquisites of judges
Administration	Work schedules, the composition of panels, initial case assignment, case reassignment, case load quotas, court performance evaluation, case flow, setting the number of judges per court, setting the number and process of hiring law clerks, setting the number and process of judicial personnel, transfer of jurisdiction, processing complaints
Financial	Setting the budget for the judiciary, the budgets for individual courts, allocation of budgets within courts, non-monetary support for courts (e.g. law clerks)
Education/training	Training of judicial candidates, of judges, organising and attending conferences, funding of continuous education, compulsory education, or training
Ethical	Adopting judicial ethics standards and codes of conduct
Information	Transparency mechanisms, recording trials, publishing judgements, financial disclosure, personal data protection
Digital/ICT	Administration of files and judgements (data storage, etc.), Internet access, e-justice
Regulatory	Review and promote amendments to the rules of procedure/civil, criminal administrative, etc.) and to the courts' statute

Source: OECD, drawn from Kosar, David (2018), "Beyond Judicial Councils: Forms, Rationales, and Impact of Judicial Self-Governance in Europe (1 December 2018)", *German Law Journal*, Vol. 19, No. 7, https://ssrn.com/abstract=3459367.

While the existence of a judicial council guarantees neither judicial independence nor judicial accountability, international standards for preserving the independence of the judiciary through judicial councils have been codified. For instance, the Council of Europe adopted a recommendation on judicial independence in 2010 (Box 4.1) (Council of Europe, 2010[1]).

Box 4.1. Recommendation on judges: Independence, efficiency and responsibilities

Councils for the judiciary

The recommendation defines judiciary councils as independent bodies established by the constitution, which seek to safeguard the independence of the judiciary and individual judges and thereby promote the efficient functioning of the judicial system (para. 26). It establishes that judges that consider their independence threatened should have the possibility to recourse to a judiciary council or another independent authority (para. 8). No less than half of the members should be judges chosen by other judges from all levels of the judiciary (para. 27); these appointments should be transparent towards judges and society by the establishment of pre-established procedures (para. 28); in the exercise of their functions, they should not interfere with the independence of individual judges (para. 29).

Source: (Council of Europe, 2010[1]), *Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency, and responsibilities*, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies, https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d.

The pursuit of independent judiciaries has taken various forms beyond the creation of judicial councils. Some countries have also established court administration authorities, usually under the management of ministries of justice. This plurality of governance arrangements aims to preserve the independence of courts, the efficiency of the delivery of justice, as well as the accountability of judges. Judicial councils and court services (or court administrations) are the most common approaches to institutionalising judicial self-government across OECD Member countries to promote the institutional independence of the judiciary.

4.2.2. Judicial independence in Peru

In addition to imparting justice through its jurisdictional organs, as seen in Chapter 3, Peru's Judicial Power (*poder judicial*) is legally entrusted with improving the administration of the justice system, notably in such areas as case management and reducing procedural caseloads (*carga procesal*). It does so through the Judicial Power Executive Council specifically to improve the management of the judiciary (Box 4.2).

Box 4.2. Peru's Executive Council of the Judiciary

The Judicial Power Executive Council (*Consejo Ejecutivo del Poder Judicial*, CEPJ) is Peru's judiciary governing body; it oversees the technical-administrative management of the judiciary and its local bodies.

Composition

The CEPJ is composed of six members: the president of the judiciary, who presides over it and has a simple vote and casting vote; two tenured Supreme Court judges elected by the Supreme Court; a tenured Superior Court Judge elected by the Presidents of the Superior Courts of Justice; a tenured Specialised or Mixed Tenured Judge; and a representative elected by the Board of Deans of the Peruvian Bar Association.

Main characteristics

The mandate of CEPJ lasts two years. For the designation of the Tenured Superior Court Judge, each Full Chamber of the Superior Courts chooses a candidate, and the presidents of Superior Courts, through direct suffrage, elects the member of the CEPJ. For the designation of the tenured Specialised or Mixed Judge, the specialised or mixed tenured judges elect a representative for each judicial district, who will meet to choose among themselves the judge who will integrate the CEPJ. If the President of the Executive Council is unable to fulfil their duties, the Supreme Court Judge with the highest seniority in the Council takes on the role. The Executive Council meets in ordinary and extraordinary sessions. Ordinary sessions are held four times a month, while extraordinary are called by the President or at the request of at least three members. As per their decision, the minimum number of group or organisation members that must be present for official business to be conducted is half plus one of the total number of directors. Agreements are adopted by simple majority. Unjustified absences are penalised with a fine equivalent to three days of total income and are recorded.

Functions

Administrative: The establishment of the number of tenured supreme judges and of judges of the Judicial Oversight Office, the designation and composition of commissions, the creation of management offices within the General Management office, the administration of the offices and goods at the national level, the creation and re-ubication of judicial districts, courts and other judicial offices, the assignment

of processes to judges according to their specialities, reassignment of cases between the specialised courts of the Supreme Court. On appointment, the transfer of authority of the personnel, the selection of the General Manager, Managers, Heads of Office and other high-level positions, and the appointment of superior and specialised supernumerary judges from the previous list made by the National Board of Justice. On sanctions, it decides the destitution of Justices of the Peace and judicial auxiliaries. In the second instance, it decides the sanctions of fines, reprimand, and suspension established by the Judicial Oversight Office.

Budgetary: Approval of the judiciary's budget proposal (prepared and proposed by the General Management) and implementation once approved and enacted into law.

Educational: Co-ordination with the Academy of the Magistracy in the organisation of training programmes for judges.

Digital: Management and supervision of information and communication technology (ICT) and statistical mechanisms.

Regulatory: Approval of the Regulation on the Organisation and Functions of the Judiciary and other internal regulations.

Source: Texto Unico Ordenado de la Ley Orgánica del Poder Judicial (Unified Texto of the Organic Law of the Judiciary), approved by Supreme Decree No. 017-93-JUS, from July 1993; Reglamento de Organización y Funciones de la Corte Suprema de Justicia y Órganos de Gobierno y Control Nacionales (Regulation of the Judiciary), approved by Administrative Resolution (No. 000321-2021-CE-PJ, from 27 September 2021.

However, several of these functions are, in fact, shared with other bodies within the judiciary, including the Plenary Chamber and the Judicial Oversight Office, or with other institutions of the justice system, such as the Academy of the Magistracy and the National Board of Justice. This tends to generate overlap or confusion regarding the roles of each body, as mentioned in Chapter 3. This raises two issues:

- **First, is the scope to clarify management responsibilities** of the Plenary Chamber (*Sala Plena*) and the CEPJ, to reduce potentially overlapping functions. In disciplinary matters, the existence of three distinct bodies (the CEPJ, the Inspectorate of the Judiciary and the National Council of the Judiciary), each with varying or unclear rules and procedures, can lead to overlapping responsibilities (see Chapter 3).
- **Second, is the scope to enhance transparency and rules governing the election of the CEPJ members**. Judge's groups and associations regularly mention that limited regulation on this matter does not guarantee a clear and transparent election process. Some of the issues mentioned include the lack of a debate for an informed vote, irregularities in the voting process, a lack of requirements governing who can be considered for election, and the absence of measures that guarantee the integrity of prospective candidates (Resolution of the Executive Council of the Judiciary of 18 August 2021) (Huaraca, 2019[2]).

This has led judges to request regulations for the election of Executive Council members. As a result, in 2021, the President of the Executive Council directed the development of a regulation on the election of the tenured Superior Judge and the Specialised or Mixed Judge as members of this council[1,2] demonstrating an overall unclear institutionalisation of responsibilities. However, even though the 2021 Regulation appears to have assigned the bulk of the management responsibilities to the CEPJ, a clearer regulation is still needed to clarify the arrangements further.

Protecting the independence of sitting judges in Peru

The principle of judicial independence is recognised in the Peruvian Constitution and developed through laws and regulations (see Chapter 3). Yet, in practice, the independence of sitting judges is not fully guaranteed. Several factors can potentially expose judges to political interference and undermine their independence.

This section describes the main challenges facing the judicial independence of sitting judges in Peru. Some relate to the human resource management system (ratification, performance appraisal, and temporality), and others with the possibility of other powers encroaching on the decision making of sitting judges (interference), notably the impact of the Ombuds Office on judicial independence in Peru

The key issues that risk undermining the internal independence of judges in Peru are:

- **interference**, the possibility of interference in individual judicial proceedings by other institutions such as the Ombuds Office, not merely through the universally accepted *amicus curiae* (an impartial adviser to a court of law in a particular case) or co-adjutancy institution, but by direct injunctions
- **ratification** of judges every seven years (addressed in Section 4.4 on human resources)
- **performance** appraisal scheme for judges every three and a half years (see Section 4.4)
- **temporality**, the high number of judges under temporary employment (see Section 4.4).

As seen in Chapter 2, the Inter-American Commission of Human Rights (IACHR), in handling four cases from Peru, raised concerns about Peru's breach of the principle of judicial independence for judges or public prosecutors, as outlined in Article 8 (Judicial Guarantees) of the American Convention of Human Rights. The IACHR determined that Peru violated victims' judicial guarantees because decisions regarding ratification, evaluation and dismissal were not adequately justified. This, in turn, infringed upon the victims' right to know the charges against them in advance and in detail, preventing them from preparing a defence. The Court deemed Peru's application of these mechanisms punitive, violating the guarantees of due legal process and judicial independence.

The impact of temporary employment terms for judges and prosecutors and the ramifications of ratification and performance appraisal schemes on judicial independence will be discussed below. Moreover, initiatives aimed at improving the quality and predictability of judicial sentences, particularly through the Judicial Power's Plenary Decisions (*Acuerdos Plenarios*) and the Supreme Court's Cassation Plenums (*Plenos Casatorios*), present challenges. These initiatives may sometimes suggest imperfect rulings, leading to concerns about the accuracy of judges' decisions. Given the mandatory nature of these rulings, there is a debate among judges regarding the potential undermining of judicial independence. These Plenary Decisions are intended to function similarly to the "sentencing guidelines" in some Commonwealth countries, like the Sentencing Council in England and Wales (United Kingdom), created in 2010, and the Sentencing Guidelines of the Irish Judicial Council (Poder Judicial del Perú, 2022[3]; 2020[4]; 2016[5]; The Judicial Council, 2022[6]).

4.2.3. The impact of the Ombuds Office on judicial independence in Peru

Peru has undertaken considerable efforts to promote integrity and accountability within the judicial system. However, some of these efforts could undermine judges' independence. For instance:

- The regulatory framework governing the functions and attributions of the Ombuds Office (*Defensoría del Pueblo*) (Law 26520, 1995) enables the Ombudsperson to initiate and follow up on, by its own motion or upon request from an interested party through a complaint, an investigation that can lead to an assessment or a decision that finds an action by the public administration or its agents, including the judiciary and Public Prosecutor's Office, to be affecting the constitutional and

fundamental rights of the person or a community (art. 9[1]). The Law on Administrative Simplification (Law 25035 of 11 June 1989) includes within the public administration the executive, legislative and judicial powers, as well as the bodies endowed with autonomy by the Constitution.

- This broad definition of public administration, coupled with the extensive powers granted to the Ombuds Office, enables the Ombudsperson to interfere in individual judicial proceedings without clear restrictions. For example:
  - If the investigation is related to the administration of justice, the Ombudsperson must inform the institution of the complaint and may request from the relevant institution(s) the necessary information, which they should provide without interfering in the institution's jurisdictional activity while respecting judicial secrecy and inform the Executive Council of the Judiciary or the Public Ministry of its findings (arts. 14, 16-17). If the requested information is not provided as part of the investigation, the Ombudsperson can ask for disciplinary action against the judge or prosecutor (art. 21).
  - This has far-reaching practical implications regarding judicial independence. If a judge or a prosecutor does not comply with an Ombudsperson's request for information or a response to a complaint, the Ombudsperson can request to initiate disciplinary proceedings against them. This could be used as a threat to their authority to decide the case's outcome or even interfere in individual judicial proceedings.

The scope of the Ombuds Office powers may also further undermine the independence of sitting judges or prosecutors in charge of a case by creating risks that the individual judges may become subject to the injunctions of the Ombudsperson, given that the Ombudsperson presides over the special commission that selects the members of the National Board of Justice (*Junta Nacional de Justicia,* or *Junta*),[3] which in turn can undertake a disciplinary procedure against judges and prosecutors. Indeed, the Ombudsperson may also request that the National Board of Justice start disciplinary actions against judges and prosecutors.

Given that the Ombuds Office is one of the institutions with the best approval rating (IPOS, 2019[7]; IPSOS and Proética, 2022[8]), notably due to its advocacy work, the fear of a negative review from this institution could indirectly add pressure on a judge or prosecutor to comply with its requests. As such, Peru could benefit from a review of the Ombuds Office's powers defined by law to clarify its scope of intervention in individual judicial proceedings. Peru could also consider reviewing current arrangements with a view to establishing key safeguards necessary to protect judicial independence while aligning Peru's legal framework with OECD Member countries' best practices.

4.3. Budget allocation and negotiation

4.3.1. Budget allocation to the justice sector

Trends in negotiating budget allocations to the judiciary in OECD Member countries

To improve transparency, accountability and proper resource allocation among courts, some OECD Member countries (e.g. Belgium, Finland, France and the Netherlands) have implemented performance-based budgeting, which introduces performance indicators on the results that were delivered from the budget (Curristine, 2007[9]) (Box 4.3). However, in Peru courts' budgets are still mainly drafted by considering baseline costs from the previous year. Incremental increases to court (and other) budgets year-over—year is known in Peru as inertial budgeting.

Box 4.3. OECD practices in court budgeting

In **Germany**, the judicial budget is part of the Ministry of Justice's budget. The annual budget requests are based on baselines. The Ministries of Justice and Finance formally negotiate and agree upon the final budget proposal, which is then submitted to the *Bundestag* (parliament) for approval. Once the funds are allocated, the Ministry of Justice distributes them among individual courts. A similar process occurs in most of the *Länder*. As such, the judiciary does not have a formal opportunity to take part in the budget process. However, the president of each court plays a role in preparing budget proposals for their court and subsequently managing the allocated funds. In some courts, the *Geschaeftsleiter* is also involved in drafting the budget proposals and may be charged with the actual budget management. Budget plans are usually devised for two-year periods.

In the **Netherlands,** in 2016, power over the judicial budget was granted to an independent judicial council (Viapana, 2018[10]). The judiciary's budget is no longer included in the overall budget of the Ministry of Security and Justice but stands as a separate category in the national budget. Although the Ministry is still formally responsible for presenting and justifying the judiciary's budget request before Parliament and allocating the approved funding to the Council, the annual budget is calculated according to an objective and precise formula that takes into account the number of cases that is anticipated to be resolved during the year and the cost per case, with the input data mutually agreed upon by all the parties involved, i.e. the court management boards, the Council for the Judiciary, and the Ministry of Security and Justice. One of the major innovations of budgetary reform in the Netherlands is the autonomy of the courts, which are self-administered organisations under the supervision of the Judicial Council. Each court has its management board, which is the decision-making body in charge of the general management.

In **Finland**, the budgeting process is managed directly by the Ministry of Justice, which interacts with the courts. For performance indicators, the targets are based on the estimated caseload and regard the cost per case and the number of decisions per judge (person-year). Other indicators are the number of incoming cases, the length of proceedings, the number of postponed cases, the number of pending cases, the number of decisions, the caseload of judges and courts, the budgetary means of a court and the spending of the budget, and quality indicators. All these indicators are calculated based on a weighted caseload system. Differences in the case structure are considered by grouping case categories into different difficulty categories, each of which has a fixed weighting co-efficient. The co-efficient was calculated by a working time monitoring conducted in 2009. Not only working time, but other criteria, such as the difficulty level, the number and the length of hearings necessary, or the number of judges composing the panel who takes the decision, were considered in calculating weight co-efficients. The budget cycle begins in January, with the formulation of the budget framework by the Ministry of Finance after discussing with the Ministry of Justice. Within this threshold, the Ministry of Justice decides the amount and the guidelines for budget allocation. The Department of Judicial Administration within the Ministry of Justice conducts individual negotiations with each court president. The individual meetings take place from September to November. During these meetings, the performance of the courts, the level of accomplishment of the targets, and the forecasts for the next year are analysed. Within the budget limit imposed by the framework, each court sets the number of cases it can solve with the resources allocated.

Source: OECD own elaboration; (Viapana, 2018[10]), Pressure on Judges: How the budgeting System Can Impact Judge's Autonomy, in Laws 2018, 7, 38, www.mdpi.com/journal/laws.

In terms of budgetary allocations to the courts in EU countries, Table 4.2 shows the average amount EU countries spent per inhabitant on courts by diverse groups of countries based on their gross domestic product (GDP) per capita in 2020.

Table 4.2. Budgetary allocations to courts in EU countries, 2020

	Per inhabitant (in EUR)	As % of GDP
Group A: < EUR 10 000	26.42	0.45%
Group B: EUR 10 000-20 000	63.24	0.42%
Group C: EUR 20 000-40 000	85.80	0.31%
Group D: > EUR 40 000	137.54	0.25%
Average	78.09	0.35%

Note: To facilitate the analysis, member states and entities have been divided into four groups based on their GDP per capita, Group A having the lowest. It is important to note that there are considerable differences between EU countries in the same category with respect to courts' budgets.
Source: (CEPEJ, 2022[11]), *CEPEJ Evaluation Report 2022 Evaluation cycle (2020 data)*, https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279.

The budget of the judicial system is determined either by using population (EUR per inhabitant) or a percentage of nominal GDP as indicators for allocation decisions. The budget per inhabitant is logically higher in wealthier countries and jurisdictions. On the other hand, the same budget, standardised as a percentage of GDP, is higher in less wealthy countries, showing that most of them give priority to the justice system compared to other public services, but also that this priority represents a significant effort in their state budget (CEPEJ, 2022[11]).

Justice system budget allocation negotiations in Peru

The budget process in Peru is centralised in the Ministry of Economy and Finance (MEF), mainly under the stewardship of the General Directorate of Public Budget (DGPP) (OECD, 2023[12]). The MEF, after receiving the budget proposals from all public institutions, a negotiation process starts. The MEF then prepares the final budget proposal, which is submitted to the Cabinet for approval. The proposed budget includes the budgets across public institutions, also known as *pliegos*. The government's proposed budget is then submitted to the Congress for discussion where additional negotiations are made until the Congress reaches a final decision (OECD, 2016[13]).

It is important to note that in an effort to increase the judiciary's independence over the budget negotiation process with the MEF, the judiciary benefits from a specific status since 2006 (Law 28821) where the judiciary negotiates with a coordination commission to which the MEF is party. Indeed, once the judiciary's budget proposal has been prepared internally by the Planning Management Office of the General Management and approved by the Executive Council of the Judicial Power, the draft budget is referred to the executive by the President of the Judiciary. It is then discussed in a coordination committee in which the President of the Judiciary, two Supreme Judges, the President of the Council of Ministers, the Minister of Economy and Finance and the Minister of Justice participate. The agreed budget proposal is then submitted by the Executive to the Congress. Despite these negotiations, stakeholders from the judiciary have mentioned that the agreed budget often do not reflect the judiciary's initial budget request.

Box 4.4. Peruvian institutions' budgetary approval process

In practice, there are three budgets: the PIA (Presupuesto Institutional de Apertura, or Initial Institutional Budget), which follows the inertia of the preceding fiscal year; the PIM (Presupuesto Institucional Modificado, or Institutional Modified Budget), which results from the amendments to the budget over the year mainly stemming from variations in the fiscal revenues; and the PE (Presupuesto Ejecutado, or Implemented Budget) which is the real budget reflecting the amounts effectively spent and the actual final allotment of public resources. Divergences between PIA and PIM may be significant, to the detriment of a good expenditure forecast and efficient financial planning. The total public budget in 2023 was PEN 214 790 274 052 (Peruvian soles) (EUR 53 697 568 513).

The budgetary appropriation line-item labelled justice includes some activities branded as law enforcement, but not all of them, as the police is not included. Nine institutions are financed from this rubric: 1) Judicial Power (judiciary); 2) Public Ministry (*ministerio público*); 3) National Penitentiary Institute (INPE) (under the Ministry of Justice and Human Rights); 4) Ministry of Justice and Human Rights (MINJUSDH); 5) Ombuds Office; 6) National Board of Justice (*Junta*); 7) Constitutional Court; 8) Military and Police Tribunal; and 9) Academy of the Magistracy.

All combined were awarded a PIA equivalent to 3.5% of the total public budget in 2023 (PEN 7 504 720 289 or EUR 1 876 180 072). The judiciary receives 44% of the justice budget; the Public Ministry 35.8%; INPE 10.3%; the MINJUSDH 7.2%; the Ombuds Office 1%; the Constitutional Court 0.6%; the National Board of Justice (*Junta*) 0.5%; and the Academy of the Magistracy 0.2%. Furthermore, 46.6% is allocated to three budgetary programmes: improvement of services of the criminal justice system; improvement of the competencies of the prison population for their social reintegration; and specific products for the reduction of violence against women.

Other budgetary programmes have been allocated specific budgets (outside the justice budget allocation). These include: the programme to speed up family judicial processes (PEN 133 474 020 or EUR 33 368 505 – 0.06% of the total budget, allocated to the judiciary); criminal justice system's services improvement (PEN 3 293 825 862 or EUR 823 456 465 –1.5%, allocated to the judiciary, the MINJUSDH, the Ministry of the Interior and the Public Ministry); the programme to speed up judicial labour processes (PEN 134 331 233 or EUR 33 582 808 – 0.06%, allocated to the judiciary); specific products on the reduction of violence against women, including protective measures for victims as part of the implementation of the National Specialized System of Justice for the Prevention, Sanction and Eradication of Violence against Women and Family Members (SNEJ) in eight judicial districts (PEN 261 383 680 or EUR 65 345 920 – 0.12%, and allocated to the Public Ministry, the judiciary, the MINJUSDH and the Ministry of the Interior); and specialised services for the attention and reception of complaints (PEN 180 100 868 or EUR 45 025 217 – 0.08%).

Source: (Guardia, 2022[14]), *El sistema presupuestario en el Perú,* ILPES, https://digitallibrary.un.org/record/464103?ln=en; Law 31638, Budget Law of the Public Sector for the Year 2023, from 6 December 2022; (OECD, 2023[15]), Public Financial Management in Peru: An OECD Peer Review, OECD Publishing, Paris, https://doi.org/10.1787/d51d43b1-en.

The budget allocation to Peru's justice institutions as a percentage of national GDP was analogous to those in OECD Member countries in the region: Peru, 0.30%; Chile, 0.30%; Colombia, 0.32%; and Mexico, 0.33%. However, as expressed in per capita value, Chile allocated four times more financial resources than Peru to its three justice institutions (judiciary, Public Ministry and MINJUSDH), with an expenditure per capita of USD 159 (EUR 145 approximately), and Peru at USD 38 (EUR 34 approximately) (IPE, 2018[16]).

In Peru, the key determinant in the budget allocation process appears to be the negotiation of funds between justice institutions and MEF. However, these discussions seem disconnected from annual budgetary planning on social or other needs and rarely lead to budgetary allocations to the judiciary that reflect its initial proposals, a point raised by the Judicial Power and other institutions in the justice system (Lama, 2022[17]). For example, for 2023, the judiciary requested PEN 6.7 million (EUR 1.7 million approximately) from MEF. Only about half (PEN 3.4 million or EUR 850 000) was included by MEF in the draft budget proposal (Centro de Noticias del Congreso, 2022[18]). Even though the totality of the budget allocated to justice has seen an increase of approximately 5% per year since 2021, it remains less than half of the sum initially requested by the judiciary. Contextualising these discussions can help explain this disconnect:

- MEF's Directorate of Public Budget (DGPP) focuses on cost-benefit analyses and revenue forecasting, while the Judicial Power has the expansion of and improvements in the design and delivery of judicial services as its core mission. Consequently, and as confirmed by extensive interviews with stakeholders in the executive and the judiciary, the Judicial Power regularly requests increases to its budget allocations, which are rarely approved by MEF in view of the perceived lack of quantitative analysis and standardised needs forecasting on the part of the judiciary. In addition, as raised by these stakeholders during the fact-finding missions and interviews, another reason for MEF's apparent reluctance is the lack of effective mechanisms to ensure accountability for public funds, transparency over spending and safeguards against misuse.
- These differences in approaches to budget setting – the focus on cost-benefit analyses and revenue forecasting versus core mission expansion and improvements in the design and delivery of judicial services – might explain why the two institutions find it challenging to reach a consensus on budget allocation matters. Cost-benefit analyses involve the best use of fixed resources at a given point, calculated by using existing market indicators while enhancing the quality and expanding the scope of judicial services evoke uncertainties in their delivery and their impact on society, which cannot be quantified ex ante using cost-benefit analyses.
- This type of negotiation often results in negative feedback loops, which tend not to be conducive to securing agreement on budget needs, as the uncertainties associated with measuring the impact of future service provision on societal outcomes are difficult to capture with metrics such as cost-benefit analyses. (Mazzucato, 2021[19]). Hence, as expressed by national stakeholders, important judicial reforms have not been implemented in Peru or have only been partially implemented due to a lack of dedicated resources within the national budget for this purpose (Javier de Belaunde López de Romaña, 1999[20]) (IEP, 2014[21]) (Pantoja Rosas, 2018[22]).

Indeed, the judiciary itself appears to be hobbled by limited capacity to engage in more robust performance data and evidence gathering to engage in strategic planning, including budgetary planning. This is likely in no small part due to the absence of formal, institutionalised co-ordination mechanisms that would facilitate the generation of system-wide, medium-term strategic planning and performance monitoring and evaluation frameworks, as underscored in Chapter 3. Thus, it cannot yet generate the data and evidence that can be used to demonstrate to itself, MEF, and the public the impact of existing and potential spending on improving legal and judicial outcomes for people. In addition, in some instances, the courts are unable to fully spend the resources they have been allocated, notably in human resources hiring, and face significant challenges in demonstrating value for money and strategic results from spending the resources they do have. In this connection, public accountability frameworks and mechanisms are uneven across the judiciary and appear, in some cases, to be non-existent. However, it is worth noting that the experience of most OECD Member countries suggests that performance budgeting is not a perfect system, but rather one worth investing in to identify performance measures that are relevant to decision making and inform the use of resources (OECD, 2019[23]).

Annual negotiations between the judiciary and the executive on the budgetary process have been a constant and recurrent theme in relations between the two branches. While the Judicial Power tried to claim its budgetary autonomy and the prerogative of drafting its own budget and presenting it directly and defending it before Congress at the Constitutional Court, the Constitutional Court ruled in December 2004 that while the judiciary is constitutionally entitled to prepare its own budget and defend it in Congress, the judicial budget should be aligned with the state's public expenditure policy, which constitutionally falls under the exclusive prerogative of the executive. The ruling established the creation of the co-ordination mechanism created by Law 28821, as mentioned in Chapter 3 (Sentence TC of 31 December 2004, file 004-2004-CC/TC).

Nevertheless, the judiciary has started to address these issues at the institutional level:

- In terms of the optimisation of resources, the judiciary, as additional means, is highlighting the modernisation of judicial processes and the use of technology to improve justice services and implement justice policies more effectively (Lama, 2022[17]).
- Strategic planning to enhance the administration of justice through strengthening strategic human resources management, along with the use of technology and alternative dispute resolution mechanisms, are being flagged as effective tools to enable the more effective use of existing resources.

Robust accountability frameworks, supported by system-wide monitoring and evaluation frameworks and tools, including key performance indicators, can, at a minimum, strengthen the merit of the judiciary's budget requests and lead to more efficient judicial performance and improved legal outcomes over the medium term. More effective co-ordination between the judiciary and MEF, and more systematic support to the judiciary on the part of MEF and other ministries, including training in the development of performance indicators and the design and use of monitoring and evaluation frameworks, can also strengthen performance, including budgetary performance, by the judiciary.

4.4. Human resource management in the judiciary

As seen in Chapter 2, the independence of judges is a key definitional characteristic of the institutional independence of the judiciary in a healthy modern democracy. Judicial human resource management (HRM) in justice systems aims to foster judges' independence.

This section will look at several issues relevant to human resource management in the judiciary.

4.4.1. Selection and appointment of judges

Trends in the selection and appointment of judges in OECD Member countries

In OECD Member countries, various selection methods seek to appoint knowledgeable, competent, and honest judges. Selection systems also aim to ensure the independence and accountability of sitting judges. The underlying assumption is that citizen's trust in an independent judiciary is crucial for the functioning of the political system and a clear separation of power. Judicial independence is key to ensuring its impartiality.

However, judicial independence is not absolute, as structural and psychological factors invariably affect judges' decisions. Independence refers to the absence of bias of a judge that would unduly influence decision making (known as internal independence) and to structural independence from interference or pressure from the executive and legislative branches or public opinion and private interests.

OECD Member countries have developed three basic models for appointing judges (Volcansek, 2006[24]): 1) the **civil service model,** also known as the bureaucratic recruitment model, under which university

graduates are recruited and whose promotion will follow the rungs on the ladder of a judicial hierarchy; 2) the **professional model** under which legal professionals are recruited; 3) the **mixed decision making on appointments model**, under which appointment decisions are shared between politicians and professional judges, with or without the use of partisan quotas, to recruit for the higher ordinary courts and constitutional courts.

1. **The civil service model** of judicial appointments has been widely used across Europe and in most OECD Member countries. The model's fundamental aim is to protect the imparting of justice from the vagaries of the political system and politics. Peru shares this feature. The civil service model is based on three principles. The first is merit-based recruitment, in which assessing legal knowledge and the qualifications of candidates determines entry into the judicial career, starting at the bottom of the hierarchy. This is usually accompanied by lengthy induction and training periods, sometimes lasting years depending on the country, which count as probationary periods. Second, judges are tenured for their working life if no disciplinary or criminal penalty is imposed on them. Third, judges are promoted based on seniority and the evaluation of professional merits, including performance in some national systems. Nevertheless, in some civil service models, lateral entry of experienced lawyers into the judiciary is used to fill vacancies in the higher courts. The civil service model is used to appoint entry-level judges in Austria, Belgium, France (which created the model), Germany, Italy, Portugal and Spain, among others.
2. **In the professional model,** in common law countries, such as Australia, England and Wales (United Kingdom) and the United States, ordinary court judges are appointed or elected from among practising lawyers or legal experts. As a rule, each judge is recruited to fill a specific vacancy and serve in a specific court, be it a trial, appellate or supreme court. Formal career advancement mechanisms are generally not provided; in other words, judges cannot formally apply to be promoted to a higher court; nonetheless, they have a legitimate expectation of being promoted in competition with other candidates to more senior judgeships. Lower court judges may join a higher court through a specific recruitment procedure in which they compete with outsiders.
3. **The mixed decision making on appointments model**, under which appointment decisions are shared between politicians and professional judges, with or without partisan quotas, is used to staff the higher ordinary courts and the constitutional courts in most European OECD Member countries that have a Constitutional Court, and in the United States to staff the Supreme Court.

The recruitment authority, the body in charge of managing entry into the judicial career, varies across OECD Member countries. In Slovenia, it is the Supreme Court; in Croatia, the Judicial Academy; in Belgium, the High Council of Justice, as well as in Portugal and Spain. In England and Wales, it is the Judicial Appointment Commission. In Germany, it is the Minister of Justice and a Parliamentary Committee. Box 4.5 presents the induction training models applicable in Finland, Italy, the Netherlands and Spain.

Box 4.5. OECD practices in the recruitment and training of judges

In **Spain**, the Judicial School, which is part of the General Council of the Judiciary, provides the initial teaching and training to lawyers who want to become judges. It is based in Barcelona. This training has three stages: 1) face-to-face theoretical-practical teaching (*fase presencial*), which lasts ten months; 2) supervised practice (*fase de practices tuteladas*) for six and a half months; and 3) substituting and reinforcing (*fase de sustitución y refuerzo*) for four months.

In **Italy**, newly recruited magistrates undergo initial training for no less than 18 months. The initial training period is divided into ordinary/theoretical training (13 months) and professional training (5 months). The ordinary training is intended to expand technical knowledge and familiarise the individual with the actual judicial work through various on-the-job training experiences: six months in

the civil sector and seven months in the criminal sector. At the end of the ordinary training, each student is assigned to a specific function in a specific judicial office (either as a judge or a prosecutor). For the following five months, the students are assigned to a programme of on-the-job training in the specific functions of their first destination as judges or prosecutors. After 18 months of training, they can autonomously perform the specific judicial function in the office to which they had been assigned since the end of the first period of the initial training.

In the **Netherlands**, access to the judiciary is open only to candidates with at least two years of professional experience. After the sitting of examinations and psychological tests, an induction training programme (lasting from two to four years, depending on the candidate's prior experience) is mandatory.

In **Finland,** judicial training has traditionally been based on practical court training (learning by doing) in the courts and on the in-service training for judges provided by the Ministry of Justice. Court training refers to a traineeship system that provides induction into judicial tasks in courts. The official title of a court trainee is “Trainee District Judge”. The training period is one year. The purpose of the trainings is to maintain and develop the professional skills and competences of the courts' personnel. Methodologically, the training combines theory and practice (lectures, presentations, group work, simulation, etc.). Usually, professors, other experts and serving judges work as trainers.

Source: (OECD, 2023[25]), *Modernising Staffing and Court Management Practices in Ireland*, https://doi.org/10.1787/8a5c52d0-en, (Escuela Judicial de España, 2022[26]), “Plan Docente de Formación Inicial. 72 promoción de la Carrera Judicial. Curso 2022-2023”, https://www.poderjudicial.es/cgpj/es/Temas/Escuela-Judicial/Formacion-Inicial/La-fase-presencial/Plan-docente-de-formacion-inicial-72--Promocion-Carrera-Judicial--curso-2022-2023., (Oikeus.fi, n.d.[27]), *Court Training,* https://oikeus.fi/tuomioistuimet/en/index/courttraining.html

Qualified human resources, including judicial numbers, qualified support staff, and adequate organisational structures, are crucial to delivering efficient and timely justice. For this, understanding judicial needs to create future workload planning is important. To ensure workload planning, a caseload study to understand judicial position needs is required to be able to factor workload shifts in staffing practices throughout the years. HRM data are relevant, including upcoming and long-term retiring schedules, sick leave trends to plan for better back-up options, and hiring data with information on applicant trends to understand if current needs in terms of skills and diversity can be met for future workforce needs and goals. Data to understand what attracts potential applicants to the judiciary and what precludes others from applying may also be applied to human resource planning across other government sectors. Other factors to consider are upcoming legislative changes and the impact of changes in operations and staffing across the justice sector and related social service providers (see Box 4.6). Furthermore, this strategic workload planning should be applied by the judiciary and the wider justice system (OECD, 2023[25]).

Box 4.6. OECD practices in data and factors for strategic workload planning

The Judicial Affairs, Courts and Tribunal Policy Section of the Ministry of Justice in Canada assesses requests for additional judicial resources from courts. A software-based simulation model informs evidence-based proposals for new positions. The software is used to collect, analyse, and forecast the effects of changes in workload. The software applies a standard Business Process Modelling Notation that allows a case path to be followed, showing the variety of demand for judicial resources for different case types and in various locations. After detailed programming, time, and case data development and entry, the system can pinpoint bottlenecks, delays, and the time judges take for various aspects of the case flow, such as time to resolve motions, hearings, judgements and case conferences. Data used by the system include: the time cases take to arrive at certain milestones, the time by which cases may

have been delayed at each milestone due to resource constraints (e.g. lack of judges), how long tasks take to perform per case by type, event counts (motions, conferences, trials, etc.), percentage utilisation of available resources, number of judges needed to process cases in each period (accounting for expected absences due to non-case related work or other circumstances, such as travel, education, vacation, retirement, etc.).

Source: (OECD, 2023[25]), *Modernising Staffing and Court Management Practices in Ireland*, https://doi.org/10.1787/8a5c52d0-en.

Selection models and appointment trends in Peru

Recruitment and appointment to the judiciary in Peru are essentially based on a mix of civil service and professional models with some important specificities. As mentioned above, the civil service model aims to recruit fresh graduates for the judiciary, whereas the professional model aims to recruit seasoned law professionals. Both exist in OECD Member countries, and, in principle, both produce independent and impartial judges.

The question of which one of them would better protect judicial independence and impartiality in a country such as Peru falls outside the purview of this report. Suffice it to say that the Peruvian recruitment system displays features of both. The civil service model features in the Peruvian system include the fact that judges are given life tenure and a career. That said, the model contains essential elements of the professional model, including the requirement that candidates for the judicial office show experience in the practice of law. Indeed, the National Board of Justice (*Junta*) estimates that a candidate needs at least three years of professional experience as a lawyer before being able to be considered in a competition for a judgeship, even if this does not constitute a codified prerequisite. This feature remains characteristic of professional models rather than civil service models, where candidates must show technical-theoretical knowledge of the law. The system also departs from traditional civil service models, of which a fundamental feature is the entry exam and the academic profile, with new recruits facing an induction training period of at least two years. In Peru, candidates for judgeships are assessed through four sudden-death phases (a written test, *curriculum vitae*, case studies and personal interviews). The Plenary Chamber of the *Junta* then votes on the final scores to be awarded to each candidate. A candidate must obtain at least two-thirds of the votes of the *Junta* membership to be offered an appointment. Score results cannot be contested.

Once selected by the *Junta*, successful candidates are required to take induction training. Compared to OECD Member countries, Peru's induction training is comparatively short (80 academic hours). Training is delivered by the Academy of the Magistracy (AMAG) on topics such as ethics, leadership and court management, legal reasoning and interpretation, sensitivity to violence against women and children, human rights and interculturality. Unsuccessful candidates in the training course may be deprived of the appointment by the discretionary decision of the *Junta*.

Candidates are also required to participate successfully in the PROFA (*Programa de Formación de Aspirantes*) training programme, a mandatory nine-month course for aspiring judges or prosecutors also delivered by AMAG. In 2006, the Constitutional Court ruled that this requirement contravened the constitutional right to equal treatment before the law. However, the recruitment process was never adjusted to align with this decision (Castillo-Córdova, 2007[28]).

Compared to OECD Member practices, there is scope to strengthen pre-entry training of judges and prosecutors, as existing training can be considered limited or short by OECD standards and with an insufficient variety of courses, considering the needs of society. This generates an institutional need to fill knowledge gaps by providing training, which is not mandatory for judges and does not ensure capacity development to strengthen quality access to justice. This has also been flagged in the justice reform public policy as one of its main objectives is to create a judicial school with a new two-year model for aspiring

judges and prosecutors. Reform to the selection process that gives more importance to pre-entry induction training and enhances the role of AMAG in the selection process should be encouraged. As can be observed from the distinct phases of the recruitment process, most decisions during the process are either non-contestable or discretionary, which can represent a risk of impropriety in the selection of judges.

An additional specificity in the Peruvian recruitment process is that candidates apply for specific judicial positions at a certain level of the judicial hierarchy rather than pursue a career that starts at the entry level and involves promotions based on merit, competence, seniority, and professional achievements. In addition, promotions have been granted without competition for years, leading to an overpopulation of provisional judges (around 19%) in 2023. Similarly, recruitment has been extensively confirmed without competition, leading to a judiciary overpopulated with temporary judges (who lack tenure and receive lower salaries), reaching 39% in 2023, as explained in the next section.

Hence, the Peruvian system can be characterised as a mix of the civil service model with a position-based rather than a career system. It can also be branded as a professionalised system, although with a range of relatively discretionary decisions in the recruitment process and little guarantees of due process for those willing to participate in it.

4.4.2. The tenure statute of judges, prosecutors and non-judicial staffers

Trends in OECD Member countries

The majority of OECD countries practice lifetime appointments for judges, reflecting a strong emphasis on judicial stability and independence from political pressures. Yet, to manage the increasing workloads and financial constraints, several OECD Member countries were found to use temporary judges . However, such practice remains exceptional as it leads to a temporary increase in temporary staff and is usually accompanied by appropriate safeguards (e.g. Germany, Spain) (see Box 4.7).

Box 4.7. Temporary judges in Spain

Spain allows the use of temporary judges on a special basis to temporarily fill vacancies until regular judges can be appointed. The Chambers of the Superior Tribunal of Justice informs the General Council of the Judiciary about temporary needs, together with a justifying report. The General Council decides on the validity of the requests. Only lawyers meeting the entry requirements for the judicial career can apply, with a preference for those meeting additional requirements set in the law (such as holding a Doctorate in Law, having judicial or public administration experience, among others). The term is one year, extendable for an additional year after reapplying. Appointed temporary judges have the legal status and remuneration of the judicial career members. The law also establishes reasons for termination.

Source: Organic Law 6/1985 of the Judiciary, Title IV (arts. 428-433), from 1 July 1985 (modified by Organic Law 4/2018 from 28 December 2018).

The European Charter for Judges, a non-binding document of the Council of Europe, suggests that a refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office. The main idea is to exclude the factors that could challenge judges' impartiality and independence, including, for example, the instability of judges' appointments often produced by high levels of temporary judges. Despite the laudable aim of ensuring lofty standards through a system of evaluation, it is not easy to reconcile the independence

of a judge with a system of performance appraisal. If one must choose between the two, judicial independence is the crucial value (Venice Commission, 2007[29]).

The tenure status of judges, prosecutors and non-judicial staffers in Peru

In Peru, the existing position-based system for recruitment and limited human resource planning have resulted in the widespread use of temporary judges. Temporality is one of the most serious problems of the judicial system in Peru, as it has become systemic and affects judges' impartiality in many ways.

The judges presiding over the courts are divided into three categories (Judicial Career Law, art. 65): 1) tenured judges, permanently appointed to exercise jurisdictional functions at their designated level; 2) provisional judges, regular judges who are appointed to act in a vacant position at the immediately higher level; and 3) supernumerary judges, unsuccessful candidates for a tenured position who agree to be added to a registry of judges at the same court level.

As of June 2022, there were 3 516 judges (between 39% tenured, 21% provisional, and 40% supernumerary) and 5 599 Justices of the Peace who are not part of the judicial career service and are elected by the local communities to impart justice (Ley de Justicia de Paz, Preliminary Title, art. III) at the national level, as presented in Table 4.3. As of June 2023, there were 3 595 judges and 5 599 Justices of the Peace (OECD, 2023[30]).

According to information provided by the Human Resources and Welfare Management of the Judicial Power, the number of temporary judges has diminished as of June 2023. The supernumeraries amounted to 1 383 (38.4%), the provisional judges to 696 (19.4%), and the number of tenured judges increased to 1 516 (42.1%).

Table 4.3. Number and type of judges in Peru, June 2023

	Tenured	Provisional	Supernumerary	Total
Supreme judges	19 (30%)	43 (68%)	1 (2%)	63
Superior judges	477 (58%)	328 (40%)	15 (2%)	820
Specialised or Mixed judges	878 (42%)	325 (16%)	869 (42%)	2 072
Justices of the Peace judges	142 (22%)	0	498 (78%)	640
Total	1 516 (42%)	696 (19%)	1383 (39%)	3 595

Source: OECD's own elaboration with information provided by the Peruvian judiciary on 23 November 2023, through Oficio No. 5982-2023-GRHB-GG-PJ

A high level of temporary judges in the judicial branch (57.8%, including 19.4% provisional and 38.4% supernumerary) hinders the autonomy and independence of the judiciary. These temporary judges lack the same legal protections as tenured judges that protect their independence, such as job stability and receive lower compensation than their tenured counterparts (they are paid some 30% of tenured judges, as seen below) (OECD and National Institute of Statistics Peru, 2017[31]). Under these conditions, there is a risk to their independence and impartiality, making them susceptible to corrupt practices. The same concern applies to prosecutors, among which precarity is also high: 58% of provincial prosecutors and 8% of superior prosecutors are temporary, out of some 8 000 prosecutors.

Moreover, even formally tenured (*titulares*) judges and prosecutors are not safe in their positions due to the ratification and performance appraisal mechanisms, as these can be used to influence judges' decisions or be used as a sanction, as mentioned by the IACHR and will also be seen below.

Judicial Power employees are subject to the three public sector employment regimes applicable in Peru:

- Legislative Decree 276, Basic Precepts for the Administrative Career and Remuneration of the Public Sector Law, which applies to judges and magistrates of the judiciary. This civil service regime has been frozen since 1992, and entry into this regime is only possible when a currently occupied position becomes vacant (OECD, 2023[32])
- Legislative Decree 728, Employment Promotion Law, which are open-ended contracts for hiring civil servants under the same conditions as in the private sector). The growth of posts in the private activity regime is restricted due to limitations of the Budget Law, which is why staff growth has mainly been under the CAS regime (OECD, 2023[32]). According to information provided by the Judiciary, as of June 2023, this regime was applied to 62% of other jurisdictional personnel.
- Legislative Decree 1057, Law that regulates the special regime of Administrative Contract Staff *(contrato administrativo de servicios*, CAS). The CAS is a Peruvian contractual mechanism introduced in 2008 to hire public personnel under administrative law for temporary appointments, available to most public institutions (Decreto Legislativo 1057 of 27 June 2008, as amended in 2012 and 2021). Another mechanism the state uses to hire personnel is service contracts, which provide the contractor with lesser benefits.

The CAS has been used extensively across the Peruvian public administration, the judiciary and prosecutorial services. In the judiciary, it is limited to hiring non-judicial and non-prosecutorial staff. Despite being phased out, the CAS has been criticised for increasing temporality and precariousness in the judicial system. As of the end of 2018, CAS personnel in the judiciary constituted 24% of the total staff, and by March 2019, it reached 25.5% in the Prosecutorial Service (Poder Judicial del Perú, 2018[33]; Ministerio Público, 2019[34]). As of May 2022, the judiciary reported that CAS personnel amounted to 35% of the total staff, and by June 2023, this figure reached 38%, signalling high turnover due to the nature of contracts. However, it is unclear whether non-judicial and non-prosecutorial staff are incorporated under the regime of the general civil service, as it should be, according to OECD standards, through proper meritocratic mechanisms (OECD, 2023[30]).

4.4.3. Selection of higher court judges

Selection of higher court judges in OECD Member countries

In most OECD Member countries, appointments to higher courts are generally made without a competitive process. However, they typically have a certain length of service and experience. These appointments are primarily political but may include some merit-based considerations (Box 4.8).

Box 4.8. OECD Member practices in the selection of higher court judges

In **Austria,** the Supreme Court consists of 85 judges organised into 17 senates or panels of 5 judges each. The Constitutional Court consists of 20 judges, including 6 substitutes. The Administrative Court has two judges plus other members depending on the importance of the case. Selection of candidates to the Supreme Court is prepared by the Supreme Court's internal senate (president, first deputy president, three Supreme Court judges). The Supreme Court judges are nominated by the Minister of Justice and appointed by the president, and they serve for life. No appeal possibilities exist against the appointment. The Constitutional Court judges are nominated by several executive branch departments and approved by the president; judges serve for life. The Administrative Court judges are recommended by the Minister of Justice and appointed by the president; the president determines the terms of judges and members.

In **Portugal**, the Supreme Court has 12 justices. The Constitutional Court has 13 judges. The Supreme Court justices are nominated by the president and appointed by the Assembly of the Republic. Judges are appointed for life. Ten Constitutional Court judges are elected by the Assembly, and three are

elected by the other Constitutional Court judges. Constitutional Court judges are elected for a six-year non-renewable term.

In **Spain,** the Supreme Court consists of the court president and is organised into the Civil Chamber with a president and 9 magistrates; the Penal Chamber with a president and 14 magistrates; the Administrative Chamber with a president and 32 magistrates; the Social Chamber with a president and 12 magistrates; and the Military Chamber with a president and 7 magistrates. The Constitutional Court has 12 judges and is considered outside the judiciary. The monarch appoints Constitutional Court judges for a nine-year term upon proposal by the Parliament. The monarch also appoints the Supreme Court judges and Regional Courts Presidents.

Source: (OECD, 2023[25]), *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*, https://doi.org/10.1787/8a5c52d0-en.

Selection of Higher Judges in Peru

Peru's Constitution outlines the rules for appointing judges to the country's High Courts:

- To be appointed a **Supreme Court justice,** an individual must be at least 45 years old, be a Peruvian citizen by birth, and have 10 years of experience as a prosecutor or as a judge, or at least 15 years as an attorney or law professor.
- For a **Superior Court** judge, the requirements include being at least 32 years old, be a Peruvian citizen by birth, and having five years of experience as a Specialised or Mixed Judge, Adjunct Superior Prosecutor, or Provincial Prosecutor, or at least seven years of practice in law or being a university faculty member in a law-related discipline.
- A **Court of Special Jurisdiction** judge is required to be at least 28 years old, be a Peruvian citizen by birth, and have 2 years of experience as a Justice of the Peace judge, over 3 years as Secretary of the Superior Court or Adjunct Provincial Prosecutor, or over 5 years of practices in law or being a university faculty member in a law-related discipline.

Once these requirements are met, candidates are evaluated, and appointments are made by the *Junta*, the National Board of Justice. The *Junta* selects and appoints judges and prosecutors through public competitions and individual performance evaluation, as mentioned above and described below (art. 150, Constitution).

Constitutional Court judges need the support of two-thirds of Congress members for their election. They are not subject to an imperative mandate nor receive instructions from any entity; therefore, they operate independently. They cannot be removed or held accountable for their votes or content of their opinions. Additionally, they have legal immunity and can only be detained or tried with the Court's authorisation, except in cases of flagrancy (art. 13 of the Organic Law on the Constitutional Court). Six of the seven Constitutional Court members are required to vote to declare a law unconstitutional (Law No. 26435, 1995).

Higher judges' selection in Peru compares positively with those of most OECD Member countries, where appointments to higher courts are generally made without competition, but a certain length of service and experience is required. These appointments are fundamentally political or governmental appointments with some merit-based components. In some countries, Supreme Court judges recommend the higher judges themselves (usually using an elective process) or via a judicial appointment committee and are appointed by the executive.Performance appraisal and ratification of judges

4.4.4. Performance appraisal and ratification of judges: Trends in OECD Member countries

Within OECD Member countries, there is strong recognition that accountability is an essential element of good governance in the judiciary. Measures to promote accountability include but are not limited to performance management, transparency and integrity safeguards. These measures need to be carefully designed to not hamper judicial independence and impartiality.

The distinctiveness of justice delivery impacts court management, a particular kind of organisation with highly qualified staff and an unclear hierarchy where staff (judges) do not receive instructions on how to perform their jobs. Managing public expectations on the quality of justice becomes challenging (Jeuland, 2018[35]). Due to the need for judicial independence, the content of judgements cannot be evaluated outside the appeal systems. Consequently, a judge's output cannot be assessed as good, mediocre or bad, as this evaluation occurs in higher courts through appeal mechanisms (CCEJ, 2014[36]).

There are different approaches to judicial performance appraisals across OECD Member countries (Box 4.9). In addition, the Bangalore Principles of Judicial Conduct outline core measures of judicial performance (UNODC, 2016[37]). While judiciaries generally establish performance standards to foster the quality, accessibility, and timeliness of decisions, the frequency of evaluation exercises varies across countries. The authority in charge of the appraisal may also differ, ranging from judicial inspectors to court presidents.

Box 4.9. OECD Member practices in performance appraisal through peer review pilots

In **Denmark** in 2004, the District Court of Copenhagen conducted a pilot project on the quality of legal opinions and the conduct of court proceedings. A working group defined several quality indicators and conducted a survey measuring the level of these quality indicators in both legal opinions and during court proceedings. Judges from the District Court of Copenhagen conducted the survey. The judges set up quality groups, and a representative from one group then reviewed the legal opinions and attended the court hearings of judges from another group.

In the **Netherlands**, peer review primarily aims to improve the functioning of individual judges and focuses on behavioural rather than judicial aspects. It contributes to a more open culture within the profession, in which individual performance in the courtroom can be discussed and improved upon. Peer review can take place in diverse ways, one being the camera method, where the court hearing is recorded and discussed with the judge afterwards.

Source: (OECD, 2023[25]), *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*, https://doi.org/10.1787/8a5c52d0-en.

Ongoing efforts aim to establish minimum standards for evaluating professional performance and stability of judiciary members (ENCJ, 2021[38]). For example, the 2020-21 European Network of Councils for the Judiciary (ENCJ) report identified a set of minimum standards currently undergoing evaluation in areas such as timeliness and efficiency of procedures; due process ensuring accessibility; the quality of judicial decisions; and public access to the law to facilitate people's access to justice.

Finally, there is an increasing body of literature stressing international standards in the evaluation of the quality of judicial decisions. The Consultative Council of European Judges (CCJE) suggests that in states where a Council for the Judiciary exists, this council should be entrusted with the evaluation of the quality of decisions. Within the Council for the Judiciary, data processing and quality evaluation should be undertaken by departments other than those responsible for judicial discipline. For the same reason, where there is no Council for the Judiciary, the quality of decisions should be evaluated by a specific body having

the same guarantees for the independence of judges as those possessed by a Council for the Judiciary (CCEJ, 2018[39]).

Judicial ratification in Peru

In Peru, judges undergo a ratification procedure every seven years (art. 154, Constitution).

Hence, the main response to the issue of performance appraisal and to the larger challenge of ensuring judicial accountability has been to give effect to this constitutional provision through the application of a ratification procedure every seven years and a performance appraisal procedure every three and a half years, managed by the National Board of Justice (*Junta*).

The ratification process was first included in the Constitution of Peru of 1920, following a hierarchical system with disciplinary control applied to judges by the Supreme Court and the Government (Gonzales, 2012[40]). This system was carried over in recent iterations of the Constitution, including the current one dating from 1993, which also created the National Council of the Magistrature, replaced by the *Junta* in 2018 (see Chapters 2 and 3).

There have also been attempts to eliminate or reform the ratification procedure. For instance, the 2001 Study Commission for a Constitutional Reform (Comisión de Estudio de las Bases de la Reforma Constitucional) proposed the elimination of the ratification and the transfer of all disciplinary procedures to the National Council of the Magistrature. In 2022, the Ombuds Office recommended suspending all ratifications until due process guarantees were established and guaranteed. The Report by the Special Commission for the Integral Reform of the Administration of Justice (CERIAJUS) proposed eliminating the ratification procedure altogether and implementing yearly performance evaluations (see Chapter 2).

The current judge ratification procedure dates from 2020 and is overseen by the Junta. It has four stages:

- **Calling/convocation:** The *Junta* notifies the judge requesting the necessary documentation and the judge's schedule of activities. The calling/convocation is published and informed to the judiciary (arts. 11-14).
- **Appearance:** Judges must submit various documents, including judicial decisions, management reports, publications and training certificates. Furthermore, information is gathered from other public institutions, including a report from the judiciary on the judge's cases under review (arts. 15-28). Citizens can provide information on the judge's behaviour during this stage (arts. 29-37).
- **Evaluation:** The judge's conduct is assessed, including disciplinary measures, work organisation, management efficiency, judicial proceedings, decision quality, debt information, attendance and punctuality, compliance with deadlines, performance, suitability, quality of publications, professional development, etc. Psychological and psychometric evaluations are also part of this stage (arts. 42-60).
- **Decision:** If the judge attains a certain score (good or excellent for conduct and a 70% score for suitability), they move to the Plenary of the *Junta* for deliberation, which determines whether the judge is ratified (arts. 61-64). There is an option to request reconsideration of the decision (arts. 65-73).

The decisions of the *Junta* on ratification are discretionary administrative acts, not disciplinary, but must be immediately implemented. The non-ratified judge or prosecutor must leave the post the day after the notification of the decision, even if the person appeals to the *Junta* itself in a *recurso de reconsideración,* asking it to reconsider its decision. Otherwise, the *Junta's* decision is final. It is not appealable before a court or any other instance (art. 37). At the conclusion of a ratification procedure, a dismissed judge or prosecutor is disbarred for life and cannot ever re-join the judiciary or the procuratorship.

Tenured judges can thus be subjected to a relatively discretionary dismissal through the current ratification mechanism and are consequently compelled to hold precarious employment. Loyalty to the law can easily

be superseded by loyalty to the assessors and superiors, with irreversible damage to the rule of law and to the obligation to judge a case on its merits.

Indeed, some have seen this ratification process as arbitrary and detrimental to judicial independence (Gutarra, 2020[41]). The IACHR has flagged that the process has been misused in the past by the *Junta's* predecessor institution, the National Council of the Magistrature (Consejo Nacional de la Magistratura); the Court declared that the process has been used as a mechanism to sanction magistrates and public prosecutors, which runs afoul of judicial independence (case Cuya Lavy v. Peru) (Inter-American Court of Human Rights, 2021[42]).

The resolution of the IACHR pointed out serious violations of the American Convention of this ratification procedure. In response, in January 2022, the judiciary, including the Plenary of the Supreme Court and the Superior Courts of the country, requested that the *Junta* not proceed with the ratification process and that legislative changes to the current legal framework be adopted to ensure that Peru complies with the declaration of the IACHR in the case Cuya Lavy v. Peru. For its part, the *Junta* asked the National Judges' Association (*Asociación de Jueces para la Justicia y Democracia*, JUSDEM) in February 2022 to assess the effects of the IACHR decision on the ratification procedure.

In response, the JUSDEM stated almost immediately that the IACHR decision condemned the current Peruvian ratification system because it is a sanction, a disciplinary mechanism being applied without due process and cause (Asociación de Jueces para la Justicia y Democracia, 2022[43]). The IACHR decision clearly invalidates the ratification regulation (legal ground 205 of the sentence), while the JUSDEM opinion underlines that the ratification regulation contains serious shortcomings and undermines judicial independence. Indeed, the IACHR decision called for amending the Peruvian Constitution on the issue of ratification and evaluation of judges and prosecutors (legal ground 206), while the JUSDEM opinion suggested that the ratification and evaluation procedures of judges and prosecutors be suspended until the domestic legal framework is adjusted to conform with the IACHR decision.

For the time being, no plans have been announced concerning a modification of the current ratification regulation. The existing framework contains no judicial procedure for appealing administrative decisions on judges' and prosecutors' ratification. Before the reform of 2019, ratification decisions did not need to be justified, or if justified and the incumbent heard, the latter was not allowed to initiate a constitutional *amparo* procedure: an extraordinary legal remedy against violations of constitutional rights by officials and government agencies. In OECD Member countries, a judge is never evaluated on the contents of his/her decisions, which should only be assessed by a higher court through the legally foreseen appeal procedures. This procedure is clearly at loggerheads with international recommendations on the independence of judges.

Performance appraisals

Performance appraisals are regulated in art. 38 of the Organic Law on the *Junta* and the Regulation on Performance Appraisal (approved by Resolution No. 515-2022-JNJ from 28 April 2022). This procedure is conducted every three and a half years by the *Junta* together with AMAG, and its goal is to provide recommendations to evaluated judges and prosecutors to follow specific training or other ways to improve their performance. AMAG uses the recommendations to design training programmes. The recommendations also indicate which specific training activities an evaluated judge or prosecutor must follow. Beyond the output derived from individuals' performance appraisals, there is no systematic training needs analysis done by AMAG, the *Junta* or the Judicial Power.

Most importantly, these training activities required by the performance appraisal are to be delivered by AMAG (art. 40-3), a body enjoying constitutional standing within the Judicial Power, which delivers training in exchange for tuition fees paid by each individual participant in the training, not by his/her institution. The *Junta* monitors whether the relevant judge or prosecutor follows up on the individual training

recommendations. This arrangement may generate questions of institutional conflict of interest for AMAG while evaluating judges and prosecutors and sending them for training at AMAG itself.

The appraisal proceeding has features like those in the ratification process, including calling/convocation, appearance, evaluation and recommendation. The evaluation stage focuses on competencies (digital, teamwork, leadership, service vocation) and abilities related to judicial work, knowledge, management of the judicial office and the integrity of the judge. It is carried out by evaluating reports, resolutions or rulings of the person being evaluated (Regulation on Performance Appraisal).

As stated with respect to the regulation mentioned above, performance appraisal is complementary and independent of the ratification and disciplinary proceedings; however, the results of this evaluation can be considered by the *Junta* in ratification proceedings and in the selection and appointment of judges (Regulation on Performance Appraisal).

As stated above, OECD Member country practice suggests that a judge should not be evaluated on the contents of his/her decisions, which should only be assessed by a higher court through the legally foreseen appeal procedures. This is particularly important given that the results of an evaluation and compliance with its recommendations are considered in the ratification of judges, which could undermine their impartiality if it is considered that their rulings could influence the ratification process.

Improving accountability mechanisms respecting judges and prosecutors is an important objective in modernising judicial systems across the OECD. Performance appraisal is one tool to pursue this objective. In Peru, the ratification procedure is another one. However, these need to be refined in Peru: stronger procedural guarantees protecting judicial independence and the judicial career must be given to those being scrutinised. In principle, a judge's performance should be appraised in a way that protects his/her personal independence and freedom of judgment in resolving individual cases.

Judicial independence and impartiality do not occur in the abstract but in concrete settings where judges, as human beings, face all sorts of influences that may affect clarity of mind, impartiality and independence. Therefore, knowledge of the law, a sound development of the "art of judging" and a sense of justice are necessary assets in a judge. Judges are given enormous power by the state over citizens, businesses, and government, and, as with any other power, Judicial Power needs to be checked in a democracy. Cultivating these features requires continuous training, awareness raising and socialisation in public service, as well as in the values underpinning democratic pluralism.

Accountability of sitting judges is a requirement in democratic societies, but the accountability framework needs to be carefully designed, as with any HRM tool, directly or indirectly aimed at enhancing judicial accountability (discipline, performance appraisal, merit-based recruitment, promotion and retention, professional improvement through training, variable remuneration and perquisites) can be susceptible to arbitrariness, abuse and malpractice. Applying these tools, therefore, requires clear guidelines that protect the integrity, transparency, independence and impartiality of the judicial decision-making process. Regardless of how imperfect these mechanisms might be, though, they are nevertheless needed in liberal democracies to promote and protect the rule of law, to safeguard against the abuse of power and misbehaviour by judges and to promote the individual improvement and professional development of judges, as well as the quality of the judiciary.

4.4.5. Judges' remuneration

Remuneration trends in OECD Member countries

Remuneration across OECD Member countries varies considerably according to the wealth of the state and the state of the judge's career. It also varies in states and jurisdictions where judges are recruited at the beginning of their professional careers or as experienced lawyers (as in Israel, Switzerland, and

Scotland and Northern Ireland [United Kingdom]). The European Commission for the Efficiency of Justice (CEPEJ) has considered three groups (CEPEJ, 2022[44]):

- Salaries are the lowest at the beginning of their careers, compared to the average salary (less than twice the average salary), but a significant catch-up can be noted during their careers (multiplied by two to more than two and a half against the beginning of the career) (e.g. Austria, Belgium, France, Germany, Sweden).
- Salaries are quite high at the beginning of their careers, compared to the average salary (between two and four times the average salary), and it increases during their careers (multiplied by more than two against the beginning) (e.g. Czech Republic (hereafter, Czechia), Portugal, Spain).
- Salaries are high at the beginning of their careers (at the beginning, earning more than four times the average salary and at the end, more than six times) (e.g. Scotland and Northern Ireland), bearing in mind that judges in this group are recruited among already experienced lawyers.

According to international best standards and practices, the level of judges' remuneration contributes to their independence, and they should be offered a level of remuneration corresponding to their status and responsibilities, which should be sufficient to shield them from inducements aimed at influencing their decisions (Council of Europe, 2010[1]).

Remuneration in Peru

The Peruvian remuneration scheme for judges is complex. It is outlined in arts. 186 and 187 of the 1993 Organic Law on the Judicial Power, as amended. The take-home pay of judges is based on four components: basic pay; a jurisdictional function bonus; operational expenditures, which shall be partially a non-justifiable lump sum (amounting to 90%), but 10% needs to be justified by recipients; and a supplement for seniority/length of service (25% of basic pay after ten years for all judges except those on the Supreme Court, for whom the entitlement to this supplement is every five years and has another legal regime).

Not all components are considered pensionable remuneration. Disputes and controversies on this subject are widespread among experts and stakeholders, especially between MEF and the Supreme Court/Judicial Power. Perhaps clarifying the remuneration system for the judiciary and prosecutors could enhance legal certainty and better internal and external equity in the system. In fact, it appears that the proportions envisaged by the Organic Law on the Judicial Power (art. 186-5b) are no longer in practice after several years of political negotiations on the issue. Those proportions were that judges of Categories 1 to 3 (Justice of the Peace, Specialised and Superior judges) should be remunerated 70%, 80% and 90%, respectively, of the remuneration paid to judges of the 4th category (Supreme Court judges). In practice, those percentages have shrunk to 26%, 41% and 53%, respectively (Limo Sánchez, 2019[45]).

Nevertheless, given the circumstances, by OECD averages, Peruvian judges enjoy similar salaries, except for supernumeraries, whose remuneration is about 30% of tenured judges (Table 4.4), according to Supreme Decree of the President of the Republic No. 353-2019-EF (Official Gazette, El Peruano, of 29 November 2019, pages 25-26). Between October 2021 and September 2022, the average salary in urban areas of Peru was PEN 1 558 (EUR 383) (INEI, 2022[46]). Considering this number, the salary of supernumerary judges is between 2 and 4 times the average salary, and that of tenured judges is between 6 and 22 times the average salary.

Table 4.4. Peru's judges' salary scale

	Monthly salary in PEN	Monthly salary in EUR (approximate)
Tenured Supreme Judge	35 000	8 600
Tenured Superior Judge	19 000	4 673
Tenured Specialised Judge	15 000	3 690
Tenured Justice of the Peace Judge	9 500	2 337
Supernumerary Superior Judge	6 505	1 601
Supernumerary Specialised Judge	4 705	1 158
Supernumerary Justice of the Peace Judge	3 505	863

Note: A rough salary table for the year 2020 in Peruvian soles (PEN) and its approximate equivalent values in EUR for tenured judges (without length of service, but including basic pay, jurisdictional bonus, and operational expenditures) and Supreme Decree on supernumeraries (for these latter operational expenses are not included). Is it worth highlighting that, according to the National Institute of Statistics and Informatics (INEI), the average salary in Peru between October 2021 and September 2022 is PEN 1 508 (some EUR 383). The calculating reference is the "revenue unit in the public sector" (*unidad de ingreso en el sector público*, UISP), an index equivalent to PEN 2 600 as of 2016. For Supreme Judges, the bonus was 4.5 UISP (PEN 11 700) from 2018 onwards. Supreme Judges with more than five years of service may earn PEN 45 000 per month. Peruvian judicial salaries are well above those in many OECD Member countries and are equivalent in absolute numbers to other OECD Member countries. However, the cost of living is much cheaper in Peru. So, the judicial salaries in Peru are excellent (except for those in precarity).
Source: (Limo Sánchez, 2019[45]), "La situación laboral de los jueces del Perú: de la precariedad de sus derechos a la afectación de su dignidad", *Pasión por el Derecho*, 31 December 2019, https://lpderecho.pe/situacion-laboral-jueces-peru-precariedad-derechos-afectacion-dignidad/; Supreme Decree No. 353-2019-EF, which approves the remuneration and bonification of supernumerary judges of the judiciary, from 29 November 2019.

4.4.6. Discipline and integrity

Discipline and integrity trends in OECD Member countries

Disciplinary rules focus on specific acts or behaviours that the legislator considers legal breaches. In contrast, professional standards represent good or best practices that may or may not coincide with acts that could contravene the law. Misconduct subject to disciplinary liability should be serious, obvious, and flagrant and go beyond being perceived to contravene a professional standard. Breaches of professional standards should be sanctionable if the facts also demonstrate that the behaviour has contravened disciplinary rules. In some countries, however, disciplinary rules are formulated to be coterminous with professional standards, so a breach of a standard is a breach of the disciplinary rule.

Thus, breaching a code of ethics need not necessarily lead to disciplinary liability. Indeed, some countries distinguish between a code of ethics and a code of conduct, with breaches of the latter only being subject to disciplinary liability. This is the case in Croatia, Belgium, Italy, Romania, Slovenia, Spain and Sweden.

If a code of ethics is not a legal instrument but rather a set of behavioural guidelines, breaching it should not necessarily constitute grounds for disciplinary action. Yet if the code of ethics has been adopted in the format of a binding regulation, breaching the code can be taken as a violation of legal obligations and consequently liable to disciplinary sanction. As a result, distinct systems have been established to regulate or enforce professional ethical standards in some countries. For instance, in Slovenia, failure to observe such standards may attract a sanction before a Court of Honour within the Judges' Association, not before the judges' disciplinary body. In Czechia, in a dire situation of non-observance of the rules of professional conduct, a judge may be excluded from the Judges' Union, which is the source of these principles.

One of the most prominent sources defining judicial obligations is a country's Constitution or Basic Law, which usually mandates judges to be independent and impartial. The rationale for most legal obligations imposed on judges flows from these constitutional mandates (e.g. incompatibilities, conflict of interest). In some countries, work discipline (complying with office hours, delivering rulings within deadlines, etc.) forms part of the judge's duties, the breaching of which may bear disciplinary liability.

In most OECD Member countries, any individual may lodge a complaint requesting disciplinary procedures against a judge. Complaints may even be lodged anonymously in some countries. However, the issuing of

an administrative act opening a preliminary inquiry or a disciplinary procedure against a judge is reserved to the public authority only. Experience in OECD Members points to three categories of sanctions: 1) **moral** (remonstration, reprimand, warning, etc.) that will tarnish the honour or reputation of the judge; 2) **pecuniary or economic** (fines, suspension of remuneration); and 3) sanctions **affecting a judge's career** or membership in the judiciary (long suspension, demotion, compulsory transfer, compulsory retirement before age, dismissal).

Across OECD Member countries, there are diverse types of disciplinary bodies, and they mostly follow three distinct systems (see Box 4.10).

Box 4.10. Disciplinary bodies in OECD Member countries

National Councils for the Judiciary (or a special committee or other body) and its decisions may be appealed to special disciplinary panels or courts (e.g. France, Italy, Mexico, Spain; and Colombia with the *Comisión Nacional de Disciplina Judicial*, which depends on the National Council for the Judiciary).

Independent panels or committees outside the National Council for the Judiciary or with the involvement of the head of the judiciary or the president of a court (e.g., in Norway with a separate supervisory committee for disciplinary cases; in England and Wales where the Lord Chief Justice makes decisions on disciplinary matters with the agreement of the Lord Chancellor).

Courts of Justice (including disciplinary panels or special disciplinary courts) **or Supreme Courts** (e.g., in Germany, there is a special senate within the German Federal Court of Justice for cases against federal judges, while special tribunals exist for judges).

Source: (OSCE, 2019[47]), *Note on International Standards and Good Practices of Disciplinary Proceedings against Judges*, https://www.osce.org/odihr/410387.

Discipline and integrity in Peru

The Organic Law on the Judicial Power (art. 184) defines the obligations of judges as a mix of personal labour obligations (e.g. observing working hours), procedural-related obligations (e.g. to demand from the parties in the process that precise their claims) and integrity-related obligations (e.g. avoiding conflict of interest). Regarding conflict of interest, magistrates are required to recuse themselves from a case when the magistrate or their spouse or partner has or has had an interest in or professional relationship with one of the parties in the case (art. 196[7]); it is up to the National Authority for the Control of the Judicial Power to identify judges' possible conflict of interest (art. 102-A.1) (OECD, 2023[48]).

The new Criminal Procedures Code (Legislative Decree 957) (Chapter V, arts. 53-59) further regulates conflict of interest by establishing several factors for the judge to decline jurisdiction, including interest in the process, friendship, enmity, being creditors or debtors of one of the parties, among other reasons (art. 53). If the judge does not decline jurisdiction, the parties can challenge them by alleging one of the causes listed in the clause, explaining the cause, and providing, if possible, elements to prove it (art. 54).

Other measures to ensure the integrity and impartiality of judges are provided and regulated by the Law on the Judicial Career. Some of them include the duty of recusal: judges must declare those cases in which they may be aware of illegally exercising their functions and that such conduct would contravene professional ethics (art. 33-12). Judges can only exercise their jurisdictional function with the possibility of also teaching at a university (art. 33-13 and art. 40-3). In addition, judges or their spouses or cohabitants or family members cannot receive from the litigants or their lawyers' donations, gifts, entertainment, hospitality, or intestate succession; nor can they receive publications, trips or training/capacity-building

offers from any institution that has a case against the state (art. 40-2). Judges cannot influence or intervene in any way in the result of another judicial proceeding (art. 40-7).

There are no disciplinary liabilities for discrepancies in legal interpretation (art. 212), where judges are expected to be independent. Disciplinary penalties are appealable through administrative remedies: revision (before the same authority), appeal (before a higher authority) and reconsideration, but not before the Administrative Court (Law 27444 of 2001). As in other OECD Member countries, the Law on the Judicial Career regulates three types of misconduct: minor (*leve*), serious (*grave*) and profoundly serious (*muy grave*) (arts. 46-48). The sanctions are reprimand, fines, suspension, and destitution (art. 50-55), and there are guidelines to establish the proportionality between both (art. 51).

The competent authorities to apply disciplinary action against judges are the *Junta* or the control organs of the judiciary (Law on the Judicial Career, art. 63). The National Authority for the Control of the Judicial Power (replacing the existing Judicial Oversight Office [*Oficina de Control de la Magistratura*, OCMA]) was created through Law 30943 of 2019, which started operations in August 2023 when the *Junta* appointed its first head for the period 2023-28. Its purpose is to establish a mechanism of external functional control of judges, except Supreme Court judges, who are under the direct remit of the *Junta*.

Functional control includes prevention, supervision, inspection, investigation, undertaking disciplinary actions and imposing disciplinary penalties, as foreseen in the Law on the Judicial Career. The head of the National Authority is appointed through an open, merit-based national competition and reports to the *Junta*. The National Authority is also expected to provide analyses on the functioning of judicial offices and their internal working processes and propose recommendations for their improvement. This Authority is different from the existing General Inspectorate of the Judicial Power, but the differentiation is not clear yet from the wording of the law. The head of the National Authority will also head the Inspectorate (art. 103-B), but a new body of specialised judges on disciplinary control is created (art. 103-C), along with a mechanism to facilitate whistleblowing (art. 103-D). These changes respond to a policy designed to reduce corruption. However, it is too early to assess the operational performance of this new administrative body.

It is also incumbent upon the *Junta* to apply the sanction of destitution to judges and prosecutors at all levels and to apply sanctions of warning and reprimand or suspension to members of the Supreme Court and Supreme Prosecutors. The Organic Law of the *Junta* regulates the grounds for these kinds of sanctions (arts. 41-43) and the proceeding (art. 43 and Chapter V). The control body of the judiciary adjudicates all the other cases.

An ethics code for the judiciary was adopted in 2003 by the Plenary Chamber of the Supreme Court, which established a Judicial Ethics Committee. A regulation was adopted in 2019, adopting a new code of ethics referring as interpretative guidance to the Bangalore Principles of Judicial Conduct and the UN Principles on Judicial Independence. There is also an Ibero-American Code of Judicial Ethics, adopted in 2006 and amended in 2014, to which Peru adhered. These codes contain guidance on conflict of interest. The Law on the National Authority for the Control of the Judicial Power contains provisions for the protection of whistleblowing on corruption.

All this still needs to be developed in practice, however. The effective implementation of these norms and the safeguarding of the independence and impartiality of judges are not guaranteed. According to the Ombuds Office, out of all complaints received by the Authority for the Control of the Judicial Power and its regional offices between 2016 and 2018, only 11% have concluded with a sanction, mostly fines and reprimands (90% of the sanctions), while the others are still pending or have been filed (Defensoría del Pueblo, 2020[49]). The Ombuds Office's report mentions that one of the factors contributing to this consistently high number of minor sanctions (and the low rate of more serious disciplinary sanctions) (see Table 4.5) is that the law allows the disciplinary organs to impose less severe sanctions for each of the misconducts if it is so considered, without clear criteria [Law on the Judicial Career, art 51 (Defensoría del Pueblo, 2020[49])]. The ambiguity and lack of precision regarding the application of sanctions allow for different interpretations and criteria regarding what is sanctionable. The vagueness of some disciplinary

misconduct carries the risk of arbitrary application and violation of judges' independence (Organization for Security and Co-operation in Europe, 2019[50]).

Table 4.5. Magistrates and jurisdictional assistants' sanctions in 2022

	Magistrates	Jurisdictional assistants	Total
Reprimand	630 (37%)	2 187 (61%)	2 817 (53%)
Fine	887 (52%)	1 334 (37%)	2 221 (42%)
Suspension	109 (6%)	46 (1%)	155 (3%)
Destitution Proposition to the *Junta*	71 (4%)	29 (0.8%)	100 (1.9%)
Total	1 697 (32%)	3 596 (68%)	5 293 (100%)

Source: OECD's own elaboration based on Oficina de Control de la Magistratura, https://ocma.pj.gob.pe/Estadisticas/MapaInteractivo.

The lack of clarity regarding the law and harmonised and unified criteria governing the application of disciplinary rules can be explained by the existence of three different organs that conduct disciplinary proceedings for magistrates, public prosecutors, and jurisdictional auxiliaries: the *Junta* (as an autonomous and independent institution), the OCMA and the Executive Council of the Judiciary, both part of the judicial branch (see Chapter 3 on the judiciary and disciplinary roles).

Compared with other OECD Member countries' disciplinary bodies (see Box 4.10), the existence of different bodies with disciplinary roles and the vagueness of the law in Peru can undermine equal treatment before the law and the independence of judges.

4.4.7. Gender parity within the judiciary and the Commission on Gender Justice

Enhancing gender equality in the judiciary: Trends in OECD Member countries

Having balanced gender representation in judicial decision-making positions, such as a President of the Supreme Court, President of Higher Courts or the Executive Council of the Judiciary, is crucial for the development and implementation of policies and for the allocation of resources to prevent gender discrimination and promote and advance gender equality within the justice system (Box 4.11). Women in leadership positions can not only raise awareness concerning gender equality and gender mainstreaming activities but can also be inspirational role models for other women judges to assume such roles (OECD, 2023[51]).

Box 4.11. OECD Member practices in promoting gender equality in the justice system

Chile adopted an action plan on gender mainstreaming in the judiciary in 2015. The action plan created a Working Group on Gender Issues as a body of knowledge and observation regarding the incorporation of the gender perspective into the judicial branch. The Working Group comprises members of the judiciary as well as ministers, judges and trade union representatives. The action plan sets a guiding framework and lays out actions to be taken by the Working Group, as follows: analysing and evaluating gender inequalities and gender-based discrimination in the exercise of jurisdictional activity, as well as identifying gender equality and mainstreaming objectives in the judiciary. Considering these objectives set by the action plan, the Working Group participated actively in analysing the gender-diagnostic studies and in elaborating proposals to develop a gender policy for the judiciary. The adoption of the action plan and the creation of the Working Group indicate strategic promotion of gender equality and mainstreaming within the judiciary in Chile.

In **Mexico**, the Federal Electoral Tribunal's human resources department established a Gender Equality Unit to address obstacles deterring women from judiciary careers. These obstacles included limited family-friendly policies, mobbing and sexual harassment. The unit implemented measures like shorter working hours, paternity leave and raising awareness of gender stereotypes in the workplace. Yet, the distance of the Gender Equality Unit from the apex of decision making has significantly curtailed its influence. It has been transferred to the Presidential Office of the Court to increase its leverage. However, its influence on decision making is still uneven and depends on the personality of the President of the Court.

The **Portuguese** Gender Equality Policy Framework is guided by the Fifth National Plan for Gender Equality, Citizenship and Non-discrimination 2014-2017. Under this policy framework, the Ministry of Justice developed its own Second Plan for Gender Equality 2015-2017. This plan for gender equality builds on a gender assessment conducted by the Ministry of Justice, which included a study of characterisation, by gender, of the leading posts of the Ministry of Justice; evolution, by gender, of the professions associated with justice in the years 2010 to 2013; and evaluation of the implementation of the intervention measures proposed in the First Plan for Equality of the Ministry of Justice.

The Directorate of Judicial Services, and more specifically, the Human Resources Branch of the Judiciary in **France**, guarantees all magistrates equal access to all posts. A gender analysis of judicial recruitment has been conducted over several decades in France and allows for a comparison of data over a long-time span. Statistics are regularly drawn up on the distribution of people according to the age pyramid and the distribution of senior posts.

Source: (OECD, 2017[52]), *Building an Inclusive Mexico: Policies and Good Governance for Gender Equality*; (OECD, 2019[53]), *Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership*; (OECD, 2023[25]), *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*.

As of 2018, women, on average, made up 61% of the professional judges across OECD Member countries that are also EU Member States, a 2 percentage-point increase since 2016. The representation of women in professional judgeships in OECD Member countries ranges from 81% in Latvia to a low of 33% in the United Kingdom. In Greece, Ireland, Luxembourg and Switzerland, the share of women has risen steeply (around 10%) since 2010. However, uneven gender representation is still observed in Supreme Courts, with an average of 36% in 2018 (OECD, 2021[54]). To increase the representation of women in the judiciary, OECD Member countries have implemented concrete actions in line with the relevant provisions of the OECD *Recommendation on Gender Equality in Public Life* [OECD/LEGAL/0418] adopted in 2015 (Box 4.12).

Box 4.12. Gender balance in judicial institutions: Relevant provisions of the 2015 OECD Recommendation on Gender Equality in Public Life

The 2015 Recommendation promotes a government-wide strategy for gender equality reform, including recommendations to judicial institutions to achieve gender balance.

Considering measures to achieve gender-balanced representation in public life, including in decision-making positions, by encouraging their participation in public institutions, including:

- Introducing measures to enable equal access to opportunities in senior public service and judicial appointments, such as disclosure requirements, target setting or quotas, while ensuring a transparent and merit-based approach in judicial and senior public sector appointments through open competition, clear recruitment standards and wide vacancy advertisement.
- Mainstreaming work-life balance and family-friendly work practices at the top level in public institutions and promoting gender-sensitive working conditions (e.g. reviewing internal

procedures, reconsidering traditional working hours, developing schemes to support the reconciliation of family and professional obligations, providing incentives to men to take available care leave and flexible work entitlements).

- Facilitating capacity and leadership development opportunities, mentoring, networking and other training programmes promoting female role models in public life and encouraging active engagement of men in promoting gender equality.
- Monitoring gender balance in public institutions, including in leadership positions and different occupational groups, through regular data collection, such as the use of employee surveys, and reassessing its alignment with overall gender equality objectives and priorities, considering the results of evaluations.
- Adopting measures to tackle the root causes of barriers to women's access to decision-making positions and to improve women's image in society by developing information campaigns and awareness-raising programmes about gender stereotypes, conscious and unconscious biases and social and economic benefits of gender equality while addressing double or multiple discrimination.

Source: *OECD Recommendation of the Council on Gender Equality in Public Life,* https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0418.

Enhancing gender equality in the judiciary in Peru

In 2021, Peru achieved gender parity within the Supreme Court of Justice as more than half of the judges of the Supreme Court were women (compared to 30.6% in 2020). That said, most were temporary (as they were tenured Superior judges from different courts at the national level), which can pose challenges to ensuring ongoing parity (Huaita Alegre, M., 2021[55]). This was reached in the context of the development and implementation of the National Policy on Gender Equality, one of the objectives of which is to achieve greater participation of women in decision-making spaces and reduce institutional barriers to that aim.[4] The appointment in 2021-22 of a woman president of the judiciary turned gender parity into an institutional objective. It boosted reforms to achieve parity in management positions and the chambers of the Supreme Court, using her functions and power to allocate women to these positions.

Table 4.6. Gender parity among judges of the Peruvian judiciary, June 2023

Category	Total	Men	%	Women	%
Supreme Judge	63	41	65	22	35
Higher Judge	820	539	66	281	34
Specialised or Mixed Judge	2 072	1 159	56	913	44
Justice of the Peace (Judge)	640	319	50	321	50
Total tenured and provisional judges	3 595	2 058	57	1 537	43
Justice of the Peace June 2022	5 599	4 902	88	697	12
Total	9 194	6 960	75.70	2 234	24.3

Source: OECD's own elaboration with information provided by the Peruvian judiciary on 23 November 2023, through Oficio No. 5982-2023-GRHB-GG-PJ.

Not counting Justices of the Peace, men constitute 57% and women 43% of magistrates across the judiciary in Peru (see Table 4.6). However, the number of women decreases when it comes to higher positions. For instance, the Executive Council of the Judiciary, as a body that plays a key role in the

development of the General Policy of the Judiciary and its Development Plan and in the approval of the judiciary's budget proposal, is composed of four men and one woman, (as of November 2023).

As of June 2023, women constitute 35% of Supreme judges. There are only six women-tenured judges within the Supreme Court against 16 provisional, which does not ensure their permanence. Likewise, only 34% of women are Higher judges, of which 47% are tenured judges. In the case of the Presidents of Higher Courts, only 8 are women, while 27 are men (23% compared to 77%) (see Table 4.7).

Table 4.7. Gender parity among Presidents of Higher Courts in Peru, June 2023

	Absolute numbers	Percentage (%)
Men	27	77
Women	8	23

Source: OECD's own elaboration with information provided by the Peruvian judiciary on 23 November 2023, through Oficio No. 5982-2023-GRHB-GG-PJ.

The achievement of gender parity has been the least successful in criminal, civil, mixed and transit judges, with 65% in these speciality disciplines being men and 35% women in 2021. On the other hand, women, family and contentious-administrative judges surpass men (68% women to 32% men, and 59% women to 41% men, respectively).

Gender parity and diversity are important across all areas of the judicial system but take on specific importance in criminal and civil law, as the bigger number of gender-based cases are found in these specialities, which is why it is necessary to identify barriers to and opportunities for gender equality and adopt measures to ensure greater numbers of women applicants and to widen gender balance. If the composition of the judiciary reflects the composition of society, gender parity can confer added legitimacy on the judiciary as it will be perceived as being more capable of delivering equal justice for all and upholding equality before the law (OECD, 2023[51]).

As the appointment of women Supreme Court judges is due to the political will and attributions of the President of the Supreme Court, it is important that parity within the Supreme Court, the judiciary and other justice institutions be achieved in a permanent and institutionalised way. While current progress is laudable, in view of the temporary nature of the appointment of provisional judges, there could be significant backsliding if there is no institutionalised approach to ensure gender-balanced appointments in the judiciary.

It is important to engage different justice sector actors to advance gender equality. This includes the *Junta* promoting the selection and appointment of women as tenured judges and implementing training and measures to reduce gender bias and gaps. It also includes AMAG to build capacity on gender equality and gender-based violence through workshops to support women candidates in preparing for the judicial selection process.

In Peru, the Commission on Gender Justice played a crucial role in the promotion of gender equality and in enhancing gender diversity within the institution. As seen in Chapter 3, the Commission is mandated to promote the guarantee of equal access to justice for the population and to strengthen the judiciary's work towards this objective by establishing the gender approach as a policy to be applied at all levels and organisational structures. Besides the Commission, there are 35 District Commissions of Gender Justice at the national level, each with its own annual plan and receiving support from the main commission.

The 2019-2022 National Policy on Gender Equality has also considerably contributed to achieving gender equality, greater political participation, and access to decision-making roles for women.

Building on good practices adopted by the Commission on Gender Justice, it is important to monitor gender balance systematically through regular data collection, such as the use of employee surveys. It is also critical to use the results of evaluations in assessing the alignment of practice with overall gender equality objectives and priorities and, if necessary, adjust course if monitoring information points to these objectives not being met properly (OECD, 2023[51]).

Even though the judiciary has demonstrated a good start with the implementation of the surveys and considering that most of these policies and activities are recent, it is crucial to develop well-defined gender objectives linked to priority actions and clear timelines, monitor their implementation, and evaluate their impact against set targets (OECD, 2023[51]). Furthermore, adopting an institutionalised approach to ensure gender-balanced appointments in the judiciary is important. The role of the *Junta* is central in appointing women-tenured judges, as is co-ordinating with the judiciary for this purpose. Gender equality in the judiciary needs to be achieved at the national, judicial districts, and court levels in the long term.

4.5. Summary assessment

While Peru has taken active steps to put in place a comprehensive institutional framework to ensure sound governance in the justice sector, the country's fragmented justice management system has blurred lines of responsibility. This tends to intensify overlap, duplication and conflicts of authorities and competencies in the governance of the judicial system, while limiting their accountability.

Mechanisms governing budget allocation to the justice sector, including co-ordination and negotiation arrangements used to define this allocation, appear restricted. The judiciary engages in limited system-wide, medium-term strategic planning, including budgetary and financial planning, and has yet to develop monitoring and evaluation frameworks that can be used to demonstrate to itself, MEF and the public the impact of its spending on improving legal and judicial outcomes for people. In addition, evidence suggests that in some instances, the courts are unable to fully spend the resources they have been allocated, notably in human resources hiring, and face significant challenges in demonstrating value for money and strategic results from spending the resources they do have. In this connection, public accountability frameworks and mechanisms are uneven across the judiciary.

Most importantly, there is a strong need to strengthen the existing institutional, legal and operational framework safeguarding the independence of judges. The most salient challenges are judges' ratification, performance appraisal schemes, the high number of judges under temporary employment and the possibility of the Ombuds Office interfering in individual judicial proceedings by direct injunctions.

In addition, even though the remuneration of judges and prosecutors in Peru is considered in line with OECD Member countries, judges in precarious jobs are remunerated less than tenured judges, which is a risk to their impartiality. A similar conclusion can be reached for prosecutors. Moreover, there is a risk that even formally tenured judges and prosecutors *(titulares*) may not be impartial due to the system of judge's ratification and performance appraisal, which can be used to influence judges' decisions or be used as a sanction, as mentioned by the IACHR.

The analysis of the judicial recruitment system also highlights that the Peruvian system may be characterised as a mix of the civil service model, common in civil law countries, but leaning toward a position-based system rather than a career system. It could also be categorised as a professional system prevalent in Anglo-Saxon countries, although with a range of relatively discretionary decisions in the recruitment process and little guarantees of due process for those willing to participate in it.

The legal framework for disciplining judges contains all the standard elements found in OECD Member countries in the Constitution, criminal procedural laws, disciplinary sanctions and breaches of codes of ethics. However, the ambiguity and lack of precision regarding the application of sanctions may allow for different interpretations and criteria of what is sanctionable and how. The vagueness in regulating some

disciplinary misconduct carries the risk of arbitrary application and violation of judges' independence. Therefore, consistency and equal treatment may not be guaranteed. This limited clarity regarding the law and the absence of harmonised and unified criteria governing the application of disciplinary rules could be explained by the existence of three different bodies that conduct disciplinary proceedings for magistrates, public prosecutors and jurisdictional auxiliaries: the *Junta* (as an autonomous and independent institution), the OCMA (soon be replaced by the National Control Authority of the Judiciary) and the Executive Council of the Judiciary, both part of the judicial branch. Consequently, the effective implementation of the norms to enforce disciplinary rules and integrity within the justice system and safeguard the independence and impartiality of judges can be better defined.

Finally, gender equality within the judiciary and the measures adopted for its promotion have increased, partly due to the appointment of women to high-level positions and the political commitment to increasing gender parity and women's representation in the justice system. It would be important, however, to further institutionalise these practices to ensure sustainable and equitable approaches. This aspect will be further developed in Chapter 6.

4.6. Recommendations

A range of institutional, legal and structural constraints limits Peru's ability to modernise its justice system in a way that would render it more transparent and independent. In light of the above, Peru could consider implementing the following recommendations:

4.6.1. Key recommendations:

Take measures to ensure the constitutional guarantee of judicial independence, including the overhaul of the performance appraisal, ratification and evaluation of sitting judges to avoid risks to their independence and impartiality. To facilitate the implementation of this recommendation Peru may consider:

- ***Guaranteeing judges' full independence and impartiality***, ensuring they can deliver justice free of interference and bias. Several factors currently undermine judicial independence and impartiality. Some relate to the current human resource management system (ratification, performance appraisal and widespread temporality). Other factors stem from the legally recognised possibilities of other powers or institutions (e.g., the Ombuds Office or the National Board of Justice [*Junta*]) to encroach upon the decision making of judges while deciding individual cases. The substantive contents of judicial rulings should not be evaluated by administrative instances outside the appeal system before higher courts, as is the case in OECD Member countries.
- ***Reviewing the current ratification and evaluation of judges,*** as recommended by the IACHR decision on Cuya Lavy and others v. Peru of 2021 and the JUSDEM. The ratification and evaluation mechanisms may negatively affect the independence and impartiality of sitting judges and prosecutors while being detrimental to efforts to prevent corruption at the same time.
- ***Re-evaluating the remuneration system of judges and prosecutors***. Given the circumstances, by OECD averages, Peruvian judges enjoy proportionally similar salaries, except for supernumeraries, whose remuneration is about 30% of that of tenured judges in Peru. However, clarifying the remuneration system for the judiciary and prosecutors could enhance legal certainty and improve internal and external equity in the system.
- ***Reinforcing accountability mechanisms of judges and prosecutors***. The accountability framework for judges, as any accountability framework, needs to be carefully designed so that it minimises the potential for arbitrariness, abuse and malpractice when it is applied. Applying these

tools, therefore, requires clear guidelines that protect the integrity, transparency, independence and impartiality of the judicial decision-making process.

- ***Modernising and streamlining the disciplinary system of judges*** using OECD Member country best practices. The legal ambiguity and lack of precision regarding the application of sanctions allow for different interpretations and criteria of what is sanctionable and how, not guaranteeing equal treatment.

Further clarify the roles and functions of the highest bodies of the judiciary to avoid overlap and duplication as well as conflicts of authorities and competences. This is of particular importance in the case of investigation and sanction of magistrates. To implement this recommendation Peru may consider:

- ***Better defining the roles and functions of Peru's judiciary's highest bodies to avoid overlap and duplication.*** The judiciary could consider better defining the roles and functions of its highest bodies to avoid overlap, duplication and conflicts of authorities and competencies. This is particularly important in the case of investigation and sanction of magistrates, as the Judicial Power Executive Council (CEPJ), the OCMA and the *Junta* have competence on this issue. The same recommendations apply to the programmes currently operated by the judiciary (such as legal counsellors) with a view to identifying how greater efficiency and effectiveness can be achieved through the transfer of responsibility to the Ministry of Justice and Human Rights (MINJUSDH) or, with co-ordination, to another part of the executive (such as the Ministry of Women and Vulnerable Populations).

Continue to implement measures to reduce judges' and prosecutors' temporality (provisional and supernumerary), with a view to safeguarding their impartiality. To facilitate the implementation of this recommendation Peru may consider:

- ***Reducing the number of judges and prosecutors under temporary employment contracts (supernumerary)*.** The elevated level of temporality of judges and prosecutors limits the autonomy and independence of the judiciary and the Public Prosecutor's Office, as these do not benefit from the same legal protections and benefits as tenured judges and prosecutors. Increment the number of permanent position holders or tenured judges and prosecutors (*titulares*), including selecting and appointing women in permanent positions to promote gender parity.
- **Take measures to ensure fair, impartial and merit-based treatment of judges regarding their selection, lifelong training and sanctions, including by overhauling the selection system and strengthening pre-entry training of judges and prosecutors.** To facilitate the implementation of this recommendation Peru may consider: ***Overhauling the selection system of judges and prosecutors.*** A greater emphasis on pre-entry training and strengthening the role of the AMAG in the selection process should be made as most decisions in the current selection system are either incontestable or discretionary. This creates a significant risk of impropriety in the selection of judges and prosecutors.
- ***Strengthening pre-entry training of judges and prosecutors.*** The state should finance pre-entry training, not only for interested individuals; it should ensure that this training offers a proper variety of courses that will enable judges and prosecutors to consider the needs of society, including those of its most vulnerable groups, properly. Continuous training should be mandatory and fill knowledge gaps identified in training needs analyses.

Take steps to strengthen judiciary budgetary management and performance, including system wide strategic planning, developing performance indicators, and designing and using monitoring and evaluation frameworks respecting judicial independence and the judiciary's needs to carry out

its constitutional mandate successfully. To facilitate the implementation of this recommendation Peru may consider:

- ***Developing more effective co-ordination between the judiciary and the Ministry of Economy and Finance***, and more systematic support to the judiciary on the part of MEF and other ministries (especially Justice and Human Rights, but also Education and Interior), notably by bringing about deeper discussions on the social role and mission of the justice system as a necessity of the state and society. This focus should include institutionalising and properly resourcing whole-of-system co-ordination mechanisms and training for the judiciary (including for the *Junta* and other key judicial system actors) in medium-term, system-wide strategic planning, in the development of performance indicators and in the design and use of monitoring and evaluation frameworks respectful of judicial independence and the needs of the judiciary to carry out its constitutional mandate successfully.

4.6.2. Medium/Long term recommendations

Continue strengthening gender equality in the judiciary. To implement this recommendation Peru may consider:

- ***Continue enhancing and institutionalising gender parity in the judiciary and prosecution service.*** Implement policies and adopt measures to advance gender parity in all disciplines and areas of the judicial system and in the composition of the judiciary. The role of the *Junta* is important in achieving this objective. Therefore, it is crucial to engage relevant actors within the justice sector to advance gender equality, including the *Junta,* in selecting and appointing women as tenured judges and implementing measures and training to mitigate gender bias and reduce the existing gender gaps. Entrust the Academy of the Magistracy with capacity building on gender equality and gender-based violence with workshops to support women candidates in preparing for judicial selection processes.
- ***Adopting an institutionalised approach to ensure gender-balanced appointments in the judiciary*** and monitor gender balance systematically through data collection. Use the results of evaluations to assess the alignment of practice with well-defined gender objectives and priorities by implementing the 2015 OECD *Recommendation on Gender Equality in Public Life* [OECD/LEGAL/0418].

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1. Resolution of the Executive Council of the Judiciary of 18 August 2021.

2. Regulation of Organisation and Functions of the Supreme Court and Government and Control National Organs, approved by Administrative Resolution 0321-2021-CE-PJ from 27 September 2021.

3. Organic Law on the *Junta*, art. 71.

4. National Policy on Gender Equality, approved by Supreme Decree No. 008-2019-MIMP.

5 Towards an efficient and seamless justice system in Peru

This chapter focuses on the main mechanisms implemented to tackle inefficiencies in justice services in Peru and compares it with OECD Member countries. It describes how countries have increasingly adapted new management, budgetary and digital tools to deal with trial length and case backlog, including case and court management, and how digitalisation and alternative dispute resolution mechanisms are being implemented to increase justice efficiency.

5.1. Introduction

The efficiency of justice services is vital to upholding the rule of law and ensuring fair outcomes, guaranteeing timely and effective access to justice for all. Excessive judicial turnover or temporality in judicial employment (see Chapter 4) impedes justice efficiency. The time a court requires to analyse, process, and adjudicate a case serves as a key indicator of justice efficiency and represents an essential element underpinning the right to a fair trial. This right is safeguarded as a fundamental right in OECD Member country constitutions. Moreover, well-functioning judicial systems are crucial in shaping national economic performance. Lengthy civil proceedings can act as a hindrance to economic activity. The protection of property rights and enforcement of contracts encourage savings and investment while promoting the establishment of economic relationships. These factors contribute positively to competition, innovation, the development of financial markets, and economic growth, as seen in Chapter 2.

This chapter analyses how courts need to organise their resources (human, financial, physical premises, working procedures and management tools) to efficiently address citizen demands for fair and impartial justice. The proper allocation of judges and justice personnel is a key resource supporting smooth justice delivery, though it is not the sole factor. This chapter analyses several tools and mechanisms aimed at addressing inefficiencies in justice services. One approach involves redesigning judicial decision-making processes, while another entails further developing alternative dispute resolution (ADR) mechanisms for seeking settlements outside the courts. In some cases, well-defined ADR mechanisms can achieve more equitable, cost-efficient and faster case resolution, as discussed in Chapter 4.

Whether within or outside courts, enhancing the use of information and communication technologies (ICTs) in the justice system can improve efficiency by reducing case backlog and trial length. Technology can also serve as a powerful enabler of integrated, inclusive and people-centred justice ecosystems through process automation and data collection, creating new justice pathways and providing direct access to services. In fact, ICT is increasingly perceived as a vital tool for breaking physical access barriers to justice.

This chapter will explore how the effective use of justice resources and ICT tools can improve access to justice in Peru. It builds on comparisons with OECD best practices, as well as on the European Commission for the Efficiency of Justice (CEPEJ) general principles and *Guidelines to Increase Justice Efficiency and Quality*, the OECD *Recommendation on Access to Justice and People-Centred Justice Systems* [OECD/LEGAL/0498] and the OECD Framework for People-Centred Justice for establishing and maintaining evidence-based mechanisms to support decision making, delivery and monitoring of people-centred justice services (CEPEJ, 2023[1]; OECD, 2021[2]).

5.2. Enhancing court efficiency: Decongestion measures, court and case management and the use of digital solutions

Court efficiency is critical for the seamless functioning of the justice system. It is influenced by several factors, including case backlog management, the adoption of digital solutions, and court and case management practices. This section highlights OECD Member country practices and the situation in Peru in these areas, identifying areas for improvement in ensuring the efficiency of court procedures.

5.2.1. Enhancing court efficiency in OECD Member countries

Case backlogs and decongestion measures

Case backlogs refer to pending court cases that remain unresolved within a legally established timeframe. This situation leads to substantial delays in solving court cases, increasing the cost of legal proceedings, contributing to legal uncertainty, and adversely impacting justice efficiency and people's trust in the judicial

system (commonly expressed as “justice delayed is justice denied”). The following factors typically contribute to these delays:

1. the structure of trial procedures and unnecessary procedural formalisms, leading to inefficient judicial decision making;
2. inefficiencies in the allocation of court resources, often resulting in fewer human resources and malfunctioning or obsolete ICT equipment; and
3. poorly designed performance appraisal schemes for judges, or the absence of incentives for high performance within the judiciary.

To reduce case accumulation in courts, some OECD Member countries have developed new management structures and tools to enhance the administration and delivery of justice in ordinary courts. For example:

- **Some OECD** Member **countries rely on temporary staff** in periods of high demand, such as decongestion judges in Colombia and temporary replacement judges in Spain (Box 5.1).
- **Some countries have created special units or chambers within courts** to help them reduce case backlogs, such as the United Kingdom, some EU countries, including the Netherlands, Canada, and the United States (Box 5.1). Meanwhile, countries like Austria have implemented early countermeasures initiated by the courts to reduce or avoid backlogs and expedite judicial proceedings (CEPEJ, 2020[3]).

Box 5.1. OECD practices in court decongestion strategies

In **Colombia,** courts facing longstanding congestion problems prompted the establishment of temporary specialised courts to address the backlog. Known as decongestion courts or fast-track courts, these include additional judges assigned temporarily to handle cases in the regular court system. Colombia has also created specialised Judicial Services Centres (Centros de Servicios Judiciales) in major cities such as Bogotá, Medellín, Cali and Barranquilla. These centres aim to expedite the resolution of oral procedure cases, particularly in family and civil law. These centres efficiently prioritise long-pending or highly important cases by streamlining procedures and providing additional human resources.

In the **Netherlands**, a central backlog team have been created in the courts, known as the “flying brigade”, a special task force helping courts reduce the backlog in civil and municipal divisions. Once cases are received, judges and court staff within the chamber prepare draft decisions that are then sent back to courts, providing the latter with more time and resources to hear pending cases or dispose of those with pending decisions. In addition, courts can assign cases to other, less busy courts.

Croatia has introduced specialised family departments in 15 municipal courts to strengthen the efficiency and quality of processing these sensitive cases. Judges assigned to these departments meet specific professional requirements. The President of the Supreme Court appoints them for a term of five years at the proposal of the president of the competent municipal court. Additionally, these departments are staffed with psychologists, sociologists and other domain experts. Regular mandatory trainings have been designed for judges and state attorneys.

Source: (OECD, 2023[4]; CEPEJ, 2022[5]; Judicial Branch of Colombia, 2023[6]).

As seen in Chapter 4, some OECD Member countries have also developed case and court management strategies to optimise court performance and reduce case backlogs. For instance, performance evaluation can play a key role in enhancing court efficiency. Judges’ behaviours are determined by incentives such as career prospects and salary, among other factors, to reduce trial length and increase overall court efficiency.

Reducing trial length

Trial lengths are defined as the time needed to resolve a case in court, representing the duration it takes for the court to reach a decision at the first instance. Across OECD Member countries, factors associated with shorter trial lengths include:

- court governance systems that either allocate broader managerial responsibilities to the chief judge or allow the hire of non-judge court managers
- existence of specialised courts (such as administrative, commercial or family courts)
- active management of case processing by courts through standardisation or other means
- systematic production of statistics at the court level
- implementation of timeframes, proven to be a useful tool for assessing court functioning and policies and subsequently improving the pace of litigation.

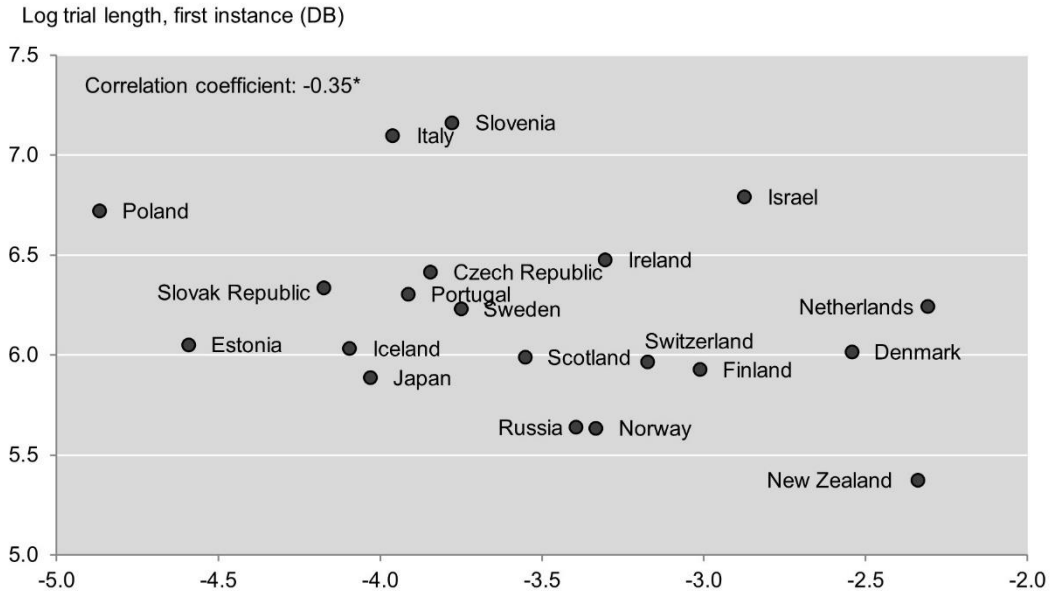
Timeframes serve as *operational tools,* offering concrete targets to measure the extent to which each court, and the administration of justice, pursue the timeliness of case processing and the principle of fair trial within a reasonable time. Setting timeframes is a fundamental step in measuring and comparing case processing performance and better conceptualising backlog, which is the number or percentage of pending cases not treated within the set or planned timeframe. According to OECD Member practices, each timeframe considers the case complexity, as suggested by the jurisprudence of the European Court of Human Rights (CEPEJ, 2016[7]).

OECD Member countries have increasingly incorporated ICT tools and strategies to support judicial activity in accelerating and improving court performance and case-treatment fairness. Indeed, countries devoting a larger share of the budget to ICT investment display, on average, shorter trial lengths (Figure 5.1) (OECD, 2013[8]) (Palumbo, 2013[9]).They have achieved this by digitalising legal procedures (within the judiciary and in their interaction with users) and increasing the use of statistics by adopting a data-based approach to case monitoring. This approach allows for better prediction of case outcomes, reduces sentencing disparity, facilitates the monitoring of case progression and helps accelerate precedent analysis, as will be analysed in this chapter.

To reduce case length and court backlogs, most OECD Member countries have dematerialised their files through electronic case management or e-filing. While practices may vary, several OECD Member countries have implemented electronic filing systems to streamline judicial processes. In the United States, federal courts use the Case Management/Electronic Case Files (CM/ECF) system, allowing attorneys to file and retrieve court documents electronically. Many state courts have their own e-filing systems, including the New York State Unified Court Systems NYSCEF (US Courts, 2023[10]). Similarly, in Canada, several provinces, including Ontario's Small Claims Court, have adopted electronic filing systems, using portals for e-filing and claim submissions (OECD, 2023[4]).

In 2021, the Council of Europe's Working Group on e-Justice and Artificial Intelligence of its Commission for the Efficiency of Justice (CEPEJ-GT-CYBERJUST) developed guidelines on electronic court filing (e-filing) and digitalisation of courts, including a checklist for countries to reflect on the basic requirements for deploying an e-filing system. Some of the most important CEPEJ guidelines related to implementing digital solutions in the judiciary should be understood as a systemic and comprehensive reform that goes well beyond the technological, e-filing and digitalisation of judicial procedures. These are ongoing processes within a complete service ecosystem, whether digital or not, rather than standalone projects with fixed implementation timelines. These guidelines are also based on the understanding that an e-filing system should uphold the principles of transparency, inclusiveness, accountability and accessibility (CEPEJ, 2021[11]).

Figure 5.1. The ICT share of the justice budget is inversely related to trial length



Source: (CEPEJ, 2022[5]), *European Judicial Systems - CEPEJ Evaluation Report: 2022 Evaluation Cycle (2020 data)*.

However, a significant level of ICT development and diffusion does not necessarily translate into their practical application in the justice system, let alone a positive impact on the efficiency or quality of the public service of justice. It is indeed easier to quantify investments in technology and the degree of its dissemination than to measure ICT's actual use or impact on the efficiency and quality of justice, as these changes are more challenging to measure (CEPEJ, 2022[5]).

Effective court management and resource allocation are also crucial to ensuring shorter trial lengths and reducing case backlogs. Investing in the right areas can significantly increase courts' efficiency. The efficient use of statistics and data-based approaches to case management and monitoring, when accompanied by the right ICT tools, infrastructure and training, is critical to clearing backlogs, improving court clearance rates and case disposition times, and enhancing the quality of justice delivery, as will be analysed in detail in the next section.

Measuring court efficiency: Clearance rates and disposition times

European OECD Member countries measure court efficiency as a function of case backlogs and trial length by measuring a court clearance rate and a case disposition time, as follows:

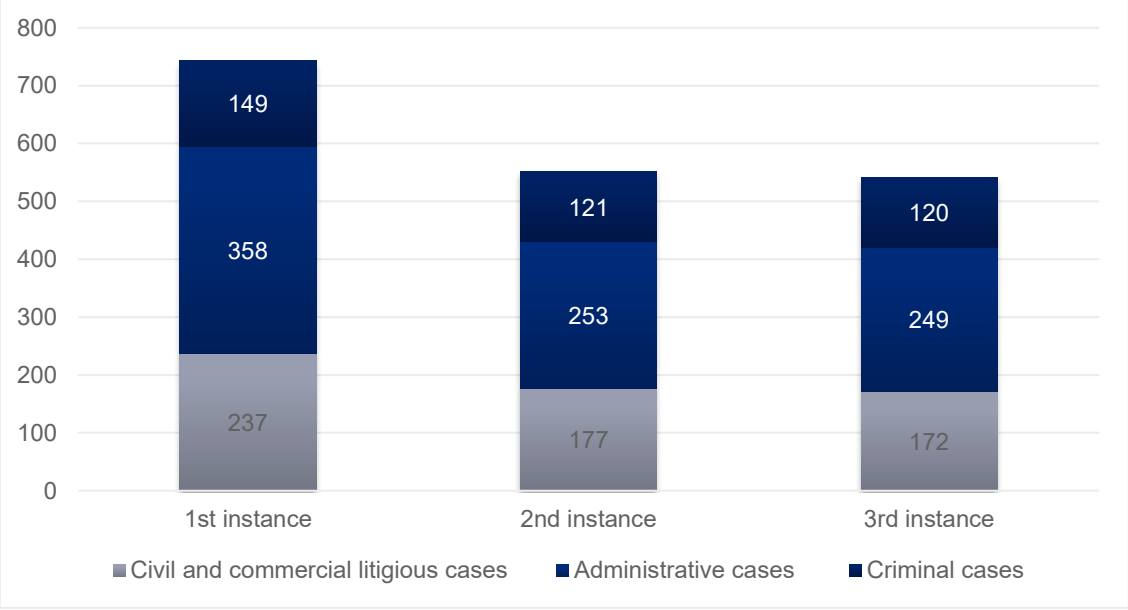
- **The clearance rate (CR)** is the ratio obtained by dividing the number of resolved cases by the number of incoming cases in each period, expressed as a percentage. This rate shows how the court, or the judicial system, copes with the inflow of cases and allows comparison between systems regardless of their differences and particularities. When the result is lower than 100%, case backlog is increasing, and the court can resolve fewer cases than it receives. On the contrary, when the result is higher than 100%, case backlog is decreasing, and the court can resolve more cases than it received. In 2020, the median value of the clearance rate of European jurisdictions was stable and close to 100%, with only minor differences among instances and case types, implying that European jurisdictions have efficient case management systems with little, if any, case backlogs.

- **The disposition time (DT)** is the theoretical time necessary for a pending case to be resolved, taking into consideration the current pace of work. This indicator offers valuable information on the estimated length of proceedings. It is reached by dividing the number of pending cases at the end of a particular period by the number of resolved cases within that period, multiplied by 365 (days in one year). More pending than resolved cases will lead to a disposition time higher than 365 days and vice versa.

Some 42 European states provided data to the CEPEJ for calculating the CR and the DT in 2020. These states' CR ranges from 95% to 200%, and DT is not higher than twice the median value, which comes to 298 days. Most of them have a CR slightly over or under 100% (Andorra, Czechia, Estonia, Kazakhstan, Monaco, Romania and the Slovak Republic). DTs differ to a greater extent, from 10 days in Kazakhstan and 30 days in Estonia to 265 days in Andorra.

Regarding the DT for EU countries in 2020, the third (highest) instance courts took the lead (with 120 days for criminal cases, 249 for administrative cases and 172 for civil and commercial litigious cases). However, the differences between the second and the third instances are minor. At the same time, the only instance and case type that shows a reduction in DT is the civil and commercial litigious cases at the third instance. Nevertheless, in this cycle, the trends are very much shaped by the effects of the coronavirus (COVID-19) pandemic, which most affected the productivity of the first-instance courts (Figure 5.2) (CEPEJ, 2022[5]).

Figure 5.2. European median disposition time by instance and by area of law, 2020



Source: CEPEJ (2022), *European Judicial Systems - CEPEJ Evaluation Report: 2022 Evaluation Cycle (2020 data)*.

Court and case management

Effective court and case management ensures the efficiency and transparency of the judicial system, enables effective access to justice, and upholds the right to a fair trial. It involves the availability of systems, sufficient staff, and members of the judiciary to process cases, as well as measuring their efficiency and effectiveness. A responsive justice system ensures that the right mix of services is provided to the right users, areas of law, locations, and time (OECD, 2019[12]). Specifically:

- **Court management** refers to the administration and organisation of the court system, including managing court resources, co-ordinating court processes, and providing support services to the

judiciary and the public. The scope of action and main objective are similar in all OECD Member countries (i.e. human resources, technologies, premises, communication, targets and indicators). In most cases, court management involves balancing between achieving the necessary efficiency of the process and accountability while preserving the independence of the justice system. To facilitate this task, some countries, including Denmark, Finland, Norway, Portugal and Sweden, have created permanent dialogue capacity between judges, managers, the Ministry of Justice and court users (OECD, 2020[13]).

- **Case management**, in turn, focuses on administering processes related to processing cases and bringing them to timely adjudication (Rooze, 2010[14]). It refers to the process of managing and overseeing legal cases to ensure their efficient and effective progression through the legal system. It involves organising and co-ordinating various aspects of the case, including procedural matters, deadlines, evidence disclosure and court appearances.

Due to the exponential increase of caseloads coupled with budgetary constraints, there has been increasing attention paid to court and case management practices in OECD Member countries. To respond to this challenge, OECD Member countries' courts are developing a broad view of case management necessary to achieve timely, cost-effective and procedurally fair justice (Hannaford-Agor, 2021[15]). This has been done by implementing triage, a form of process management that fast-tracks incoming workflow by focusing on the most critical work first, removing unnecessary procedural barriers that complicate litigation, and better staffing court personnel and increasing technology resources, including data and performance management.

A common and effective tool developed in different forms across European and OECD Member countries to improve court performance is case weighting analysis (CWA) (Box 5.2). It was initially designed to identify the needs of judges by assessing the complexity of different case types based on the understanding that one case type differs from the other in the amount of judicial time and effort required to be processed.

Box 5.2. Successful case management tools: Case weighting analysis

Case weighting analysis was developed in the United States in the 1970s to help courts estimate their personnel needs, adjust staff distribution and support requests for more human resources. The practice has expanded to other countries in recent years, which, in turn, has broadened its uses. The CWA was developed to address output insufficiencies created by inadequate staffing, caseload distribution, uneven work units and human resources relative to the actual demand for judicial services. Recent applications have also attempted to address other problems, such as how to deal with significant variations in individual judges' productivity, a tendency of judges to prioritise easier cases over more complex ones, and the impact of both on accumulating backlog.

The CWA innovation is the recognition that not all cases require the same amount of effort from judges and court staff. This implies that allocating or evaluating personnel according only to quantitative input or output numbers is insufficient. The CWA provides a means to define the level of effort invested in handling each case type. Converted to average case weights, the results can be used to determine reasonable caseloads and distribution of staff. A meaningful CWA requires a good case management information system with as many accurate statistics as possible.

Experts who have worked on CWA caution that the technique is not apt to solve other problems beyond case allocation, affecting the judicial system. Aside from allocative efficiency or the improved distribution of personnel relative to caseloads, other problems may include limited access to justice for citizens and businesses, the lack of standardisation of procedures and practices between work units, significant variations in capacity and professionalism among judges and staff, a legacy of bureaucratic and

inherently inefficient procedures, political pressures, corruption, etc. In most justice institutions, these issues are more of a concern than allocative efficiency. Nonetheless, if these additional issues do not represent insurmountable obstacles, a review of case-allocative and relative (within-system) technical efficiency may still be worthwhile, if it does not make anyone believe that all else is well or that a CWA can help solve those other, often more compelling, performance challenges.

Source: Hammergren, Harley and Petkova (2017), *Case-weighting Analyses as a Tool to Promote Judicial Efficiency: Lessons, Substitutes, and Guidance (English)*, World Bank, Washington, DC, http://documents.worldbank.org/curated/en/529071513145311747/Case-weighting-analyses-as-a-tool-to-promote-judicial-efficiency-lessons-substitutes-and-guidance.

5.2.2. Enhancing court efficiency in Peru

Case backlog and decongestion measures

With a CR of 91.7% in 2021 and 92.7% in 2022, Peru's judicial workload (*carga procesal*) is increasing, and the system is struggling to handle it Table 5.1 which in 2023 reached 3 235 606 cases (Lama, 2021[16]) (Poder Judicial, 2023[17]).

Table 5.1. Clearance rates in Peru, 2021 and 2022

	2021	2022
Incoming cases	1 771 155	1 955 679
Resolved cases	1 629 309	1 813 070
Clearance rate	91.7%	92.7%

Source: Poder Judicial (2023), Plan de Descarga en el Poder Judicial 2024-2025, approved through Administrative Resolution No. 0255-2023-CE-PJ, from 3 July 2023, https://www.pj.gob.pe/wps/wcm/connect/417726004c04e019b48db5dd50fa768f/RESOLUCION+ADMINISTRATIVA-000255-2023-CE.pdf?MOD=AJPERES&CACHEID=417726004c04e019b48db5dd50fa768f

Peru's Council for the Reform of the Justice System identified in the Public Policy for the Reform of the Justice System (2021-2025) four main reasons affecting court congestion in Peru:

1. First, **a sometimes misleading assumption that case efficiency can be solved with additional human resources alone**. Indeed, as seen in Chapter 4 and Table 5.1, court congestion keeps increasing even though the judiciary has constantly increased the number of judges (Poder Judicial del Perú, 2022[18]).
2. Second, **the implementation of excessive court regulations that complexify and lengthen the process and case resolution**. Although the judiciary has made significant progress in solving cases under the former Criminal Procedural Code, there are still open cases under the framework of the old Criminal Procedural Code, adding to case backlogs. Moreover, the lack of investment in justice officials' adequate training has considerably hampered the smooth implementation of the new Criminal Procedural Code, which includes several provisions and reforms to reduce case backlogs and reduce trial length, as detailed in Chapter 2.
3. Third, as seen in Chapter 3, there is a lack of specialised courts to solve specific matters, especially regarding constitutional rights in all parts of the national territory. For example, in constitutional cases, court congestion is mainly due to a lack of constitutional judges and constitutional courts in the country. Another cause is the embryonic development of the administrative justice system in Peru (Chapter 4), which increases the preference of legal actors for constitutional proceedings instead of using administrative jurisdiction. In family cases, there is a high backlog in child support and alimony cases, where only 3% of these cases are solved in the first instance. In criminal cases,

a lack of human and physical resources for the implementation of evidence (peritos/peritazgo) is one of the causes of long criminal trials.

4. Fourth, **there is a lack of statistical information to help in decision making**, such as caseloads and allocation of human resources, as seen in Section 4.2 in Chapter 4.

Overall, Peru faces similar challenges to those experienced by most OECD Member countries dealing with case backlogs caused by unnecessary procedural formalities, inefficiencies in the allocation of court resources (including obsolete ICT equipment), and inadequately designed performance appraisal schemes for judges, with little or no incentives for optimal performance in the judiciary.

To respond to these challenges, Peru has implemented several initiatives and programmes to reduce case backlogs.

As seen in Chapter 2, the new Criminal Procedural Code (Código Procesal Penal, CPP) provides several mechanisms for criminal procedural simplification, such as oral hearing, which accelerates case resolutions. Since 2006, the judiciary has gradually been implementing strategies to solve procedures under the old code, such as discharge plans in criminal judicial offices, to optimise time in the conduct of hearings. In addition, District Commissions have been implemented to monitor the work of courts by implementing better management and productivity measures to reduce case backlogs. Moreover, since the implementation of Results-based Budgeting (Presupuesto por Resultados, PpR) as a public management strategy in 2008 and in the context of the reform of criminal justice with the implementation of the new CPP, the Budgetary Programme 0086: Improving the Justice System Services of the Criminal Justice (Mejora de los Servicios del Sistema de Justicia Penal) was established in 2015. This programme links public budget allocation to specific products (goods and services) and indicators for implementing efficient and effective criminal justice mechanisms and services through the implementation of the new CPP. However, some of the mechanisms for criminal procedure simplification (see Chapter 2 on the new CPP) are still under-implemented by criminal courts in Peru, mainly due to the prevailing culture of willingness to solve conflicts and problems by starting legal cases and formal case resolution (Consejo para la Reforma del Sistema de Justicia, 2021[19]). This multisectoral programme includes the judiciary, the Public Ministry, the Ministry of Interior and the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos, MINJUSDH).

Moreover, recognising the significant presence of family cases in Peru's case backlogs, a new budget programme was created in 2022. This programme aims to modernise the operations of judicial offices dealing with family cases by allocating public funds to implement specific results to accelerate the resolution of these cases. Some of these indicators include digitalising judicial processes, standardising judicial proceedings, promoting conciliation, judges training on the topic and on interpersonal communication, monitoring the implementation of actions and goals of the programme, and strengthening and supporting the work of the detrital commissions of the 33 High Courts where the programme is implemented.

Other initiatives on this matter include Corporative Family Modules (Módulos Corporativos de Familia). Created in 2018, these modules propose a new court management arrangement in which the courts' administrative functions are under the responsibility of a specific unit, freeing the judge of such tasks to perform only judicial ones. The judiciary has been implementing these modules nationwide for labour, family, and civil cases.

The increase in caseloads and insufficient tenured judges to handle the cases has led to the widespread use of temporary judges. This practice has become a significant issue in Peru's justice system and a risk to judges' impartiality (see Chapter 4). Notwithstanding, Peru has been implementing measures to reduce the number of temporary judges. Since the launch of the National Board of Justice (Junta Nacional de Justicia), it has implemented initiatives to appoint tenured judges and prosecutors to reduce the number

of provisional judges, with the appointment in 2022 of 63 tenured judges.[1] From June 2022 to June 2023, the share of tenured judges increased while the share of temporary judges diminished (see Chapter 4).

Although decongestion measures undertaken to improve case backlogs, such as those regarding the CPP and those implemented under family cases, might go in the right direction, they are neither comprehensive nor co-ordinated. These efforts should be designed and implemented alongside digitalisation measures and the adoption of tools to improve court efficiency. These measures should also be co-ordinated across case types (i.e. the decongestion measures undertaken under the CPP should be co-ordinated with those implemented in family cases) to have a greater impact on the justice system overall. Also, the impact of these measures should be measured in terms of CR and DT.

Peru could also implement additional measures to reduce trial length, such as setting timelines, improving court governance systems, creating more specialised courts, improving the systematic production of statistics at the court level and devoting larger shares of the justice budget to ICT.

Like many OECD Member countries, Peru has also implemented a series of justice digitalisation tools and reforms to reduce case backlogs and trial lengths, as summarised in Box 5.3.

Box 5.3. Peru's justice digitalisation tools and reforms to reduce case backlog

Clearance rate *(Indicador de carga procesal)*: The National Commission on Judicial Productivity (Comisión Nacional de Productividad Judicial, CNPJ) was created in 2008 within the judiciary to follow up on court congestion and propose to the Executive Council of the Judiciary actions and measures to tackle this issue. Its main mission is to collect data on the procedural burden in each transitory and permanent court. Based on this, it has established an indicator to measure court congestion, which is obtained by dividing the number of resolved cases by the number of incoming cases in each period, expressed as a percentage (same as the clearance rate). The CNPJ has also calculated each court's minimum and maximum percentage of procedural burden.

Integrated file management system (Sistema Integral de Gestión de Expedientes, SIGE): The integrated file management system is software developed by the Ministry of the Interior of Peru (MINITER) to help administer and monitor internal and external documentation. It helps organisations quickly locate and organise files, as well as effectively manage resources. The system provides an automated data management system that improves workflow and reduces costs by streamlining document-filing processes. The SIGE system helps manage databases and information systems, including documents, records, data, and images. It is also a powerful platform for virtually organising, sharing and tracking information, making it particularly useful for organisations with limited budgets. The system is designed to improve the accuracy and efficiency of document management and ensure record retention over time.

Electronic prosecution file (*Carpeta Fiscal electrónica*): The Public Ministry has also started to work on a tool including all digitalised prosecutorial procedures within a case, aiming to accelerate the implementation of justice from the first level of the provincial prosecutorial service to the supreme.

Source: (Consejo para la Reforma del Sistema de Justicia, 2021[19]), *Política Pública de Reforma del Sistema de Justicia [Public Policy for the Justice System Reform]*, Ministry of Justice and Human Rights, https://www.gob.pe/institucion/consejo-de-justicia/informes-publicaciones/2021932-politica-publica-de-reforma-del-sistema-de-justicia; Information shared by Peru, August 2022.

The main organisational ICT reform to accelerate case management is the Judicial Electronic File (Expediente Judicial Electrónico, EJE), a digital case management system and the Peruvian equivalent of electronic case or court filing (ECF) or e-filing in OECD Member countries. This service allows users to access and process their cases online, eliminating the need for most on-site appearances at courthouses.

Currently, a file is processed through the Electronic Reports Table (MPE), through which documents can be digitised, creating a set of information contained in metadata in a digital format accessible to all legal operators involved.

Judicial Electronic File

The EJE is an automated case management system (initially for non-criminal cases), which the judiciary launched as a pilot in 2017. Before instituting the EJE initiative, each judicial file was made of a set of papers and had to be physically moved from one place to another to obtain a response to the claim made and the resolution of the procedure (see Box 5.4).

Box 5.4. The implementation of the Judicial Electronic File by the Peruvian judiciary

The EJE is focused on assuring more expedited and transparent justice services using new information technology (IT) tools. This service allows users to access and process their cases online, eliminating the need for most on-site appearances at courthouses.

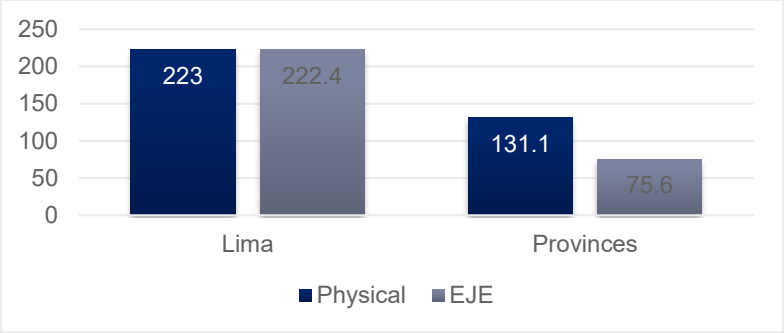
In 2015, the judiciary adopted the electronic signature and the e-Notification System (SINOE) to simplify and speed up these common judicial procedures. Although the SINOE has multiplied the use of EJE by four, this is not mandatory. Indeed, lawyers need to register and agree to receive any communication through this mechanism. In addition to this voluntary practice, activating the notification still requires that the initial notification be carried out physically. Also, as part of the EJE, the judiciary has begun implementing supporting modules to present documents or requests related to a case, such as the e-child travels and e-debtors request. Significant advances have been made in providing court e-services, achieved through microforms and electronic files for labour and commercial cases in Peru.

The judiciary has already piloted the EJE in 60 courts in the Lima District (19 commercial courts, 29 labour courts, 7 customs courts and 5 courts for market issues). Implementing the EJE in these courts has been an important first step to test the main framework for its effective operation. The pilots generated considerable savings in time and use of paper (World Bank, 2019[20]). To date, according to the information shared by the judiciary, the EJE is used in 20 High Courts and 33 Specialised Courts throughout the country: 17 in charge of labour cases, 8 in charge of civil cases and 8 in charge of family cases (mainly regarding violence against women). It appears that the EJE has had an impact on reducing procedural times; in the case of civil procedures, they recently transitioned from written to oral and reduced their procedural times due to the EJE.

Source: (Poder Judicial, 2023), *Expediente Judicial Electrónico website [Judicial Electronic File]*, https://eje.pe/wps/wcm/connect/EJE/s_eje2/as_inicio/ (accessed 11 September 2022); (World Bank, 2019), *Project Appraisal Document on a Proposed Loan in the Amount of US$85 million to the Republic of Peru for Improving the Performance of Non-criminal Justice Services*, https://documents1.worldbank.org/curated/en/288961560045670620/pdf/Peru-Improving-the-Performance-of-Non-Criminal-Justice-Services-Project.pdf.

The EJE significantly reduced case length compared to physical paper filings, especially in rural areas. For example, in first-instance cases, for High Courts in the Department of Lima, it took 223 days to close a case using a physical file. Using the EJE, it takes 222.4 days (-0.3% time reduction). For High Courts in the provinces, it took 131.1 days to close a case using a physical file; using the EJE, it takes 75.6 days (-42% time reduction) (see Figure 5.3).

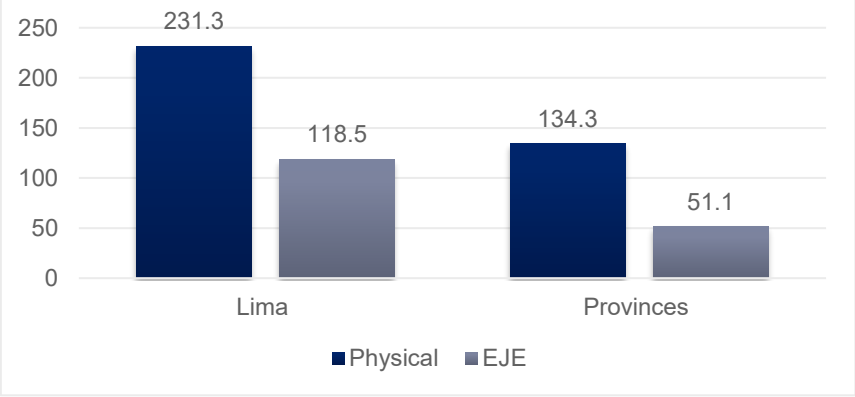
Figure 5.3. Trial length in first instance: Physical file versus Judicial Electronic File (EJE)



Source: Peru's judiciary (2022), information for the OECD.

In second instance cases, for High Courts in the Department of Lima, it took 231.3 days to close a case using a physical file, while using the EJE, it takes 118.5 days (-49% time reduction). For High Courts in the provinces, it took 134.3 days to close a case using a physical file, while using the EJE, it takes 51.1 days (-62% time reduction) (see Figure 5.4).

Figure 5.4. Trial length in second instance: Physical file versus Judicial Electronic File (EJE)



Source: Peru's judiciary (2022), information for the OECD.

Implementing the EJE for criminal cases has taken longer, primarily due to the recent nationwide completion of implementing the new CPP (see Chapter 3). However, stakeholders reported that thanks to international development assistance, Peru is now working to accelerate the implementation of the EJE in criminal procedures.

To successfully implement the EJE, justice institutions might consider establishing key common standards in terms of capacities and technological equipment to have the same level of digital development. In addition, the lack of interoperability, the digital gap (most evident in rural areas) and the lack of trainings for public officials on the EJE are still barriers limiting the optimal implementation of the EJE and its reach. Moreover, the impact of the EJE could be better monitored with more data on contexts and specific populations across the country. These data would help understand justice needs and how the EJE addresses or fails to address those needs in different areas.

Peru could also consider revising the e-filing system to respect the principles of transparency, inclusiveness, accountability and accessibility. There is still room for improvement in building institutional capacity and providing technological equipment to justice actors. This would ensure all parties have the

same level of digital development to effectively implement the EJE and maximise its use across the system. There is also room for improvement to enhance public officials' training on the EJE. Limited training and the lack of harmonised technological uptake thus still constitute barriers to the optimal implementation of the EJE. In addition, the impact of the EJE could be better monitored and evaluated to understand justice needs and whether they are being addressed effectively using the EJE.

Peru has taken a positive first step towards improving case management and digitalisation by implementing the EJE and measuring its impact. While the SIGE and the Electronic Prosecution file seem to have potential to follow this path, implementing monitoring and evaluation mechanisms could help fully assess their success.

Further, when measuring the impact of digitalisation tools in improving CR and DT, other aspects should be factored in, such as the impact of court management and resource allocation, the use of statistics and data-based approaches to case management and monitoring, infrastructure, and training. These aspects could be factored in, as the EJE alone does not resolve much if it only works within the judiciary, as many stakeholders may be involved in a case and thus require access to information.

Measuring court efficiency: Clearance rates and disposition times

The CNPJ has also undertaken significant reforms to address court congestion and implement actions and measures to tackle CR issues. Although this indicator is useful to measure the number of cases resolved or disposed of by the courts within a specific period, implementing additional measures, as is currently being done in OECD Member countries, can provide insights into the overall performance and effectiveness of the judicial system in Peru. This is important considering that operational challenges remain, and court congestion in Peru is still significant, as reflected in relatively low CR, high procedural burden, an average long trial length, and bottlenecks in several courts.

Peru would also benefit from measuring DT to identify the average time a case takes to be resolved once it enters the court system. Other indicators, such as case backlog (the number of pending cases not resolved within a certain timeframe), the efficiency of appeals (average time for an appeal to be decided), and the backlog rate in appellate courts, could also be useful. Measuring judicial productivity by assessing the number of cases handled by individual judges or judicial officers within a given period can indicate efficiency in case management. Finally, user satisfaction can be measured through surveys or collecting feedback from court users, providing insight into their satisfaction levels and perceptions of the court system's efficiency. It is, however, important to note that the accuracy of these measures depends on the availability and precision of data, highlighting the importance of improving data management, as discussed later in this chapter.

Court and case management

As seen in Chapter 4, the Executive Council of the Judiciary is responsible for case and court management. It holds administrative, budgetary, educational, digital and regulatory functions. The National Commission for Judicial Productivity and its Office for Judicial Productivity depend on the Executive Council and oversee the development of performance management policies and guidelines, monitor the functioning and productivity of the jurisdictional bodies, and propose actions for better judicial production.

In Peru, case management is primarily understood as case allocation and is based only on quantitative data. This means a case will be allocated based on a judge's competency (specialisation) and caseload. However, the allocation does not account for judges' needs, for example, assessing the complexity of different case types. Unlike many OECD Member countries that use CWA, Peru currently focuses on a quantitative analysis, which considers only the number of cases. It is essential to analyse the type of cases, recognising that each case type requires a different amount of judicial time and effort to process.

The judiciary has implemented monitoring activities to strengthen judicial productivity, improve the quality of decisions and accelerate the process to conclude cases. This has translated into particular attention being paid to monitoring and evaluating the jurisdictional offices with a low level of resolution of cases or inconsistencies regarding caseload, the settlement of cases processed with the old CPP, and other monitoring initiatives with a quantitative approach focused on the number of active and finished processes to promote.

While most initiatives aimed at promoting case management efficiency rely on a quantitative approach, the judiciary has recognised the need to strengthen its role in implementing measures with a qualitative approach to case management.

Regardless of the considerable advances that the CR and the EJE initiatives have meant for increasing the efficiency of the justice system, there is scope to develop case weighting and court performance indicators along with more qualitative approaches to measuring performance, in line with the trends in OECD Member countries. In this sense, judicial resources, such as judges and budgets, could be better allocated across the judiciary by implementing court and case management strategies, for example, across the country.

As Peru has been transferring part of the court's activities from real-time to digital– transforming them into e-courts – the judiciary has also begun implementing digital mechanisms to facilitate judges' access to information, as seen in the previous section. It also granted them easier access to the decisions at key stages of the process (including admission, notification and sentence) and documents or requests related to a case (such as the e-reception desk, e-child travels and e-debtors request) and quick execution of decisions or preventive measures ordered by the court (such as e-seizures, e-judicial auction and e-edict). However, it is important to recall that court digitalisation should go together with other measures beyond ICT tools, such as the decongestion measures cited above.

5.3. The efficiency of ADR mechanisms

5.3.1. The use of ADR mechanisms in OECD Member countries

ADR mechanisms refer to the diverse ways people can resolve disputes outside a trial or court process. Common ADR comprises all mechanisms for resolving legal disputes without resorting to litigation processes in a court of law; these include mediation, arbitration and conciliation. ADR mechanisms may provide speedier, generally confidential, less formal, and sometimes less costly settlements to disputes between private parties. These alternative solutions are not supposed to replace ordinary justice but to complement it by reducing case backlogs and length. As explained later, a people-centred justice system should include ADR and informal options to provide a wide range of justice services that respond to people's needs. Justice services should be readily accessible to anyone experiencing legal needs to help them resolve their problem.

ADR mechanisms may provide effective and efficient alternatives to litigants, drive settlements, assist courts in reducing caseloads, reduce costs and increase access to justice. Also, because they depend on the will of the parties, ADR services may preserve personal and business relationships, prevent future litigation, and increase the predictability of the process. In many judicial systems in OECD Member countries and beyond, ADR services have been recognised as an effective case management tool.

The trend in many OECD Member countries is that parties increasingly rely on ADR mechanisms as an alternative to formal court proceedings. Some opt for standalone, out-of-court proceedings, while others include them (especially conciliation) as part of an intervention of the courts. In any case, reforms aimed at strengthening ADR are still relevant for some OECD Member countries, while in others, the widespread use of ADR is a longstanding reality.

Recourse to mandatory court-related mediation also seems to be increasing. For example, in Belgium, following a 2019 reform, a judge may, at the beginning of proceedings, impose a recourse to mediation, *ex officio* or at the request of one or more parties if s/he considers that a reconciliation is possible. In Austria, the judicial system provides for mandatory mediation in diverse legal fields: some tenancy law matters before going to court; some family law matters based on an order issued by the judge; the family court can order a mandatory informative session if this is necessary for the best interest of the child; in criminal matters, a reference should be made to the withdrawal of the prosecution (diversion) – victim-offender mediation. Lithuania presents the most recent example in terms of ADR expansion. As of 2020, parties must try to resolve a family dispute through mediation before going to court, except for victims of domestic violence. Moreover, the court may order mandatory mediation in certain civil cases when an amicable resolution is likely. Free-of-charge trainings for mediators in Lithuania have increased the number of mediators in recent years (CEPEJ, 2022[5]).

A clear and comprehensive legal framework is an essential step for supporting the effective introduction and implementation of different ADR services. The availability of ADR mechanisms also affects the demand for judicial services. Indeed, disputes can be effectively and efficiently resolved through various ADR mechanisms, such as online dispute resolution, mediation and arbitration. The challenge for law makers is to design a justice system that supports parties in bringing their disputes to the right forum, depending on the nature and severity of the dispute. Hence, offering a range of ADR options is the best way to meet a pluridimensional and multifaceted demand. A practice adopted in some countries is that ADR services are developed and evaluated with input and feedback from the legal community, court users and other stakeholders. Law and policy makers could thus consider the needs of specific populations and adapt ADR services to them.

That said, evaluating the utility and efficiency of ADR depends on access to robust data and data collection practices. In fact, courts and ADR service providers need to rely on solid data and information systems to evaluate and measure the success of the services (in a way that also considers the user's perspective), as well as identify trends and potential demands for additional or different programmes or identify any need for altering how the services are provided (OECD, 2021[21])

5.3.2. The use of ADR mechanisms in Peru

To increase the efficiency of its justice services, Peru has advanced in implementing ADR mechanisms (Box 5.5). There are four main types of ADR in Peru: conciliation, mediation, arbitration (including popular arbitration) and extrajudicial conciliation, as seen in Chapter 3.

Box 5.5. Recent reforms in Peru to improve ADR mechanisms (2008 onwards)

Centre for Popular Arbitration (Centro de Arbitraje Popular, or Arbitra Perú): The centre was created by the MINJUSDH in 2008 to settle minor disputes below PEN 99 000 Peruvian soles (EUR 24 750). The matters under its scope are evictions, claiming monetary debts, assuming obligations of doing or not doing, conflicts on property and possession, contract rescinding, division and partition of goods, contracts with the state, and annulment of contracts. The contract in dispute shall contain an arbitration clause or a covenant on arbitration. The plaintiff chooses the arbiter among the arbiters certified by the MINJUSDH. The claimant shall pay a small fee of PEN 70.29 (EUR 17.6) for using the Arbitra Perú service. In general, the assessment of popular arbitration is positive, even if it does not fully reach remote areas and rural communities. The ministry has also created a public service of conciliation free of charge, as seen in Chapter 6.

Mass conciliation exercises (*Conciliación*): Following Colombia's example, in 2021, the MINJUSDH implemented these exercises throughout the country by providing conciliation services free of charge to citizens, aiming to reach the greatest possible number of people (most of them virtually). These are

3-day sessions, reaching an average of 150-180 conciliations per month. The matters that can be taken to conciliation include alimony, child support, custody, child visitation, eviction, payment of debts, compensation, issuance of public deed, property distribution, breach of contract and offer of payment.

Source: OECD fact-finding mission, March 2022. Peru's responses to the OECD Questionnaire, July 2022.

5.3.3. Arbitration

Arbitration is constitutionally recognised as an alternative to the settlement of property-related disputes and is separate from the judiciary. The parties decide to resolve their conflicts by voluntarily submitting their case to the decision of an arbitrator or expert tribunal in the disputed matter. The parties may submit disputes to arbitration for which they have free disposition pursuant to law, as well as those authorised by law or international treaties or agreements. This legal framework has contributed to improving arbitration practices in the country (Montezuma Chirinos, 2018[22]).

Arbitration in Peru is a simple, short, and less formal process that ends with the arbitration "award" or compensation deciding the outcome of the dispute. The agreement to submit a case to an arbitration jurisdiction must be made in writing and based on consensus (civil and commercial arbitration, consumer arbitration, securities arbitration, etc.). Arbitration awards are final, and there is no recourse available against them, except in the case of arbitration awards that have incurred in one of the causes for annulment, usually associated with the violation of due process. In such cases, the aggrieved party can appeal to the judiciary. The entire arbitration process takes approximately 3 months, including the period for issuing the arbitration award, which is 30 days.

Popular arbitration, a service provided by the MINJUSDH, is also an ADR mechanism in which a third party, an arbitrator, facilitates mediating conflicts between two parties. In 2008, the MINJUSDH created the Centre for Popular Arbitration (Arbitra Perú) to solve conflicts, especially among micro and small business enterprises (MSMEs), professionals and civil society in general. However, this centre is only located in Lima, and the hearings are virtual. It numbers 179 arbitrators. The price of this service is PEN 70.29 (EUR 17.6), and it sees cases with claims for up to PEN 99 000 (EUR 24 750). Besides managing the Centre for Popular Arbitration, the MINJUSDH also shares information and promotes this service.

Based on information provided by the MINJUSDH, only 39 people used this service in 2021, with the most prevalent cases being eviction and the obligation to pay a sum of money, which were 34 out of the 39 total. However, of the 39 cases initiated in 2021, only 21 were concluded. This analysis indicates a low usage rate of the arbitration service, pointing to the necessity for broader dissemination and promotion. Crucially, there is a need to establish mechanisms that enable access for individuals outside Lima, particularly those with limited or no technological proficiency. The modest number of concluded cases also prompts questions regarding the service's effectiveness. Expanding the types of cases handled by the MINJUSDH and ensuring effective access to justice for users of arbitration services is essential. Enhancing the data and information system is also imperative. Currently, the MINJUSDH lacks a comprehensive system, relying instead on basic Excel tables for limited data. A more robust system would enable the government to understand the low uptake of this service, identify barriers to its use, and strategise on making the service more effective and centred on the needs of Peruvians. Chapter 6 provides more information on this service.

5.3.4. Mediation

In Peru, mediation serves as an alternative to prosecution, especially in youth criminality. The MINJUSDH, guided by the principle of opportunity, proposes an agreement with the victim.

While there is currently no legal framework for mediation in Peru, including the accreditation of the mediators and the establishment of mediation centres, the MINJUSDH recently approved a new Official Calendar for the progressive application of the Adolescent Criminal Responsibility Code (Supreme Decree No. 008-2023-JUS). The Code, approved in 2017 (Legislative Decree 1348) and its Regulation (Reglamento) in 2018 (Supreme Decree No. 004-2018-JUS), promotes the avoidance of criminal prosecution for minor cases involving adolescents. It encourages the intervention of a mediator or conciliator (duly trained on the issue) to facilitate dialogue between the parties to reach an agreement on the reparation to the victim, including restorative justice practices. Since 2018, the MINJUSDH has led the Permanent Multisectoral Commission composed of the Ministry of Interior, the Public Ministry and the Judicial Power to ensure the implementation of the Adolescents Criminal Responsibility Code (Legislative Decree 1348, Third Complimentary Final Disposition) (Presidenta de la Republica, 2023[23]). A previous calendar to implement the Code had been modified three times in the last two years, postponing its implementation in various regions (DS. 003-2022-JUS; DS. 010-2022-JUS; DS. 003-2023-JUS).

According to the new calendar, the Code will be implemented incrementally, starting in April 2024 in some judicial districts, with the full implementation scheduled for completion in 2028 (El Peruano, 2023[24]).

5.3.5. Judicial and out-of-court conciliation

Judicial conciliation is regulated in the Civil Procedures Code. It serves as an alternative conflict resolution mechanism provided by a judge by which the parties can conciliate their conflict in any stage of a judicial process before a second instance resolution. If the parties do not approve the use of conciliation, then the judicial process continues. The conciliation decision has the same effects as a judicial resolution.

Furthermore, Justices of the Peace have the power to settle certain types of disputes through conciliation on minor disputes related to ownership rights, except for crimes, small alimony and child support payments, tenancy evictions, and land property demarcation. They apply equity criteria for adjudication rather than adhering to ordinary law. Their decisions can be appealed in front of the Justice of the Peace Judge or the Specialised or Mixed Judge. Their conciliation settlement constitutes an enforceable document, like traditional out-of-court conciliation. However, there seems to be a void in the legal framework that encourages effective recourse to judicial conciliation. Also, the existing institutional weaknesses facing Justices of the Peace have hampered the implementation and monitoring of this mechanism, including the lack of an information system to record their cases.

Judicial conciliation is still underused in Peru. In 2021 and 2022, cases solved through conciliation processes accounted for less than 2% of incoming cases. Leadership is required to promote conciliation, digitalised tools and materials as one means to increase efficiency in justice and intercultural justice in remote areas.

On the other hand**, extrajudicial conciliation** is conducted outside a judicial proceeding. It is mandatory in some civil cases before launching a court proceeding, in contentious administrative cases (when previously agreed by the parties) and in labour cases. Conciliation in civil matters (especially on eviction, payment, compensation, termination of contract, breach of contract, inheritances' division, and partition, among others) is legally mandatory prior to filing a lawsuit in court; otherwise, the judge declares the claim inadmissible. The process started in 2011 and is progressively entering into force throughout Peru.

Extrajudicial conciliation is also an alternative conflict resolution mechanism that allows people who have problems with alimony and child support, child custody, payment of debts, compensation, and evictions, among others, to solve these problems without having to go to court. Even though Peru has developed legislation that encourages the effective recourse to extrajudicial conciliation through the Conciliation Law in 2021 (Law 26872), many institutions have the mandate to conciliate, and conciliation is not dependent on the judiciary, causing limitations in the management, implementation, and monitoring of this mechanism.

As mentioned in Chapter 3, there are no co-ordination mechanisms between the judiciary, the MINJUSDH, the Ministry of Women and Vulnerable Populations (Ministerio de la Mujer y Poblaciones Vulnerables, MIMP), and the Ministry of Labour, which are the public institutions that offer extrajudicial conciliation services. This is more problematic given that the judiciary ends up enforcing conciliation decisions. Moreover, there is currently no overall information system that accounts for cases settled through extrajudicial conciliation by each institution, and there are no mechanisms in place to exchange information among institutions dealing with this mechanism.

The MINJUSDH is the main public institution that provides extrajudicial conciliation services, which are provided by public conciliation centres and free legal assistance centres (Centros de Asistencia Legal Gratuita, ALEGRAs) at the national level (see Chapter 3). It also supervises the management of the more than 3 000 private conciliation centres at the national level. According to the MINJUSDH, this supervision role accounts for more than half of the work of the Conciliation Direction of the Ministry. Furthermore, the limited number of extrajudicial conciliators that deal with all the cases has created a backlog of cases and risks the effectiveness of this service and people's access to justice. According to the MINJUSDH, there is a 60% deficit of conciliators to deal with all the cases. In 2021, 2 879 cases were initiated, and 2 556 were concluded by the 89 extrajudicial conciliators in the 90 conciliation centres at the national level (see Chapter 3). The fact that there is one conciliator for each conciliation centre, which are located mostly in urban and populated areas, highlights the little funding and importance that the implementation of this public service is given.

Moreover, according to the MINJUSDH, training and capacity building of the conciliators is required for them to better understand the purpose of conciliation and their role in providing it for effective access to justice. Unlike arbitration, the extrajudicial conciliation service has a system for the follow-up of conciliation processes (SISCONE 3.0.1.). The information gathered regarding the cases is used to allocate more personnel to areas with more need and experience in certain topics according to demand. This good practice of using data to promote access to justice where people most need it can be strengthened by better allocating resources to meet demand.

Finally, considering the small number of cases brought for conciliation each year (in a country of 34 million people), better dissemination of this service as a mechanism for conflict resolution is required, as it is not commonly used or known in Peru. Like judicial conciliation, there is scope to promote extrajudicial conciliation as one means to increase efficiency in justice.

Overall, Peru has made considerable progress in creating legislation on ADR, mostly for extrajudicial conciliation, addressing when, how, and by whom this mechanism is used. However, Peru could benefit from a clearer and more detailed legal and regulatory framework for all ADR mechanisms (especially for judicial conciliation and mediation) to improve their use and implementation nationwide. Peru could continue further promoting the use of ADR as one of the means to increase efficiency in justice while implementing a comprehensive approach to the services they provide. Peru could also benefit from enhancing its information and data systems to better understand how and why Peruvians use these mechanisms and how they contribute to reducing court-based litigiousness. Indeed, greater efforts could be made to more deliberately evaluate the impact of ADR mechanisms on the judicial system in Peru with input and feedback from the legal community, court users and other stakeholders. In this connection, the current Public Policy for the Reform of the Justice System (2021-2025) advocates for the need to carry out a diagnostic study on the effectiveness of conciliation as an ADR mechanism (Consejo para la Reforma del Sistema de Justicia, 2021[19]).

5.4. Digitalisation and justice service efficiency

5.4.1. Strategies on the digitalisation of justice services

Digitalising the justice system in OECD Member countries

Digital tools are key for breaking physical access barriers to justice. They seek to automate existing processes, enhance efficiency, create new pathways and solutions and provide direct access to legal and justice services for all. According to the OECD Good Practice Principles for People-Centred Justice, the Governance Enablers and Infrastructure Pillar incorporates approaches to establishing whole-of-government systems to ensure access to technology and justice services, justice system simplification and people-centred reorientation of justice services to all (OECD, 2021[2]). Furthermore, the OECD *Recommendation on Access to Justice and People-Centred Justice Systems* states that the implementation of a governance infrastructure that enables people-centred justice requires digital transformation across the justice sector by maximising the potential of technology and data in the design and delivery of people-centred justice services while ensuring trustworthiness and transparency of digital tools (OECD, 2023[25]).

The digital transformation of a justice system increases:

- **accessibility** by providing the best information available and a better understanding not only of the way a justice system works but also of the available legal instruments to ensure recognition of people's rights and legal needs
- **institutional efficiency** by growing productivity and diminishing costs of transactions, as well as connecting different services beyond courts
- **effectiveness** by improving processes, reducing the duration of procedures – thus both saving time and lowering costs – and putting systems in place for document resource administration
- **Transparency and coherence of decisions** through improved control of cases and better qualitative evaluation of outputs
- **peoples' trust** in institutions.

Trends in OECD Member countries focus on using technology to digitalise justice services in a comprehensive and integrated manner. Also, OECD Member countries' good practices show that digital strategies affect justice effectiveness more directly when there are co-operation/co-ordination mechanisms in place and well-defined responsibilities. Furthermore, effective digital justice strategies tend to be articulated around a holistic vision that aims to ensure that all groups (including the most disadvantaged and vulnerable) have equal digital access to a full range of quality legal and justice services. OECD best practices suggest that national strategies related to the digitalisation of justice services must be comprehensive and integrated, and should cover legal services, dispute resolution services, technology and data.

While integrated strategies can facilitate consistency and help create a people-centred ecosystem, in the case of separate strategies, it is important to ensure consistency, coherence and alignment towards a shared objective of serving people, along with the robust inter-institutional co-ordination that such coherence and alignment require. Most importantly, evidence shows that a useful digital strategy requires and should be aligned with a clear data strategy (OECD, forthcoming[26]). In addition, clearly defined responsibilities and co-operation mechanisms enabled by digital technologies can significantly improve the efficiency and effectiveness of justice service delivery. An example of good practice in this regard is the robust co-ordination mechanisms and clear roles assigned to all participants of the digital strategy in Austria, where the Federal Ministry of Justice is also seen as a reliable partner and accelerator for

digitalisation projects. The relationship between the ministry, the courts and stakeholder groups is often described as very productive (Box 5.6).

Box 5.6. The Austrian model of digital strategy leadership

Digital government in Austria is led by the Federal Chancellor, the Federal Executive Secretary for eGovernment, and the "e-Government platform" has been created under his leadership. There are strict co-ordination mechanisms and a clear role allocation to each actor.

Source: (OECD, 2016[27]), *OECD Public Governance Reviews: Peru: Integrated Governance for Inclusive Growth*, http://dx.doi.org/10.1787/9789264265172-en; http://scdb.wustl.edu/.

Most importantly, when developing digital strategies, it is essential to identify and include the needs of specific user groups, particularly the most vulnerable that usually are left outside the scope of justice services. Hence, digital innovations and policies should be designed with the needs of underprivileged, remote, and aged populations in mind. A good example is the offline software developed in Colombia for rural communities called LegalApp Rural (Box 5.7). This tool provides access to justice services related to family, crime and rural issues, among others. This software was given to public libraries nationwide so it could be used by people with no access to computers at home. This has been particularly useful for people living in remote and vulnerable areas without Internet connections (OECD, forthcoming[26]).

Box 5.7. Digital innovation in justice services: Colombia's LegalApp Rural

LegalApp Rural, developed in Colombia, provides access to justice services related to family, crime and rural issues, among others.

By typing in keywords, people can learn what to do about a concern or case, the authority or institution they can go to, the exact location in their municipality, and whether their procedure requires a lawyer. It also allows access to different routes of justice on frequent legal conflicts, such as problems with a lease, alimony, child support, payment of debts, conflict between neighbours, personal injuries, theft,

liquidation of employment contracts, non-payment of social benefits and processes of land restitution, among others.

This software was given to mayors' offices and public libraries all around the country so it could be used by people without computers at home. This has been particularly useful for people living in remote and vulnerable areas without Internet connections (OECD, forthcoming[26]).

Source: Ministerio de Justicia y del Derecho de Colombia (2019) "Legal App sigue impulsando en las Regiones el Acceso a la Justicia", https://www.minjusticia.gov.co/Sala-de-prensa/Paginas/LegalApp-sigue-impulsando-en-las-regiones-el-acceso-a-la-justicia.aspx (accessed 26 June 2023).

It is important to note that the success of these strategies must take into consideration the reality of people's digital literacy. A digital divide may emerge, wherein certain disadvantaged groups experience reduced access to justice services and pathways due to the lack of available technology or digital literacy (OECD, 2019[12]). As discussed in Chapter 6, digital literacy must be integrated into the strategy to empower people and enhance knowledge of rights, enabling meaningful participation in the justice system when needed.

Digitalising the justice system in Peru

The Law of Digital Government (Legislative Decree 1412, from September 2022) establishes that digital government includes digital technologies, digital identity, interoperability, digital services, data, digital security and digital architecture, which work together to promote people-centred services, public institutions' internal management and the delivery of services that respond to people's needs.

In 2020, the National System of Digital Transformation was created, headed by the Digital Government Secretariat of the Presidency of the Council of Ministers (PCM), with the aim to strengthen and promote the digital transformation of public institutions, the private sector and society; and promote digital innovation and access and inclusion to and in digital technology in the country. Participants include the PCM; several ministries, notably the Ministry of Economy and Finance and the MINJUSDH (among others); the National Council of Science, Technology and Technological Innovation (Consejo Nacional de Ciencia, Tecnología e Innovación Tecnológica [Concytec]); the Digital Government Committees; and organisations from the private sector, civil society and academia. The High-Level Committee for a Digital, Innovative and Competitive Peru is the co-ordination mechanism between public institutions and external stakeholders for the promotion and implementation of digital transformation.

Institutions responsible for implementing and regulating the state's digital strategy in Peru are recent, with most of them being established in the past decade (Box 5.8).

Box 5.8. Institutions in charge of implementing and regulating the digital strategy in Peru

The Secretariat of Digital Government (Secretaría de Gobierno Digital, SeGDi): Created in 2017 and attached to the PCM, the Secretariat is the governing body in matters of digital government (digital technologies, digital identity, interoperability, digital service, data, security and digital architecture) and adopts rules and procedures related to state digitalisation. The Secretariat oversees formulating and proposing national and sectoral policies, plans, standards, regulations, guidelines and strategies on IT and Electronic Government. It is also the governing body of the National Information System. The Secretariat's mandate covers all institutions, including those that are autonomous and those that are part of the justice system (see Chapter 3).

High-Level Committee for a Digital, Innovative and Competitive Peru (Comité de Alto Nivel por un Perú Digital, Innovador y Competitivo): This committee is the multisectoral co-ordination mechanism for the promotion and implementation of initiatives and actions related to the development of digital government and the integration of civil society, the private sector, academia and citizens.

Laboratory of Government and Digital Transformation of the State (Laboratorio de Gobierno y Transformación Digital): Also attached to the PCM, this laboratory was created in 2019 to promote the participation of civil society, academia and other actors in government projects and policies regarding digital transformation; strengthening the transfer of knowledge within the public sector; and promoting spaces to strengthen digital innovation, analytics, data science and governance, and digital security, for the deployment of government and digital transformation.

National Commission for Management and Technological Innovation of the Judiciary (Comisión Nacional de Gestión e Innovación Tecnológica del Poder Judicial): Created in 2019, the commission aims to ensure speedy and transparent judicial procedures. This commission is also in charge of implementing digitalisation and new technologies to improve the efficiency of judicial procedures, especially by implementing and monitoring the EJE in non-criminal cases. It is composed of the Head of the judiciary and the Executive Council; the counsellor responsible for the Institutional Technical Team of the new Labor Procedure Law; the counsellor responsible for the Judicial Office Management Unit; the president of the Working Commission of the Electronic Judicial File (EJE); and the General Manager of the judiciary.

Digital Government Committees (Comités Digitales de Gobernanza): Created in 2018, these committees are governance entities within every institution of the public administration, including those institutions that are part of the justice system, in charge of leading, evaluating and following up on the digital transformation process as well as designing the e-government plan of a given public institution. These committees are also in charge of promoting collaboration and exchange of information with other institutions. These are composed of the head of the public institution, a head of government and digital transformation, a person responsible for IT, one person from human resources, one from information security, one from the areas of citizen attention, one from management, and a legal officer. The committees are part of the National System of Digital Transformation.

Technical Secretariat of the Council for the Reform of the Justice Reform (Secretaría Técnica Para la Reforma del Sistema de Justicia, CRSJ): The Public Policy for the Reform of the Justice System (2021-2025) establishes as one of its priority objectives the enhancement of data management and interoperability in the justice system. As such, the CRSJ, through its Technical Secretariat, oversees monitoring the implementation of recommendations and activities included in the policy to reach interoperability in the justice system.

Source: OECD's own elaboration.

Even though significant improvements have been made to digitalise the government, including co-ordination efforts, there does not appear to be a leading actor to carry out this co-ordination within Peru's justice system to enable it to pursue coherent, whole-of-government, strategic objectives to implement an integrated digital justice strategy. There seems to be little evidence of co-ordination leadership and capacity across justice institutions (maybe through their Digital Government Committees) or of a plan to implement digital justice system-wide in Peru. Furthermore, it is not yet clear how the government plans to integrate existing digitalisation developments within the judiciary (implemented individually by justice institutions) or within other justice institutions (such as digital technologies to resolve disputes and mechanisms to improve interoperability across justice institutions) into the broader government digital strategy at the local, regional and national levels. On justice, proper leadership in this area requires the establishment of conditions that would enable the Secretariat of the PCM to provide robust, strategic,

government-wide guidance and play its co-ordination and monitoring role effectively to enable the effective digitalisation of the entire justice system in a coherent and integrated fashion.

5.4.2. Harnessing digital technology for dispute resolution

The increasing use of digital technologies to resolve disputes in OECD Member countries

Online dispute resolution is understood to encompass all sorts of dispute resolution mechanisms (ranging from mediation, the Ombuds Office's schemes, and arbitration to court litigation) that employ technology to solve conflicts by using electronic means. These can include digitalised justice services through digitalised platforms, such as websites or apps, and tools or processes, such as online solution explorers to diagnose the dispute and obtain free legal information, standard templates and technology-driven dispute triage.

Digital technology promises better procedures and results in justice service delivery and offers efficiency advantages and greater transparency associated with electronic administration. First, it speeds up adjudication processes (assigning pertinent justice services to respond to legal needs) and information-sharing among parties and justice services and does so at a lower cost. Second, and from the users' perspective, digital technology can create new pathways to conflict resolution; for instance, through virtual dispute resolution, citizens engage and are required to be engaged as co-producers of justice. This particularly concerns ADR mechanisms, such as mediation or conciliation, where the parties themselves are involved in finding solutions to their disputes.

A growing number of OECD Member countries are using new technology (including artificial intelligence) to support dispute resolution and are using decentralised ledgers to implement dispute resolution outcomes along with smart contracts to prevent disputes by automating legal consequences. Some OECD Member countries are also applying triage technology to the dispute mechanism best suited to its use.

Triage systems are a good practice example of one-stop-shop structures for justice services, where users can find, through technology, the best dispute resolution mechanism suited to their needs. In fact, one-stop-shop entry portals for dispute resolution allow users to solve all aspects of a dispute in one place, such as a web platform. Examples include the Canadian Civil Resolution Tribunal and Portugal's online dispute triage mechanism (Box 5.9) (OECD, forthcoming[26]).

Box 5.9. OECD practices in online dispute resolution

The Canadian Civil Resolution Tribunal

The Civil Resolution Tribunal was established in 2012 under the Civil Resolution Tribunal Act. It started with condominium disputes in 2016 and began resolving small claims in 2017. The goal is to encourage collaborative problem-solving approaches to dispute resolution. Small tribunal claims must go through the tribunal before proceeding to provincial court. However, the court still has a role if the tribunal refuses to resolve the claim, a party objects to the tribunal's decision, or if it is determined that the tribunal does not have jurisdiction. This is Canada's first online tribunal. It is available for small claims disputes dealing with debts, damages and recovery of private property of CAD 5 000 (Canadian dollars) (~ USD 3 676) and under, or condominium property disputes of any value. The tribunal is expected to roll out capacity to deal with motor vehicle accident claims of CAD 50 000 and under starting April 2019. Individuals use the Solution Explorer to diagnose their disputes and obtain free legal information and standard templates. If they cannot resolve the dispute, they can apply directly from this software using a type of form. Once the application is accepted, a secure and confidential negotiation platform is provided for

the parties to attempt to reach an agreement. A facilitator will be appointed to aid the parties if an agreement cannot be reached.

Technology-driven dispute triage in Portugal

Portugal is currently preparing a basis for establishing online systems that could support the resolution of disputes. These systems could help diagnose the legal problems of citizens and businesses and inform them of their rights and options to help protect them and resolve their disputes by using big data. They can also provide an assisted negotiation stage, which could be followed by a seamless transition to an adjudication, depending on the nature of the dispute and involved stakeholders. This type of one-stop-shop for dispute resolution can facilitate the creation of a justice ecosystem and transform the resolution of disputes. To take the "one-stop justice shop" further, the initiative is scheduled to be linked to the existing citizens' portal to facilitate early identification of problems and provide a unique interface for citizens.

Source: (OECD, 2020[13]), *Justice Transformation in Portugal: Building on Successes and Challenges*, https://doi.org/10.1787/184acf59-en.

The use of technology and data has immense potential to improve the reflection of diversity in dispute resolution systems. They can be used to establish technology-supported dispute triage systems. Dispute triage is desirable as it supports parties in finding the dispute resolution mechanism that best fits their dispute needs. Matching the dispute with the right dispute mechanism – "fitting the forum to the fuss" – does not only promise just solutions. Such solutions are also more sustainable as there is a higher chance that a conflict is viably solved if the right forum is used. In turn, sustainable conflict resolution will reduce the risk of further conflicts in the future. In addition, good dispute triage can help to avoid wasting resources. For example, judicial attention will only focus on the cases that warrant the involvement of a court.

The increasing use of digital technologies to resolve disputes in Peru

Despite the tragic socio-economic impacts of the COVID-19 pandemic in Peru, including confinement measures, the pandemic also accelerated the implementation of digital government services, including justice services like dispute resolution. Indeed, even if the use of digital technologies to solve disputes has been increasing since 2020, the pandemic has accelerated their use and expansion. For example, it is now possible to launch claims with the Public Ministry through the Ombuds Office through their official website, the National Police Digital Police Complaints website (Denuncia Policial Digital), and the judiciary through the Table of Electronic Parts website (Mesa de Partes Electrónica, MPE) (Box 5.10).

Box 5.10. Digital claim processes in Peru

Digital Police Complaint as part of the Plan Mariano Santos Mateos 30 (Plan MS30) (Denuncia Policial Digital)

The Strategic Plan for Capacitation of Peru's National Police by 2030 (Plan MS30) was designed by the Ministry of Interior and the national police with a view to strengthening and modernising Peru's national police through six strategic pillars, including staff training, capacitation and ICT tools. Within this plan, the Digital Police Complaints process was implemented so citizens can virtually issue a complaint in cases of loss or theft of personal documents, and receive a Police Complaint Certificate, which is a document in PDF format digitally signed by the Peruvian national police and has the same validity as the Police Complaint Certificate processed at police stations and Criminal Investigation Departments. This fast, safe, and free service can be accessed remotely and 24 hours a day. This service can migrate 30% of the attention in a police station to a virtual channel, saving the time and resources of the police to deal with other cases. Although this option might impact justice effectiveness,

it would need to go in hand with other strategies that also facilitate access to police complaints for those who are "digitally marginalised."

Electronic Reception Desk (Mesa de Partes electrónica, MPE)

The National Board of Justice also reported that it uses an Electronic Reception Desk to file complaints against judges and prosecutors and that it is possible for citizens to file complaints of corruption against officials of the Board. Indeed, according to information shared by the judiciary, the Electronic Reception Desk represents an additional and effective mechanism for citizens to access judicial services, as it is an uninterrupted service available 24/7. According to reports provided by the judiciary to the OECD mission in March 2022, as of December 2021, 57% of documentation was provided during working hours and 43% after working hours.

Source: (Plataforma Digital Única del Estado Peruano, n.d.[28]) Denuncia Policial Digital, https://www.gob.pe/institucion/mininter/campa%C3%B1as/2723-denuncia-policial-digital

In Peru, extrajudicial conciliation and arbitration services are offered virtually, using virtual hearings and online proceedings and notifications, including through platforms such as Arbitra Peru, the Expediente Arbitral Electrónico SNA-OSCE, the Conciliatón and other extrajudicial conciliation services provided in conciliation centres and ALEGRAs, as further detailed in Chapter 3. In the case of extrajudicial conciliation services, these can be provided virtually or in person. When it is virtual, the parties are required to use electronic and technological means to participate in virtual hearings; otherwise, the hearing will be conducted at the conciliation centre (arts. 10, 12 and 16 of the Conciliation Law). Furthermore, the parties are required to have an electronic signature to sign the conciliation minute.

Overall, despite significant recent improvements in the use of technology to improve the efficiency and accessibility of Peruvian justice services, there is still scope for Peru to adopt harmonised technology and data standards for the operation of online dispute resolution. Peru would also benefit from offering online dispute resolution services in ways that are easily accessible for vulnerable groups (e.g. the UK Online Court and the Money Claim Online or the Estonian e-Court system), which allows individuals to resolve disputes in a user-friendly and efficient manner (OECD, forthcoming[26]). Peru's authorities could also implement dispute triage following the example of Portugal (see Box 5.9), aiming to support parties in finding the dispute resolution mechanism that best fits their dispute needs. However, to do this, Peru first needs to increase data and technology to better determine patterns that can then be the basis of triage recommendations promises. Available and sufficient data are also a requisite for the use of artificial intelligence should Peru wish to consider its use for online dispute resolution in the future.

5.4.3. Interoperability across legal services to communicate justice information seamlessly

Interoperability of justice infrastructure in OECD Member countries

Two main components are essential for interoperability of justice infrastructure: the ability to seamlessly share justice-related information, data, and evidence seamlessly within the system, both across institutions and with justice services providers:

1. **The first is the capacity to share and communicate justice information**. Information requirements cover a wide range of legal services, including legal aid, legal assistance, court decisions, templates of forms to be used, guidelines and applicable laws and regulations. The justice information provided needs to be free, clear and accessible. Therefore, legal assistance should encompass providing information and public legal support to citizens and businesses. Most OECD Member countries provide comprehensive information, including laws and regulations; legal

needs and legal assistance; documents submitted in public court proceedings; court decisions; contract and form templates; and guidelines (OECD, forthcoming[26]). These countries usually provide users with adaptive forms and interactive website platforms to provide them with justice information.

2. The second essential component underpinning the provision of legal services and technology is co-ordination, notably using ICTs, across justice services. As seen in Chapter 3, co-ordination among institutions and providers is key to enhancing justice services' access and quality to all. This can be facilitated using digital and new technologies. Digital technology and the digitalisation of data into interoperable databases can drive the provision of seamless, personalised services that respond to the needs of their users. In fact, international experience shows that interoperability, the use of technology, and data-backed approaches significantly improve the co-ordination and integration of legal services, as well as their transparency (OECD, forthcoming[26]).

However, justice interoperability is still developing, as only half of OECD Member countries report having digitalised their public services (OECD, forthcoming[26]). A good example of interoperability is the case of Spain (Box 5.11), where there is a co-ordination body with representatives from the government and the judiciary, as well as other representatives from key justice institutions in charge of co-ordinating interoperability among justice institutions.

Box 5.11. Co-ordination body for interoperability in Spain

The Permanent Technical Inter-Institutional Commission for the Administration of E-justice (CTEAJE) was created in 2011 to enhance the operability and co-operation of various systems and applications used by justice institutions in Spain. It includes representatives from the Ministry of Justice; the General Council of the Judiciary; the State Attorney General's Office; and the Autonomous Communities with jurisdiction in justice matters. The CTEAJE also forms temporary or permanent working groups for advice, especially in the study, analysis, and proposals related to electronic judicial administration.

The implementation of CTEAJE in Spain has improved inter-institutional co-ordination and alignment, defining goals and assigning responsibilities and timelines. According to the 2018-2019 Annual Balance, significant collaboration exists between the groups created within the CTEAJE to fulfil the work plan. The commission has also issued joint provisions to standardise information management and interoperability. Additionally, the CTEAJE has co-created the justice data portal, which includes data on women in the justice sector.

Source: (Gobierno de España Ministerio de Justicia, 2021[29]), (Gobierno de España Ministerio de Justicia, 2023[30])

Justice system's interoperability in Peru

Interoperability of systems is crucial to ensure seamless data exchange and efficient management of legal and justice services.

In Peru, interoperability is defined as the ability of diverse organisations to interact to achieve common goals by sharing information and knowledge through their respective information systems (Legislative Decree No. 1412 of 2018). Therefore, interoperability guarantees that justice services are delivered in a co-ordinated and efficient manner to users in a way that satisfies their multidimensional (not only legal) needs. This Decree differentiates different dimensions of interoperability, all of which should be implemented by Peruvian public institutions (Defensoría del Pueblo, 2020[31]):

- **Interoperability at the organisational level:** This has to do with the alignment of objectives, processes, and responsibilities between public administration entities to exchange data and information within the scope of their competencies.
- **Interoperability at the semantic level:** This refers to the use of data and information by a public institution, guaranteeing that the information to be exchanged with other institutions is compatible with the other institution's level technology. This means that institutions should comply with the same standards to exchange data and information.
- **Interoperability at the technical level:** This refers to the technical aspects related to the interfaces, interconnection, integration, exchange and presentation of data and information, as well as communication and security protocols.
- **Interoperability at the legal level:** This has to do with adequate observance of the legislation and technical guidelines to facilitate the exchange of data and information between the different public administration entities, as well as compliance with regulations concerning the treatment of the information exchanged.

Peru has started to build a legal framework for interoperability. In 2013, the First Policy for National Electronic Government was adopted, and five years later, in 2018, Decree No. 1412 defined the interoperability framework of the Peruvian state. That same year, the judiciary was formally registered in the state interoperability platform (PIDE), which allowed the implementation of the EJE and the possibility of it interoperating with information from the DNI (ID number) and electronic signature. This regulatory development has recently been consolidated with the issuance of Emergency Decree No. 006-2020, which creates the National Digital Transformation System to foster digital transformation and innovation.

In the framework of the 2017 National Agreement for Justice (*Acuerdo Nacional por la Justicia*), some of Peru's most relevant justice institutions agreed on the need to implement interoperability for justice services (Consejo para la Reforma del Sistema de Justicia, 2021[19]).

In parallel, individual initiatives have been implemented by some justice institutions (mostly within the judiciary) to improve interoperability in specific matters. This is the case for criminal policy, where the judiciary, the Public Ministry, the national police and the National Penitentiary Institute (INPE) created an interoperable platform called RENADESPPLE, which provides articulated information on the number of arrests and detentions, as well as judicial decisions consisting of the deprivation of liberty. Efforts have also been made in the framework of Law 30364 (Law to Prevent, Sanction and Eradicate Violence against Women and Family Members) of 2015 with the creation of the Specialized National Justice System for the Protection and Punishment of Violence against Women and Members of the Family (SNEJ). This system is jointly led by the judiciary, the Public Ministry, the MINJUSDH, MIMP and the national police and aims to enhance interoperability among these institutions. Additional efforts have been made between the judiciary and the national police to improve interoperability (exchange of information) in cases regarding violence against women or family members. The Public Ministry and the national police have also started working together to exchange information regarding claims presented before these institutions.

Although there is the Secretariat of Digital Government (attached to the PCM) that leads, since 2017, the interoperability policies in Peru, according to the CRSJ, the biggest obstacle to implementing interoperability between the institutions of the justice system is the absence of an institutional leadership hub to lead policy development in this area and to disseminate information coherently. Indeed, there is a notable lack of a co-ordinating body leading the modernisation of tools and methods within the justice system in Peru. Additionally, there are insufficient technological tools and computer equipment, which limits justice interoperability (Presidencia del Consejo de Ministros, 2011[32]) (Consejo para la Reforma del Sistema de Justicia, 2021[19]).

In this regard and building on the efforts taken over the past few decades to put in place a robust legal framework to ensure interoperability of systems in the framework of the CRSJ, Bill No. 7541 of 2020 was

drafted with the purpose of creating the Permanent Inter-institutional Technical Commission for Data Management and Interoperability of the Justice System. This Technical Commission would be made up of the judiciary, the Public Ministry, the MISJUSDH, the Constitutional Court, the National Board of Justice, the Office of the General Comptroller of the Republic, the Academy of the Magistracy, the Ministry of Interior and the Secretariat of Digital Government (which would lead this commission).

This Technical Commission would have the mandate to: co-ordinate the measures implemented by the institutions of the justice system regarding interoperability and data management; establish the policy for data management and interoperability; determine the interoperable information for institutions of the justice system; implement actions to improve the digital infrastructure of institutions of the justice system; and establish a policy related to statistics of the institutions of the justice system, among others. Despite its efforts to improve interoperability, Peru still has the scope to strengthen a seamless capacity to share and communicate justice information.

Peruvian justice institutions have yet to establish a permanent, fully integrated system-wide interoperability framework that supports the exchange of data and the processing of judicial processes in a comprehensive manner at the national level. Barriers to achieving this reflect the inter-institutional co-ordination limitations mentioned throughout this report. Also, as in some OECD Member countries, Peru could benefit from providing all services digitally and strengthening and integrating/interconnecting justice information systems. Peru could also benefit from improving information systems so that they provide updated and disaggregated information, disclosed for public use.

Peru could also benefit from an institutional leadership hub to improve effectiveness and co-ordination in implementing interoperability. The Permanent Inter-institutional Technical Commission for Data Management and Interoperability of the Justice System, created in 2020, might constitute a useful first step to reach this goal as it is an inter-institutional, high-level, decision-maker entity capable of disseminating information coherently and in charge of co-ordinating the measures implemented by the institutions of the justice system regarding interoperability and data management, establishing the policy for data management and interoperability, determining the interoperable information for institutions of the justice system, implementing actions to improve the digital infrastructure of institutions of the justice system, and establishing a policy related to statistics of the institutions of the justice system, among others.

As seen in Chapter 3, some interoperability initiatives have been implemented to provide specific justice services, including the Interoperability Plan between the judiciary and the Family Specialized Police Stations that link police stations and family courts. However, there are still too many independent and weak information systems that are not integrated, do not interact with each other, and do not support the exchange of information. This limits the production, analysis and exchange of information between justice service providers. In fact, the low level of interoperability of the justice system as a whole remains a challenge that currently generates high transaction costs, low information exchange, delays in the transfer of information and low level of the quality of the information shared (Consejo para la Reforma del Sistema de Justicia, 2021[19]), low quality levels in services to citizens, and strong limitations on efficient and effective policy making and service design and delivery to serve citizens better. Peru should make more concerted co-ordinated efforts to make sure all legal services have the same level of technology to leverage digitalisation.

5.4.4. Data collection and management for better design and delivery of justice services

Data use and data management in OECD Member countries' justice services

Data plays a key role in designing and delivering justice services. Lack of reliable data makes it difficult to design policies to improve services for users and know whether they are working. It is also difficult to build accountability systems without data to track the performance of courts and judges (as well as ADR services). The lack of quality data also makes it difficult to design new organisational structures and

processes (including removing outdated procedures), properly hire, train, and locate human resources, and intelligently adopt IT tools and invest in the right physical infrastructure (World Bank, 2019[20]).

A comprehensive and consistent data strategy is recommended to maximise the benefits of data for legal and dispute resolution services while minimising associated risks. Ideally, such a strategy could cover the following topics:

- **Anticipating and planning:** For example, anticipating the legal needs of citizens and businesses, developing approaches for dispute prevention and evidence-based policy making. In a people-centred justice system, a systematic planning process begins with mapping the needs of the target population against the availability of existing legal service infrastructure. This mapping often involves the use of administrative data, such as the demographic profiles of clients using tribunal services or legal aid.
- **Delivery:** Including, for example, the development of user-driven services, making data available to public and private actors and the analysis of data to improve both public and private justice services.
- **Evaluation and monitoring:** Covering, for example, evaluations of policy approaches and impact as well as monitoring the performance of service providers (OECD, forthcoming[26]).

Consequently, sound data governance relates to the collection and storage of data, and its use to design, modify or innovate services to address justice service needs more effectively. Leveraging data governance to improve justice services is not just about using big data. Rather, successful strategies are built on advanced approaches to mapping and managing data.

Data collection

Justice data collection in OECD Member countries is crucial for understanding and improving legal systems, ensuring access to justice, and promoting the rule of law. Justice information gathered by these countries relates to:

1. **Legal needs information** (e.g. surveys) to collect information from the user's perspective in pursuit of providing people-centred services.
2. **Crime statistics** to monitor and analyse crime rates, patterns and trends.
3. **Legal aid data** to evaluate the effectiveness of legal aid programmes and ensure equal access to justice for all.
4. **Justice data** in several types of cases to assess the efficiency and effectiveness of justice systems, identify areas for improvement and support policy development to enhance access to justice in different matters.
5. **ADR data** on the use and outcomes of ADR mechanisms, such as mediation or arbitration. This information helps measure the effectiveness of ADR processes, identify best practices and encourage the use of non-adversarial methods to resolve disputes.
6. **Gender and justice data** to analyse gender disparities within the justice system, including data on crime victimisation rates, the representation of women in the judiciary, and the treatment of women at various stages of the justice process. These data help identify gender-specific challenges, inform policy decisions and promote gender equality within the justice system.

Some OECD Members, such as England (United Kingdom), have developed standards to better collect and process court data to improve case and court management (Box 5.12).

Box 5.12. OECD practices in court data collection

Good practices of case data collection and reports for the courts to use and build into their management approaches are available (and to some extent published) in the United Kingdom.

The England and Wales Commercial Court report, for example, provides:

- data on the number of hearings listed and heard
- length of hearings
- number of paper applications (an option for parties to choose instead of an oral hearing, which speeds up the process)
- number and percentage of hearings listed that were "not effective," i.e. hearings vacated, adjourned or settled on the day and/or in advance of the hearing date.

The CEPEJ has suggested data dashboards that outline core data needs for courts across all EU countries and has recently provided an action plan for court digitalisation, including the creation of data dashboards that allow for backlog tracking.

Source: (Judiciary of England and Wales, 2021[33]; Csúri, 2022[34]).

As seen in Chapter 2, the primary purpose of mapping data is to understand the scope, nature and impact of justice problems to design and deliver people-centred strategies, measuring what works and adapting accordingly. The first step in people-centred design and delivery of legal and justice services is identifying a population's legal and justice needs. In this regard, legal needs surveys (LNS) provide the means to collect data and gain a representative picture of legal needs across a country. Chapter 6 addresses data collection practices in Peru that aim to measure the legal and justice needs of the population.

Data management

Justice data management in OECD Member countries involves collecting, organising, storing, analysing and disseminating justice-related data to ensure its accessibility, reliability and security to inform evidence-based policy making and improve the effectiveness of justice systems. In terms of data management, the focus is on leveraging the efficiency advantages of technology and data (OECD, forthcoming[26]).

However, many OECD Member countries are still uncertain or not yet engaging in justice-related data strategies. These strategies aim to leverage the use of data and technology in justice services to improve them (OECD, forthcoming[26]). The themes dominating data strategies in OECD Member countries are: 1) monitoring the performance of justice institutions; 2) developing approaches for justice services; and 3) anticipating legal needs. These three themes are characterised by an institution-oriented perspective, i.e., data are collected and used to improve justice institutions. Leveraging data governance to improve justice services is not just about using big data. Rather, successful strategies focus on mapping and managing data. A good example is how Canada uses data to modify and innovate justice services (Box 5.13).

Box 5.13. Canada's practices in using data to improve justice services

Justice Canada is partnering with Statistics Canada and several federal departments to implement the Canadian Legal Problems Survey (CLPS), which began data collection in February 2021. With a large core sample of 30 000 targeted respondents and an oversample of 12 400 Indigenous people, the CLPS will collect data on the prevalence and nature of serious legal problems for adults aged 18 and older across the 10 provinces. In addition, the CLPS will gather information on whether and how those problems were resolved and the impact of these problems on people, including financial, social and psychological impacts. Results were released in 2022, and a Public-Use Microdata File is available on request from Statistics Canada.

Source: (OECD, forthcoming[26]), *Digital Transformation for Access to Justice Towards a People-Centred Justice System*; http://scdb.wustl.edu/.

Data use and data management in Peru's justice services

The data framework in Peru is defined by Legislative Decree No. 1412 of 2018, which approves the Digital Government Law, the national framework for data management in Peru. It defines data as decipherable facts, information or concepts, expressed in any appropriate form for its processing, communication and interpretation. This decree also establishes that data governance involves data collection, processing, publication, storage and interpretation. Further, according to the Statistics System in Peru, all public institutions should have an internal division in charge of gathering administrative records. In this connection, the Ombuds Office defines information management as a procedure that aims to determine the institution's information needs based on its competencies and activities, improve communication channels and access to information, and improve information processes and the efficient use of resources.

Hence, proper information management is useful for the decision-making process. Similarly, information management can constitute a framework in which interoperability should act as a "tool" to improve the gathering of information and its management. From a more holistic point of view, information management constitutes the mechanisms that can enhance interoperability across all institutions to facilitate the seamless exchange of information and knowledge in the pursuit of mutually beneficial objectives.

Data collection

During recent years, Peru has been working towards enhancing its data collection systems to improve the effectiveness and efficiency of its justice systems. This often involves implementing digital technologies (such as the Integrated Judicial System; see Box 5.14), adopting standardised data collection methodologies and strengthening collaboration between relevant institutions to exchange information. Further, the implementation of electronic case management systems and digitisation of court records (i.e. the EJE) aims to streamline processes and facilitate data gathering. Additionally, initiatives to enhance transparency and access to justice, such as providing online platforms for legal information and services (e.g. Modules for the Judiciary Use mentioned in Chapter 6 and the Electronic Reception Desk), can contribute to better data availability.

Following the trend in OECD Member countries, Peru's institutions gather information data through justice services and programmes, as detailed in Box 5.14.

Box 5.14. Data collection in Peru's justice services

The following institutions gather justice-related data in Peru:

- **The Ministry of Women and Vulnerable Populations** collects data/administrative records from all services provided by the National Program for the Prevention and Eradication of Violence against Women and Family Members (Programa Nacional para la Prevención y Erradicación de la Violencia contra las Mujeres e Integrantes del Grupo Familiar, AURORA). MIMP gathers information on certain justice services provided to women in the information system of the AURORA Program; it includes all services provided by this programme (e.g. Women Emergency Centres [CEM], itinerary services, prevention services, etc.).
- **The Public Ministry** has both a statistics office and a Criminal Observatory (Oficina de Observatorio de Criminalidad). The statistics office focuses on generating institutional statistics, covering the number of prosecutors in all categories and specialties; types of complaints; crimes; and national legal medical services. The Criminal Observatory produces statistics on femicide; common crimes (e.g. robbery, family violence), and homicides. To gather information on ongoing cases ,the Public Ministry uses various systems, including the System of Prosecutorial Management (Sistema de Gestión Fiscal, SGF); Information System to Support Prosecutorial Work (Sistema de Información de Apoyo al Trabajo Fiscal, SIATF); the Electronic Prosecutorial File (Bandeja Fiscal Electrónica); the Administrative Integrated Management System (Sistema Integrado de Gestión Administrativa, SIGA); and the Integrated Management System for Registry and Evaluation of Prosecutors (Sistema Integrado de Gestión, Registro y Evaluación de Fiscales, SIGREF).
- **The National Statistics Institute (INEI)** is responsible for justice statistics, presented as social indicators related to the justice system, such as homicides and femicides. Additionally, the INEI transforms administrative records into statistics for cases involving femicides, homicides, and citizen security.
- **The judiciary** collects data on judicial procedures in the Integrated Judicial System (SIJ), recently introducing the ethnic variable to identify Indigenous representatives (or *Comuneros*) in judicial procedures.
- **The Ombuds Office** has a system that monitors the Ombuds Office's recommendations (including reports) in terms of human rights.
- **The Ministry of Justice and Human Rights** gathers information on ADR mechanisms in different information systems: 1) RENACE, the National Registry of Arbitrators and Arbitration Centres; 2) SISCON, the Information System for Conciliation Services; 3) SISCONCI (Sistema de Búsqueda del Directorio de Centros de Conciliación), the Directory of Free Conciliation Centres; and 4) SISCONE (Sistema de Seguimiento de procesos de conciliación extrajudicial), the follow-up of extrajudicial conciliation processes. The MINJUSDH also gathers information on the system regarding public defence services in the DATAMAR platform.
- **The Constitutional Court** compiles its resolutions in a system known as SIGE, which currently only contains resolutions from 2020.

Source: OECD fact-finding mission, March 2022 and Peru's responses to the OECD Questionnaire, July 2022.

Despite recent developments, justice data collection and storage in Peru remains weak. Although most justice institutions have their own justice databases (see Box 5.14), they face multiple collection and interoperability challenges. For instance, Peruvian stakeholders reported that due to the lack of unified standards to collect data (there is a framework for data collection across justice institutions), some justice

institutions fail to gather this information or do it in a limited fashion, producing inaccurate or incomplete data. However, some institutions collect information within services or programmes used to assess the need and location of that need, which is used for service planning and allocating resources to that service. These include MIMP with the AURORA Program, the Public Defence of the MINJUSDH and the Ombuds Office (see Chapter 6).

MIMP reported to the OECD that it collects data/administrative records from all services provided by its AURORA Program. This information is only on judicial services, not including the social or health services this programme offers. However, its evidence-based service planning uses available data to assess the need and allocation of that need. It then designs and allocates resources to the 'programme's various components accordingly.

Furthermore, the National Observatory on Violence against Women and Family Members (Observatorio Nacional de la Violencia contra las Mujeres e Integrantes del Grupo Familiar) collects, systematises and publishes data and statistics from the INEI, MIMP, the police, the judiciary, the Ministry of Health, the MINJUSDH, the Ministry of Labour and the Public Ministry on services, including justice services, related to violence against women.

Likewise, the Public Defence of MINJUSDH collects data in an ordered way through the follow-up of cases in each of the 34 District Directions (which correspond to each judicial district) to plan and determine resource allocation and staff allocations across the country and within regions by mapping the type of cases and the incidence of cases. On these data, it attempts to ensure that the appropriate specialisation and number of public defenders are in the offices to meet demand. However, its data collection could be improved to assess the service of public defence. In 2021, MINJUSDH, with the Pontificia Universidad Católica del Perú, developed a study to determine the quality level of the services provided by the ALEGRAs (public defence and conciliation), which collected data on people-centred variables, including information about the users, the type of cases seen, the type of services provided, the problems and needs of the users, performance evaluation, differentiating by service provided in person and virtual or through the phone, and user satisfaction with the use of other virtual resources (Pontificia Universidad Católica del Perú, 2021[35]). This kind of practice of data collection, which is an identified good practice, could help create the data ecosystem necessary to support people-centred justice.

Other institutions, such as the Ombuds Office, collect information on users and their cases, including through interconnection with the National Registry of Identification and Legal Status (RENIEC), which collects users' personal information and reduces errors. This information is integrated into a registry system and is used to identify needs and engage in annual planning. In addition, the Ombuds Office carries out targeted studies, but it fails to integrate the data gathered for these studies and findings into an information system.

The Ombuds Office has no information systems on its strategic litigation services. The information it possesses is not updated and thus unavailable in real-time. The same holds for the SIGE, the Constitutional Court's information system, and the MINJUSDH information systems that gather ADR information. These systems appear to be obsolete, with no statistics on services or disaggregated information.

Regarding general service data collected by the judiciary, although the SIJ is a notable improvement (it also recently incorporated the ethnic variable to identify Indigenous representatives or *Comuneros* in judicial procedures), it is not regularly updated and fails to identify and disaggregate information; for example, on the extent and length of delays and on the bottlenecks that tend to cause backlog, and information disaggregated by gender.

Hence, despite some good practices in data collection, data on the 'population's legal needs are currently lacking in Peru. Interviews with stakeholders across the justice sector suggest that Peru does not conduct any national systematic assessment of the 'population's legal needs. This is a considerable gap when

trying to consider the user's perspective to design and provide people-centred services and tailor services according to the needs of the population, particularly the most vulnerable (see Chapter 6).

Data management

As in most OECD Member countries, Peru also lacks a justice-related data strategy to improve justice systems. Peruvian justice institutions would benefit from creating this type of strategy, starting by identifying how justice data can be used at its full potential to improve the justice system.

Although there is a current framework for data management in Peru, there is still space to continue strengthening the analysis and dissemination of justice-related data to ensure its accessibility, reliability and security.

Currently, accessibility challenges in Peru stem from the unavailability of key justice information systems for public use. This includes systems such as the judiciary's SIJ; MINJUSDH's system on ADR and Public Defence; the Public Ministry's systems; and the Constitutional Court's system. To address this issue, there is still scope for Peru to enhance open data initiatives, making government data more accessible and transparent to the public.

Furthermore, there are challenges around data management and interoperability standards preventing Peru from capitalising on the efficiency advantages of technology and data. This is partly due to the absence of a culture of data or a "data-driven government" culture in public institutions and a lack of oversight and co-ordination body to address these challenges.

The main challenge regarding justice data management is that justice institutions' information systems are weak, outdated or obsolete. In fact, one of the main obstacles to reforming the justice system is the lack of good empirical information and understanding of the real performance of the justice sector. The lack of reliable and updated statistical information has caused a lack of planning in terms of raising the number of justice services in the country, as well as the impossibility of adopting timely decisions within the justice system. Further, there is no verification of the data issued by justice institutions and no co-ordination to gather data or to produce statistics (Consejo para la Reforma del Sistema de Justicia, 2021[19]). Besides institutions not having enough quality data, the collection and reading of administrative data is a challenge, as well as the conversion of the administrative data into statistical records. For this, articulation is key.

Furthermore, the Public Ministry reported in its responses to the OECD project questionnaire that "There is no evidence that the services, procedures, statistical data or other information coming exclusively from the Public Ministry have influenced public policies on the justice system." In fact, according to the Peruvian stakeholders' responses to the OECD questionnaire, most institutions are not using statistics or information to plan, design or evaluate justice policies or services. Although the MINJUSDH reported using available data and information for policy making (e.g. for the design of the National Penitentiary Policy 2030 and for drafting the 2018-2021 National Plan of Human Rights), it also reported that the lack of common methodological criteria regarding the use of data and statistics, as well as the lack of available data and information that has been updated to reflect current activity, hinder its capacity and willingness to use data for policy and service design and delivery.

Further, the surveyed institutions reported not gathering data on justice service users' perceptions of the services provided. As mentioned, data on the 'population's legal needs are currently non-existent in Peru. Overall, there is a need for a data ecosystem to support people-centred, efficient justice service delivery in the country.

As mentioned, Peruvian stakeholders reported various challenges impeding the systematic production, availability, accessibility, quality and use of justice statistics. There are currently gaps in the administrative data that is collected. Therefore, Peru does not generate statistics on the legal assistance that it provides by all institutions that implement these services (not only by the MINJUSDH) or in the use of ADR

mechanisms. When collected robustly and consistently across the range of services offered, administrative data can be used in conjunction with legal needs data to pinpoint locations of over- or under-provision of services.

In this connection, the INEI is currently responsible for producing justice statistics, which are presented as social indicators related to the justice system (homicides, femicides, etc.). They also work on converting administrative records into statistics for cases regarding femicides, homicides and citizen security. However, the production of justice statistics by the INEI is limited to specific social indicators and data on criminal activity. It does not appear to reflect a wider understanding of a people-centred justice system. Furthermore, current statistical legislation does not explicitly regulate the reporting system between the Chief of the INEI and policy makers. Hence, INEI does not always have access to strategic administrative sources, notably for the compilation of national accounts, due to a lack of co-operation with data owners (OECD and National Institute of Statistics Peru, 2017[36]).

Peru could benefit from a co-ordinated data strategy to promote a more people-centred approach to data collection and management beyond the institution-based approach that currently informs data collection efforts, along with a culture of data based on a single shared standard to collect, manage and use information in a way that ensures that data collection and management is regulated and implemented by all justice institutions in Peru. Justice institutions could also benefit from further disaggregating data, making it available to the public and collecting data on the population's legal needs.

5.5. Summary assessment

Peru's justice system's efficiency falls below OECD standards and practices, as reflected in case clearance rates and backlogs; limitations and dysfunctions in ADR mechanisms, including arbitration; vulnerability to corruption in public procurement cases; and limitations in enhancing an interoperable digital justice system across the country.

Despite recent reforms that have improved the judicial system's framework, its operation still has challenges, including lengthy procedures and court congestion. To address this, Peru could optimise the allocation of judicial resources across court districts, such as judges and budgets. This could be achieved by implementing improved court and case management strategies. Additionally, improving the EJE and implementing an e-filing system aligned with the principles of transparency, inclusiveness, accountability, and accessibility could contribute to facing these challenges. The efficient use of statistics and a data-based approach to case management and monitoring, along with the appropriate ICT tools, infrastructure, and training, are critical to clearing backlogs, improving case clearance rates, speeding up disposition times, and enhancing the overall quality of justice delivery through improved courts' performance.

Popular arbitration is not yet effectively used to alleviate court congestion. ADR mechanisms could be more effectively promoted, implemented, and evaluated, to better suit the needs of the population. To enhance their efficiency, additional data and stronger information systems are required to measure the performance and impact of ADR mechanisms.

The country has made progress in creating institutional arrangements for digital transformation and adopted sound regulations to enhance interoperability and data management. However, this regulatory framework has yet to deliver tangible outcomes. Adopting a non-coordinated and overly legalistic approach to developing digital government may hinder achieving more strategic, integrated outcomes as the government pursues its modernisation efforts in this area.

Peru still has scope to design and implement a coherent and integrated vision of government digitalisation where there are whole-of-government strategic objectives (including justice matters) and where the cross-cutting nature of digital technologies is positioned to facilitate a digital transition and strategic use of ICTs that supports a digital ecosystem that facilitates the design and delivery of a people-centred approach to

justice. Despite efforts to digitalise the justice system, Peru has yet to articulate an overall coherent vision whose pursuit is supported by an integrated, co-ordinated digital strategy. In fact, Peru's digital developments have primarily focused on traditional areas and reflect an institutional, rather than a people-centred, approach to modernisation regarding justice services. In addition, due to the limited levels of digital infrastructure and literacy, the justice system's digital transformation should consider "the digitally marginalised" and, thus, focus on challenges such as a lack of private resources, lack of public infrastructure, absence of digital skills, preference for in-person services or a combination thereof.

The lack of an overarching digital governance structure could hinder interoperability across systems, leading to the proliferation or duplication of data standards and strictly technical solutions for legal and justice service delivery and data storage. It could also lead to multiple requests for people to provide the same information or file their claims multiple times to different entities across the public sector unnecessarily. Peru could benefit from stronger inter-institutional co-ordination to drive interoperability and still has scope to strengthen a seamless capacity to share and communicate justice information.

More broadly, technology and data are not yet widely used to fundamentally transform how justice is delivered in Peru. Indeed, there is space to improve information management by promoting the culture of data or a "data-driven government" through which gathering and using data in all justice institutions is standardised, and the use of information for decision making and statistics improves the quality and efficiency of justice services.

Peru could benefit from focusing on additional approaches, such as the gathering, storing and specific use of justice data and data management to improve the efficiency and delivery of justice services. Stronger, more co-ordinated, and integrated information systems and a sound and interoperable data ecosystem, with data provided by all justice institutions, can support decision makers in their efforts to design and implement efficient people-centred justice services in the country.

5.6. Recommendations

In light of the above, Peru could consider implementing the following recommendations:

5.6.1. Key recommendations

Take measures to develop comprehensive decongestion measures and new management structures to improve the efficiency of the courts, including digital tools. Improve the production and use of statistics and a data-based approach by implementing comprehensive data collection on the length of court proceedings and suggest recommendations about their application at all levels of jurisdiction in Peru. To facilitate the implementation of this recommendation Peru may consider:

- ***Improving the production and use of statistics and applying a data-based approach*** by implementing comprehensive systems of data collection on the length of court proceedings and suggest recommendations about their application at all levels of jurisdiction in Peru. Introducing such a comprehensive data collection system will enable Peru to assess whether decongestion measures have had a positive impact, whether additional measures are required and in what sectors of operation within the judiciary. It will also be a helpful tool to design case and court management solutions.
- ***Continuing to implement case and court management strategies*** to ensure optimum court performance and reduce case backlog. Judicial resources, such as judges and budgets, can be better allocated across court districts by implementing court and case management strategies (e.g. case weighting and court performance indicators).

- ***Implementing additional measures to reduce trial length***, such as incentives to judges, timeframes, systematic production of court-level statistics, and larger shares of the justice budget devoted to ICT solutions.
- ***Implementing additional indicators and procedures to measure court efficiency as accurately as possible.*** These indicators can cover a full spectrum, from the disposition time, case backlog and the efficiency of the appeals to those measuring judicial productivity and user satisfaction.
- ***Reviewing the current approach to performance appraisal and evaluation of judges and prosecutors*** to reward sound case management and efficient court management. Performance appraisal in Peru seems to be negatively affecting judges' independence and impartiality. Any incentivisation through performance evaluation schemes needs to be very carefully balanced to preserve impartiality (see Chapter 4).
- ***Designing comprehensive and co-ordinated case decongestion measures.*** Measure their impact in terms of clearance rates and disposition time.

Improve the design, trustworthiness, and practical use of alternative dispute resolution (ADR) mechanisms by implementing a clear and detailed legal and regulatory framework for all ADR mechanisms and improving data collection with a view to measuring their implementation and impact. To facilitate the implementation of this recommendation Peru may consider:

- ***Implementing a clear and detailed legal and regulatory framework for all ADR mechanisms.*** ADR should be regularised to improve its design, use and implementation so it does not interfere with or contradict formal justice.
- ***Improving data gathering on ADR mechanisms.*** Improve ADR information systems, update them periodically and disaggregate data considering different variables (e.g. race, gender, place of residence, rural, socio-economic status, population with disabilities, etc.). Further data and more robust information systems are also needed to measure the performance and impact of ADR mechanisms.
- ***Improving online dispute resolution.*** Develop a coherent and shared vision for dispute resolution and the role that online dispute resolution should play by improving the availability and sufficiency of existent data. Also, consider designing online dispute resolution services in ways that are easily accessible for vulnerable groups and consider implementing dispute triage to support parties in finding the dispute resolution mechanism that best fits their dispute needs.
- ***Evaluating the impact of ADR mechanisms on users and the judicial system in Peru.*** This should be done by requesting input and feedback from the legal community, court users and other stakeholders. In this vein, it would be ideal to carry out a diagnostic study on the effectiveness of conciliation as an ADR mechanism (as the Public Policy for the Reform of the Justice System [2021-2025] establishes).
- ***Continuing to implement the Adolescents Criminal Responsibility Code and the restorative criminal mediation mechanism*** in cases where the perpetrator is an adolescent. Ensure that the Permanent Multisectoral Commission created to implement the code and the Ministry of Justice and Human Rights (MINJUSDH), as the leading institution, benefit from enhanced co-ordination and planning based on the current implementation calendar.

Implement mechanisms to enhance/bolster the collection of data with a view of designing and implementing a comprehensive, inclusive and integrated policy on access to justice. To facilitate the implementation of this recommendation Peru may consider:

- ***Adopting a data-driven approach to justice services.*** This could be done by designing and implementing a co-ordinated data strategy to promote a more people-centred approach to data

collection and management through gathering and using standardised, updated and disaggregated data in all justice institutions.

- ***Consolidating solid data and information systems*** so that justice service providers rely on them for monitoring and evaluation purposes. This would allow justice services providers to evaluate the service's success (in a way that also considers the user's perspective), identify trends and potential demands for additional or different programmes and identify any need to alter how the services are provided.
- ***Improving data collection and storage by disaggregating data.*** Data collected through justice service providers should consider different variables (e.g. gender, ethnicity, rural, socioeconomic status, population with disabilities, etc.), investing in new technologies to improve existing information systems, creating new ones, updating them frequently and improving the seamless exchange of information between systems.
- ***Improving the accessibility of justice information for public use and consultation*** by ensuring that all justice information systems have accessible and updated information while guaranteeing data privacy and confidentiality to protect personal information and ensure compliance with privacy laws.
- ***Strengthening justice data*** to establish and maintain evidence-based mechanisms and produce justice statistics to support decision making. This could be achieved by strengthening the role of the National Institute of Statistics and Informatics (INEI) to group and disaggregate justice data and by promoting the carrying out of legal needs surveys or other strategies to measure and map the legal needs of the population, with particular emphasis on the most vulnerable.

5.6.2. Medium/long-term recommendations

Take steps to establish a permanent, fully integrated system of justice digital interoperability that allows for the exchange of justice data and the processing of judicial processes in a comprehensive and seamless manner at the national level. To implement this recommendation Peru may consider:

- ***Implementing a justice interoperability system*** that allows the digital exchange of justice data and the management of judicial processes in a comprehensive, integrated and seamless manner at the national level.
- ***Identifying an institutional leadership hub to improve effectiveness and co-ordination in the implementation of interoperability***. The Permanent Inter-institutional Technical Commission for Data Management and Interoperability of the Justice System, created by Bill No. 7541 of 2020, might constitute a useful first step to reach this goal.
- **Implement an integrated, co-ordinated national digital strategy for the justice system that enhances the use of digital tools to improve the efficiency and effectiveness of justice delivery. While doing so, define clear responsibilities, leadership, and cooperation mechanisms to ensure the strategy's implementation, monitoring and evaluation.** To implement this recommendation Peru may consider: ***Designing and implementing a Digital Justice Strategy*** to improve the efficiency and effectiveness of justice delivery including:
  - ***Defining clear responsibilities*** and co-operation mechanisms to ensure its implementation, monitoring and evaluation.
  - ***Strengthening inter-institutional articulation*** that would reflect interoperability to design and implement the justice policy in Peru through stronger, articulated and unified information systems and a sound and interoperable data ecosystem, with data provided by all justice institutions.

  - ***Defining a leading actor to carry out this co-ordination*** in pursuit of coherent whole-of-government strategic objectives to implement an integrated Digital Justice Strategy in Peru.
  - ***This strategy should also focus on the digitally marginalised*** by considering their specific needs, challenges and barriers to access. This includes improving digital literacy and Internet connectivity in underserved areas, promoting affordable devices or access programmes, and supporting digital literacy initiatives to bridge the digital divide.
- ***Continuing to implement innovative digital strategies in the justice system*** in a systemic, comprehensive, coherent and system-wide manner, ensuring that they are fully integrated into the Digital Justice Strategy mentioned above and fully consistent with the government's general strategic framework and approaches for digitalising government services. This will make it possible to tackle backlogs and include the incorporation of digital tools, data-based approaches, simplification and standardisation of procedures, further integration among public services and specialised case management for different case types.
- ***Systematically monitoring and evaluating the impacts of the Electronic Judicial Files (EJE)*** to improve it and to use information collected there, as additional evidence to better understand Peruvians' justice needs and whether they are being addressed effectively using the EJE. In addition, establish key common standards in terms of capacities and technological equipment to have the same level of digital development to use the EJE.
- ***Increasing the technological digital literacy of judges and justice officials*****.** Ensure justice officials and the Peruvian population have access to digital tools and infrastructure and receive the required training. This will also contribute to the optimal implementation of the EJE.
- ***Improving institutional capacities and ICT equipment for judges and justice officials.*** Justice stakeholders and institutions must have the same level of digital development to implement the EJE and maximise its use system-wide. Also, continue to enhance the training of public officials throughout Peru on the EJE.

Promote the use of digital technology to resolve disputes. To implement this recommendation Peru may consider:

- ***Adopting harmonised technology and standards*** for the operation of online dispute resolution, mostly regarding online implementation of ADR mechanisms.
- ***Offering online dispute resolution services in ways that are easily accessible for vulnerable groups.*** This could be done through public websites; placing advertisements on private websites; distributing information by way of leaflets; providing necessary information via social services staff; and providing certain groups with letters and emails.
- ***Implementing dispute triage.*** Dispute triages aim to support parties in finding the dispute resolution mechanism that best fits their dispute needs. To do this, Peru first needs to increase data and technology to better determine patterns that can then form the basis of triage recommendations promises.

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Notes

1. According to the National Board of Justice's 2022 Annual Review, in 2022 it has appointed 9 Supreme Judges and 3 Supreme Prosecutors; 24 Superior Judges and 2 Superior Prosecutors; and 30 Specialised or Mixed Judges and 19 Deputy Prosecutors or Provincial Prosecutors.

6 Towards a people-centred justice system in Peru

This chapter identifies Peru's main challenges in implementing a people-centred justice system. It identifies the major structural, geographical and socio-economic barriers Peruvians encounter while accessing justice services and explores specific groups' justice experiences (women, Indigenous people, and the LGBTQI community). This chapter also examines existing justice services in Peru to determine if they are accessible, cost-effective and tailored to the specific needs of the most vulnerable groups.

6.1. Introduction

The *OECD Recommendation on Access to Justice and People-Centred Justice Systems* defines access to justice as the ability of people, businesses and communities to prevent conflicts and obtain effective, fair, equitable and timely resolution of their legal and justice-related needs, which may include a problem with a legal or justice dimension in any sector and which may demand access to justice services and other dispute resolution mechanisms in order to obtain recognition of and remedy.

Access to justice and the pathways for people to address their legal and related needs are heavily influenced by a country's constitutional, legal, cultural and governance structures. At the national level (in unitary states), policies are formulated, priorities are identified, and funding is allocated to design and deliver justice services that aim to meet the needs of residents in that jurisdiction. In federal states, this responsibility is often shared between the national and constituent levels of government.

Strong leadership and policy direction are essential for clear sector-wide priorities in justice strategies, whether addressing legal problems or harmonising justice system messages and policies to adopt a common and consistent approach to data collection and planning legal services. Conversely, the absence of leadership and co-ordination, or a clear set of people-centred priorities nationally, can lead to less-than-optimal results for citizens seeking assistance and information to resolve their legal problems.

As seen in Chapter 2, the low levels of trust in public institutions among Peruvians, along with lack of knowledge concerning pathways to justice, absence of economic resources (to afford to participate in the formal legal system) and perceived gaps in integrity and corruption within the system may mean that people choose alternative means of dispute resolution.

In this context, this chapter first presents the concept of a people-centred approach to justice. It looks at the strategic environment and institutional infrastructure that underpin the provision of justice services and identifies the strategic issues affecting the provision of these services and the extent to which they support such an approach. This chapter further identifies the structural implications, barriers and main challenges citizens face when addressing their legal needs, with a focus on specific vulnerable groups (women – including but not limited to – victims of violence; the LGBTQI; and Indigenous people). Finally, it analyses formal and informal justice service delivery from a people-centred approach.

This chapter provides a summary assessment of Peru's justice system from the perspective of both users and the institutions offering justice services. It sheds light on the pathways individuals take to address their legal issues and the challenges and barriers they face when seeking effective justice. The chapter presents evidence on the planning processes directing and funding justice services that aim to meet people's needs. It highlights the importance of identifying and locating people's legal needs through a data ecosystem to match legal services to the right individuals in the right places at the right time along a seamless continuum. This work will be complemented by a forthcoming legal needs survey to be conducted in the two pilot regions of Lima and San Martin in 2024.

6.2. A people-centred justice system in Peru

As seen in Chapter 2, a people-centred justice system is based on an approach where the justice system and its components focus on addressing the needs of the people. Access to justice for all is a fundamental aspect underpinning democracy and a guarantor of the ability of people, communities and businesses to prevent conflicts and obtain effective, fair, equitable and timely resolution of their legal and justice-related needs. This means that the justice system is regarded as a means to respond to and meet people's needs effectively, whether through formal or informal justice tools and mechanisms. It intentionally focuses primarily on the legal problems and needs experienced by the community, notably by those members who do not – or cannot – gain access to the formal justice system, as stipulated by the recently adopted OECD

Recommendation on Access to Justice and People-centred Justice Systems and the United Nations 2030 Sustainable Development Goals (SDG) Agenda target 16.3 to ensure equal access to justice for all.

Adopting a people-centred approach in the justice system means prioritising the perspectives and needs of individuals, especially marginalised and vulnerable groups such as women, children, Indigenous groups, the elderly and people with disabilities. This approach guides the design, delivery, implementation and evaluation of public policies, services and legal procedures, both within and outside the justice system.

However, ensuring formal equality before the law and access to courts is not enough for true people-centred justice. The reality often falls short of the ideal of guaranteed access to law and courts in many jurisdictions. A people-centred approach, therefore, begins by identifying the specific legal and justice needs of individuals, considering their unique circumstances. This is crucial since many legal problems do not reach courts, as noted in the OECD Framework and Good Practice Principles for People-Centred Justice (OECD, 2021[1]).

For justice services to meet people's needs effectively, governments and legal service providers must strategically allocate financial and human resources. This requires understanding that justice systems, while needing independence, also compete for public funding like other services. Therefore, these systems must demonstrate efficiency and effectiveness in addressing people's legal and justice needs.

In line with the OECD Recommendation on Access to Justice and People-Centred Justice Systems, a people-centred approach to justice requires focusing on service design and delivery that meets people's legal and justice needs. It also involves redefining the missions of justice system institutions to emphasise addressing these needs. Moreover, recognising the perennial challenge of resource scarcity in the justice sector, governments must ensure adequate funding and staffing. This involves balancing the independence of the justice system, particularly courts, with the necessity for public expenditure, as seen in other areas of public service.

6.3. Access to justice and the administration of justice in Peru

The *OECD Recommendation on Access to Justice and People-Centred Justice Systems* refers to the legal and justice services as the in-person, online or hybrid judicial and non-judicial services that offer: 1) support, such as legal information, advice, resources and representation; and 2) formal or informal mechanisms to resolve their disputes or address their legal needs, including alternative dispute resolution (ADR) mechanisms that enable out-of-court settlements and schemes that support prevention and de-escalation (OECD, 2023[2]). Yet this is often narrowly interpreted as primarily having access to courts (see Chapters 3 and 4).

Constitutions of many OECD Member countries defend a broader notion of the individual right to access to justice that goes beyond access to the formal court-based institutions underpinning the administration and delivery of justice by including ADR mechanisms in their constitutions and promoting their use. These mechanisms are defined as not only an alternative to formal institutions but as highly appropriate in servicing people's justice and legal needs (Nylund, 2014[3]). Countries, including Costa Rica, have constitutions that contain the specific right to arbitration (Gomez, 2023[4]). Other Latin American countries, including Colombia and Mexico, go beyond arbitration and refer explicitly to conciliation and mediation, encouraging governments to introduce such mechanisms (OECD, 2020[5]) (Box 6.1).

Box 6.1. Access to ADR mechanisms in OECD Member country constitutions

The Constitution of **Mexico** establishes that the "laws shall provide alternative mechanisms to resolve controversies" (art. 17) and recognises arbitration and conciliation in several articles of the Constitution.

Costa Rica establishes in its Constitution that "all persons have the right to terminate their patrimonial differences by means of arbitrators, even when there is a pending litigation" (art. 43).

The Constitution of **Colombia** recognises that individuals may be temporarily entrusted with administering justice as jurors – members of a jury – in criminal proceedings. This implies that individuals act as mediators or arbitrators authorised by the parties to issue verdicts in law or equity in the terms defined by an Act (art. 116).

Source: Constitutions of Mexico, Costa Rica and Colombia.

The Peruvian Constitution does not explicitly include a right of access to justice. It recognises the rights to due process and jurisdictional protection, focusing narrowly on formal access to jurisdictional mechanisms to resolve disputes. This approach gives substantial power to the judiciary, emphasising traditional courts-based approaches for access to justice. Although the Constitution mentions arbitration as an independent jurisdiction (art. 139), it still falls under the purview of the judicial branch for enforcement or award revision (Arbitration Law, arts. 62-68). ADR or other formal or informal mechanisms for dispute resolution are not otherwise guaranteed as a right in the Constitution.

However, in consideration of Peru's cultural and demographic specificities (see Chapter 3), the Constitution's Article 149 mentions the jurisdictional functions of the native and peasant communities with the support of the *rondas campesinas*, as well as the co-ordination of this special jurisdiction with the Justices of the Peace (see Chapters 3 and 4). In this context, separating access to justice from administration of justice is critical to understanding the delivery of legal and justice services in Peru, including judicial and non-judicial, and how delivery might potentially meet the legal needs of Peruvians in each region of the country.

Peru could benefit from a comprehensive understanding of the people-centred access to justice concept and the recognition of the right of access to justice for all, increasing its capacity to design and deliver justice and legal services to respond to the legal needs of the entire population, notably its vulnerable groups.

6.3.1. The judiciary's role in ensuring access to justice

In Peru, actions to improve access to justice have predominantly been led by the judiciary, starting with the adoption of the Brasilia Rules (Box 6.2). The judiciary's commitment to improving access to justice for all people across Peru is clear and commendable. The 2022 Annual Report of the Judiciary's Commission for Access to Justice for Vulnerable People and Justice in Your Community (Poder Judicial del Perú, 2022[6]) shows a solid commitment to achieving better access to justice for vulnerable people and applying the Brasilia Rules, as noted in Chapters 3 and 4.

Box 6.2. Defining access to justice from the judiciary perspective in Peru: The Brasilia Rules

The 2008 Brasilia Regulations Regarding Access to Justice for Vulnerable People, approved by the XIV Ibero-American Judicial Summit (Brasilia Rules), are an important and commendable attempt to achieve a "people-centred justice approach. They consider that the "judicial system must be designed, and indeed is being designed, as an instrument for the effective defence of the rights of vulnerable people. It is of little use if the state formally recognises a right when its owner is unable to access the justice system effectively to exercise said right."

The Brasilia Rules are signed and monitored by the judiciary. In Peru, the Permanent Commission on Access to Justice for People in Conditions of Vulnerability and Justice in Your Community (CPAJPCV),

monitors compliance with the Brasilia Rules in all judicial districts of the country. The Commission's Work Plan for 2022 defines "11 areas of work: children and adolescents; adolescents in conflict with the criminal law; older adults; disability; Indigenous peoples; victimisation; deprivation of liberty, migration and displacement; gender; services to users in conditions of poverty and other causes of vulnerability, as well as the effectiveness of the 100 Rules of Brasilia."

Source: (Poder Judicial del Perú, 2022[6]); *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, approved by the XIV Ibero-American Judicial Summit, held in Brasilia on 4-6 March 2008; Poder Judicial del Perú (2022), *De los años 2016 al 2021 el Poder Judicial benefició alrededor de dos millones y medio de personas a través de la Comisión de Acceso a la Justicia*, https://www.pj.gob.pe/wps/wcm/connect/ajpvyjc/s_ajpvcyjc/as_noticia/cs_n_poder_judicial_beneficio_alrededor_de_dos_millones_y_medio_de_personas_a_traves_de_la_comision_de_acceso_a_la_justicia.

However, in parallel, there is scope to strengthen the design and delivery of justice programmes and services outside the judicial branch. In fact, in many OECD Member countries, the executive branch, usually through a ministry of justice or its equivalent, as well as regional executive powers, where applicable, tend to play the leading role in designing, co-ordinating and delivering justice policy making and programming. This helps avoid any issues arising between clients and service providers; in such instances, the judiciary should be able to conduct its independent judicial dispute resolution function free of any perceived conflicts of interest. This started to be developed in Peru by regional governments through their regional development plans as seen in Box 6.4 .

Therefore, as mentioned throughout this report, there is scope to strengthen the executive branch's role in the overall co-ordination, planning and delivery of justice services in Peru in line with the practice in many OECD Member countries. Yet, as seen in Chapter 2, in Peru, access to justice programming is mostly led by the judiciary, which may be a result of significant justice-related reforms that appear to have led to an expansion of the notion of the "administration of justice" to include service design and delivery functions that lie beyond the traditional judicial branch functions supporting judicial decision making.

The judiciary could invest in a range of programmes and initiatives that go beyond the traditional adjudication role, including the organisation of legal justice fairs and campaigns and the recruitment, training and accreditation of legal counsellors (*orientadoras judiciales*), services that are also provided by the executive (see Chapter 2). This approach can raise a range of challenges, including in the design and delivery of cost-effective justice services to address the day-to-day legal needs of the people. In other words, judiciary-led services tend to primarily focus on services delivered by judicial institutions rather than by other services (such as providing legal information, advice to assist citizens in choosing the best pathway, help with negotiations with debtholders and landlords, etc.) where these are most appropriate.

This may result in a suboptimal use of limited resources, possibly causing duplication, imbalances, and service gaps, as discussed in Chapters 4, 5 and 6. For example, domestic violence and violence against women services are currently provided by the judiciary, the Ministry of Women and Vulnerable Populations (MIMP), and the Ministry of Justice and Human Rights (MINJUSDH) (see Chapter 3). However, there is limited co-ordination, leading to some duplication, overlap and gaps in necessary services in those regions where these services are needed but not provided. Moreover, as discussed in Section 6.4, there appears to be a significant lack of familiarity on the part of those working in the justice sector with numerous services and agencies that tend to operate in the same regions or the same areas of law or seek to address the same issues. For example, due to limited funding, the judiciary's integrated justice modules on violence against women and family members (as part of the Specialized National Justice System for the Protection and Punishment of Violence against Women and Members of the Family, SNEJ) exist in only 8 of the 35 judicial districts (see Chapter 2); thus, justice system workers in many judicial districts may know little about them. Similarly, mobile justice services are relatively infrequent in some areas, which means they can go unnoticed by residents.

Box 6.3. Regional plans as a potential co-ordination tool for regional justice in Peru

An important aspect of leadership by the executive was revealed during the OECD's fieldwork in San Martin. The regional government in San Martin provided an interesting example of a state agency seeking to understand, map and co-ordinate all services (including legal services) to meet the needs of the people in their region. The various justice agencies and services (including the Superior Court, the police, the Public Ministry [prosecution], Public Defence, Women's Emergency Centres [CEM]) currently operate through their institutional chains of command; their interventions in the region do not appear to be formally co-ordinated. One example was provided of three separate justice agencies going to schools separately and not in co-ordination to deliver legal information and education. While a number of these service agencies collect service delivery data and report through their separate institutional chains, the regional government did not have access to data for planning and co-ordination purposes.

The regional government is responsible for its region and inhabitants across a wide range of human services. Like other regional governments, they are interested in the delivery and co-ordination of the full range of these services to gain efficiencies from co-ordinated delivery. As has been widely demonstrated (see the OECD Framework and Good Practice Principles for People-Centred Justice), people in need of legal services will often also need other services, such as health, housing, education and other government services.

In this context, the regional government in San Martin is seeking to design and deliver its next integrated regional development plan (as required under the national planning laws); it aims to co-ordinate all services, including legal services, as optimally as possible within the resources available. Currently, this co-ordination would not cover the judicial decision-making function, yet extending co-ordination coverage to include those services delivered by the judicial branch in the region has the potential to significantly improve the coherence of legal, justice and social services in the region for the greater benefit of its residents, notably its most vulnerable, to optimise the integrated delivery of regional planning and services.

Source: OECD Second Fact-finding Mission to Lima and San Martin, October 2023.

Enhancing the executive branch's role and empowering it to lead the design, delivery and co-ordination of legal and justice policy and services aligns with the OECD approach to people-centred justice. As mentioned in Chapters 3 and 4, the OECD's People-centred Justice Framework pays particular attention to governance considerations in implementing a people-centred justice system. It is crucial to ensure a coherent approach to advancing people-centred justice approaches requiring clear institutional leadership, responsibilities, and consistent approaches, notably from the executive branch. It calls for whole-of-government, whole-of-society and whole-of-justice-system approaches; ones that include non-governmental organisations (NGOs) playing a role in the justice sector. Technology, processes, data collection and utilisation, terminology, simplified language, mechanisms for the seamless transfer of information and, importantly, coherent investment initiatives and reforms in accordance with a clear and consistent set of people-centred priorities are all features of a people-centred system providing access to justice. The executive branch's justice ministries usually tend to provide leadership respecting such common reform efforts and investments. This implies allocating sufficient resources and capacities to develop consistent systems and processes.

Peru could benefit from reflecting on the optimal allocation of responsibilities and resources to empower the MINJUSDH to play a lead role in planning, co-ordinating and delivering fair and equitable people-centred justice policy and services to all in every region of the country. System-wide leadership and co-

ordination on the part of the executive, notably justice ministries, in the design and delivery of justice policy and services is common across OECD Member countries.

6.3.2. The need for an executive leadership for co-ordinating the planning of justice services

No country has the resources to invest in justice services to a level that would guarantee capacity to meet all the needs of all people everywhere all the time. Optimising the impact of available resources is thus predicated on co-ordinated planning and delivery of services focused on meeting the greatest needs and in accordance with clear and consistent priorities set by the elected government.

As mentioned throughout this report, effective system-wide leadership in planning justice services could address the current lack of co-ordination in service design and delivery (OECD, 2021[1]). This is the case regarding domestic violence and violence against women in Peru. This high-priority legal need has seen distinct, multifaceted service programmes created and operated separately by the judiciary, MIMP and the MINJUSDH.

Finally, to safeguard judicial independence, it is crucial for the judiciary to remain distinct and independent from the executive branch, as is customary across OECD Member countries. The principle of judicial independence dictates that the judiciary should not oversee the co-ordination or planning of justice services provided by agencies, both within and outside its own branch, including the MINJUSDH and MIMP. This principle also implies that the judiciary should not depend on, nor be beholden to, executive agencies, or NGOs for that matter, for their essential daily operations or for designing and delivering services outside their conventional scope. Consequently, there is an opportunity for Peru to reassess some of the judiciary's initiatives. Notably, this includes examining promoting “a regulatory framework that establishes the mandatory participation of state institutions linked to the execution of itinerant justice, accompanying the advocacy processes of the bill that has been promoted in the Congress of the Republic under the leadership of the Access to Justice Commission” (Poder Judicial del Perú, 2022[6]).

6.4. Barriers to access to formal and informal justice services

In OECD Member countries, people face a wide range of barriers when seeking to gain access to justice services (OECD, 2021[1]). These barriers include:

- **Financial barriers**: The cost of legal services and representation can be a significant obstacle for many individuals. Legal fees, court costs and other expenses can make it difficult for people with limited financial resources to access justice. For example, a low-income family may struggle to afford legal representation in a child custody case, putting them at a disadvantage compared to wealthier individuals.
- **System complexity**: Legal processes can be complex and challenging to navigate without professional assistance. Lengthy court procedures, complicated paperwork and technical language can discourage individuals from pursuing legal remedies. This can be especially problematic for those without legal representation, as they may struggle to understand and comply with the requirements of the legal system**.**
- **Lack of language skills and cultural barriers**: Language barriers can hinder individuals from understanding and navigating the legal system. Limited access to interpreters or legal documents in different languages can further impede access to justice. Cultural differences can also create challenges, as legal processes may not align with individuals' cultural practices and norms. This can lead to misunderstanding and difficulty in effectively presenting their case.

- **Remoteness**: Geographic distance and limited transportation options can prevent individuals from accessing legal services and courts. This is especially problematic for those living in remote areas or underserved communities. For instance, people in rural areas may have to travel long distances to reach a courthouse or a legal aid office, making it burdensome and expensive to pursue their legal rights.
- **Discrimination**: Prejudices and biases within the legal system can create barriers to access to justice, particularly for marginalised communities. Discrimination based on gender, sexual orientation, Indigenous or socio-economic status, or other factors can influence how legal professionals treat individuals and impact the fairness of outcomes. This can result in unequal access to justice and reinforce existing inequalities.

In Peru, barriers to access to justice services relate mainly to infrastructure, ethno-linguistic background, and socio-economic status. These barriers are often accentuated for rural and disadvantaged people. Two of Peru's most evident barriers to access to justice are structural disadvantages and geographical barriers (as seen in the sections below). Indeed, despite recent efforts to improve access to justice in Peru, 76% of Peruvians consider that the state does little, if anything, to guarantee the right of access to justice services (Consejo para la Reforma del Sistema de Justicia, 2021[7]). As seen in Chapter 2, low trust levels in the state, court decisions, justice pathways, and the services people and NGOs are willing or unwilling to seek both reflect and contribute to the prevailing attitudes towards these entities.

6.4.1. Structural, geographical and socio-economic disadvantages

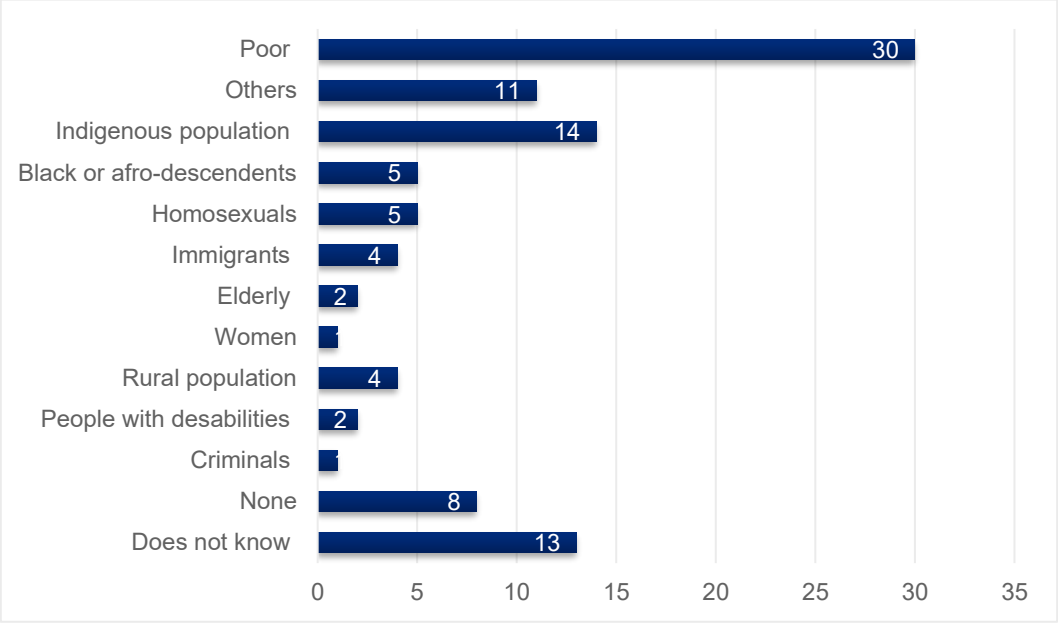
Structural issues affecting access to justice in Peru

As seen in Chapter 2, many Peruvians believe that socio-economic conditions affect their ability to gain access to and use the justice system. Indeed, 23% of surveyed Peruvians reported that they felt part of a group that is subject to discrimination, whether it be the poor (23%), Indigenous peoples (9%), Afro-descendants (7%), sexual minorities (6%) or immigrants (4%) (Latinobarómetro, 2021[8]) (Figure 6.1).

Accordingly, one of the main challenges that the government and the judiciary appear to face in providing services for all at the national level and reducing inequity in access to justice is overcoming barriers to dispensing judicial services equitably to all vulnerable groups, especially the poor in every region of the country, notably in rural and remote regions. During OECD-led interviews, many interviewees mentioned the lack of services in remote areas, especially in regions with Indigenous and native communities. Some of these include discriminatory practices against transgender people and people with disabilities, the non-recognition by some justice actors of Indigenous justice, lack of services in Indigenous languages, and the lack of regional and national policies and efforts to face these challenges and barriers.

Figure 6.1. Discrimination in Peru appears to be mainly related to socio-economic segregation

Percentage of citizens' perceptions of the most discriminated groups in Peru, 2020



Note: The figure presents the groups citizens in Peru feel are the most discriminated against. Respondents answered the following question: From what you know or have heard, who do you believe are the most discriminated against people or groups of people in the country, or do you believe that there are no discriminated groups or people in the country (none)? In the graph, none refers to the respondents who estimated that there are no discriminated groups in the country.
Source: (Latinobarometro, 2021).

Access to justice and geographical barriers in Peru

Though Peru is one of the 20 largest countries in the world by surface area, it has a low population density, with approximately 33 million inhabitants and more than 55 Indigenous communities representing 26% of the population (Chapter 2). Peru is considered one of the countries with the greatest ethnic and linguistic diversity. The 2017 Population and Housing Census identified the existence of 55 Indigenous peoples, 51 of them Amazonian and 4 Andean, in addition to the Afro-Peruvian population. According to the ethnic self-perception of the population aged 12 or older due to their customs and ancestors, 25.7% consider themselves to be of Indigenous origin, mainly Quechua (22.3%), Aymara (2.4%), and Amazonian ethnic groups (1.0%), among the main ones, while 3.6% perceive themselves as Afro-descendants; and 5.9% of white origin. Meanwhile, 60.2% identify as *mestizo* (mixed heritage) (INEI, 2022[9]).

While physical access to justice in Peru has considerably improved with the creation and assignation of service providers, as described in Section 6.5 (Box 6.4), access remains uneven across the country, mainly due to Peru's natural geographical characteristics and barriers, along with the slow and regionally uneven establishment of post-colonial state infrastructure mentioned above. Indeed, to date, beyond the courts, ADR mechanisms such as extrajudicial conciliation are mainly concentrated in cities, as more than 50% of the free conciliation centres are located in the free legal assistance centres (Centros de Asistencia Legal Gratuita, ALEGRAs) and mega ALEGRAs (see Chapter 3), which in many regions are in the cities. Likewise, arbitration services only hold virtual hearings, limiting the service to people with Internet connectivity, which in rural areas in 2021 was 17.6% of the population, compared to 57.2% in urban areas (INEI, 2022[10]).

The geographical reach of these services could be improved in many rural areas of Peru, such as the Andean and other Indigenous regions. This would increase access to justice services for residents of these areas, who tend to be Indigenous people and ethnicities with distinct cultural and language differences.

In the case of Public Defence services, even though its 390 offices and 2 057 public defenders (see Chapter 3) cover a broader geographical area, these are insufficient considering the number of cases that the Public Defence receives (Defensoría del Pueblo, 2020). The Public Defence has made some efforts to reach rural areas. The Public Defence District Directorates provide mobile legal defence and conciliation services in co-ordination with the Action Platforms for Social Inclusion National Program (Programa Nacional Plataformas de Acción para la Inclusión Social, PAIS), which provides services in rural areas through mobile and fixed mechanisms. In the first quarter of 2021, it provided 6 886 mobile services (MINJUSDH, 2021[11]). However, interviews with people in San Martin during a fact-finding mission to the region in October 2023 revealed that there is little awareness of the service in rural and urban areas.

Furthermore, the lack of trust in various state institutions discussed in Chapter 2 is also exacerbated by the fact that the state's power is not fully exercised in all areas of the country. Police stations are probably the most widely distributed state institutions, but even these could be more present across the country, particularly in rural and remote areas. Other state institutions, such as courts, are even less widely distributed, and having greater presence could considerably improve people's access to justice in those regions.

Hence, barriers to access to justice remain a significant challenge in delivering access to justice in rural and remote areas, making it considerably difficult for residents to obtain access to quality justice services. Most importantly, justice entities face a dearth of mechanisms to approach this population and clearly identify and respond to their needs. The state, therefore, faces systemic challenges in providing judicial protection to potentially millions of Peruvians who are left behind and outside the state spectrum.

In response, rural populations have developed local justice solutions tailored to their needs and cultural specificities. This is the case of the peasant patrols and other community justice mechanisms that cohabitate with formal justice today. All these mechanisms are closer to the rural and Indigenous population than are the formal institutions engaged in the administration of justice, and these do not represent higher costs for the poorest citizens (Ardito-Vega, 2012[12]). However, the Peruvian state has yet to design an administrative framework for the implementation of these mechanisms and especially for their co-ordination with formal justice services and institutions, as highlighted in Chapter 2.

Access to justice and legal literacy in Peru

When people are unaware of their legal rights, they tend to find it challenging to define their specific legal needs. This is an initial barrier that limits their capacity to identify the circumstances under which they can reach out to a third party or service to solve their problems. The most significant barrier to meeting people's legal needs often occurs in the initial phase. A lack of legal literacy means that people who require legal assistance struggle to define their needs and identify the services required. This particularly affects marginalised and vulnerable populations and those who feel unequal under the law (La Rota, M.E. et al., 2014[13]).

Therefore, specific efforts should be dedicated to reaching out to the most relevant, vulnerable, under-represented and marginalised groups in society while avoiding undue influence and policy capture. Particular attention should be paid to culturally appropriate justice services that could significantly empower Indigenous communities and advance access to justice. This approach in service design involves understanding and respecting culturally diverse groups to accommodate cultural differences in justice-related values, attitudes and traditions (OECD, 2020[5]).

Consequently, people's awareness of their legal rights, institutions and pathways to resolve legal problems and enforce their rights is essential to an effective justice system. People's awareness indicates they can

readily navigate the justice system to address legal issues. Apart from providing a range of appropriate services, a people-centred justice system will have mechanisms to help people be aware of how to address their problems and whom they can turn to for assistance and resolution or to be readily made aware when problems are confronted. In addition to general education and knowledge conveyed through education systems, community information and education campaigns, a people-centred justice system features systems of triage, including problem identification and referral, to help people make use of the available and most appropriate services (OECD, 2021[1]).

6.4.2. Justice experiences and priority areas for the legal needs of specific groups

Part of the task of identifying legal needs is to locate these needs geographically and demographically through a mapping exercise. Adequately mapping a particular community's legal and justice needs requires considering that groups of people with particular characteristics – such as age, ethnicity, gender, and place of residence, among others – experience specific legal and justice needs and barriers (OECD, 2021[1]). Some groups with specific needs, without being exhaustive, include people with disabilities; children and the elderly; people experiencing economic disadvantage; the LGBTQI community; Indigenous groups; victims of domestic violence; and detainees and prisoners. This review considers four vulnerable groups in Peru: women; women victims of violence; Indigenous (native and rural) communities; and the LGBTQI community (Chapter 2). The next section expands on their specific legal needs.

Women's justice experiences

Access to justice is increasingly recognised as a critical dimension of tackling gender inequality. Lack of access to justice can adversely affect the social, emotional and financial situation of women and their families. In addition, women are more prone to experiencing multiple and compound obstacles in accessing justice, which often include the following (OECD, 2020[5]):

- **cost-related barriers**, which include direct cost of services, fines, transportation, childcare;
- **structure-related barriers**, which include legalese, a lack of understanding of the justice system;
- **social barriers**, which include judicial stereotypes, bias and discrimination;
- **specific barriers faced by at-risk groups**, which include people with disabilities, girls, migrants, ethnic minorities and linguistic minorities.

The main barrier Peruvian women face when trying to access justice services is the lack of knowledge of their rights and services available. This barrier appears to be rendered even more daunting for Indigenous and rural women. In fact, according to a 2017 study where the Ombuds Office interviewed 117 women, victims of violence, and users of the judicial system (users of the justice system from the regions of Arequipa, Ayacucho, La Libertad, Lambayeque, Moquegua, Puno, and San Martin; most aged 19 to 51 years [88.1%]), 75% of them reported not knowing the law (Defensoría del Pueblo, 2017[14]).

Furthermore, geographical barriers are more accentuated for women in Peru, both because they often do not have their own resources and because of their domestic responsibilities (Ardito-Vega, 2012[12]).

Additionally, women tend to face procedural challenges when attempting to access justice services. These challenges tend to relate to limited training or sensibility of justice operators, along with limited clarity on the exact nature and scope of their responsibilities in delivering services to these client groups. Moreover, once women file their claims, they are often limited in their capacity to attend hearings or follow up on their cases due to time constraints (most of them are head of household single mothers who have to combine work with domestic care responsibilities).

Information regarding the exact nature of women's legal needs in Peru and what they must do to meet them remains cursory. That said, in a 2018 Ombuds Office study on Alimony and Child support Proceedings, more than 95% of the petitioners were women, and in only 22.4% of cases did the parties

agree to pursue a conciliation process (Defensoría del Pueblo, 2018[15]). A 2021 study on the ALEGRAs reported that 66% of its users consulted on alimony and child support cases, followed by 11% consulting on family violence. This same trend illustrates the uptake of conciliation services in ALEGRAs; from 2019 to 2021, 72% of its users reached out to this service to solve problems related to alimony and child support, followed by 5% of users looking for conciliation services to solve problems related to family violence. Violence against women is one of the three main problems with a legal dimension faced by women in Peru.

The users of integrated service providers, such as the ALEGRAs (Chapter 2 and Section 6.4 below), tend to be women. Indeed, from 2019 to 2021, 91% of users who received legal assistance at ALEGRAs were women (Pontificia Universidad Católica del Perú, 2021[16]). That said, awareness of the existence and functions of the ALEGRAs appears to be limited, as reported by local stakeholders to the OECD mission.

Women victims of violence

People experiencing family violence may not know what legally constitutes family violence or what legal protections are available to them. Social attitudes that shift blame to the abused victim and the threat of violent retribution create further barriers that inhibit people from seeking help. Once they decide to act, victims of domestic violence have immediate legal and justice needs arising from their necessity to seek physical protection from the police and act as witnesses and victims in an eventual criminal trial against their aggressor. Leaving a violent relationship also engenders legal and justice needs involving separation or divorce, as well as matters involving child custody. It may also entail severe economic and housing issues, leading to poverty and homelessness if the victim is forced to leave the family home where the abuser is the main income earner, and to physical and mental health-related needs following violent attacks.

Victims of family violence also often need to interact with areas of justice services other than criminal justice, including applications for crime victim assistance and child protection. Additionally, engaging with the justice system can heighten trauma for victims, such as when a perpetrator pursues or prolongs justice processes as a means of maintaining control over their former partner (OECD, 2021[1]). Consequently, policy responses to tackle violence against women should consider the unique and intersecting legal needs faced by survivors, which are often intertwined with complex emotions about their abuse and abusers. Survivors often face significant difficulty simultaneously addressing all the problems arising from the violence they have faced (OECD, 2020[5]).

According to the National Institute of Statistics and Informatics' (INEI's) Demographic and Family Health Survey (ENDES) 2020, 54.8% of women were victims of violence perpetrated by their husbands or partners. This percentage was higher for victims in urban areas (55.3%) than those in rural areas (52.3%). Among the forms of violence, psychological and verbal violence stands out (50.1%), followed by physical violence (27.1%) and sexual violence (6.0%). Likewise, it should be noted that both psychological, verbal and physical violence were declared in greater proportion in urban areas than in rural areas (50.6% and 27.5%, respectively) (INEI, 2020[17]).

Stakeholder interviews highlighted that women victims of violence in Peru are often reluctant to denounce the perpetrator for several reasons: they do not know their rights; they do not trust public institutions; they fear reprisals; or they must deal with cost-related barriers. In fact, according to INEI, most of them ask their families for advice instead of reaching out to social or justice services; only 26.2% of women victims of violence reach out to justice services, while 42.9% reach out to a family member or friend for advice (INEI, 2020[17]). Only 29% of women victims of violence launch a formal complaint (INEI, 2018[18]).

The outbreak of the coronavirus (COVID-19) pandemic in Peru led to significant increases in the levels of gender-based violence and crimes against women and girls, such as rape and sexual assault. For instance, since the introduction of mobility restrictions in mid-March 2020, female disappearances rose dramatically in Peru. In 2021, more than 5 900 women were reported missing, three-quarters of whom were girls and

teenagers. The number of cases doubled in the jungle and Amazonian regions. In 2020, the number of calls to MIMP's Hotline 100 (Línea 100) registered an increase of 97%. As a result, the overall number of calls related to domestic violence against women, family members and sexual violence was close to 236 000 (Plataforma digital única del Estado Peruano, 2020[19]).

It is likely, however, that these figures underestimate the magnitude of the issue. While data from sources such as police reports, helplines, health centres and shelters provide essential insights, they are unlikely to reflect the true situation since many victims were confined with the perpetrator. In addition, victims of violence often do not report episodes for fear of shame, stigma, or retaliation and because they have emotional linkages with the person imparting mental and or physical violence. This under-reporting may have been even greater during the COVID-19 pandemic due to mobility restrictions and because the risk of contagion may have hindered victims' capacities to seek help in person. Telephone or Internet reporting may also be limited in this context, given that victims have fewer opportunities to reach out secretly when confined at home with their abusers (OECD, 2022[20]).

Women survivors of gender violence constitute a particularly vulnerable at-risk group when interacting with the justice system. They face specific barriers that may include stigma, harassment and re-victimisation throughout the process. They also have multifaceted needs beyond the legal sphere that are often not addressed due to fragmented justice systems (OECD, 2020[5]). The Ombuds Office has reported cases of judicial harassment (e.g. the case of Natalia Manso) where women have been re-victimised by the indiscriminate use of redundant and uncoordinated judicial procedures (Defensoría del Pueblo, 2021[21]). Law 30364 of 2015 (Law to Prevent, Sanction and Eradicate Violence against Women and Family Members) is a crucial step towards improving women's (victims of violence) access to services, which could potentially solve their needs. In this connection, Peruvian authorities have worked together across administrative silos in strengthening services for women victims or potential victims of violence as well as justice pathways for this population. Yet, the institutions part of these pathways still face challenges that directly affect women's interaction with and access to services.'

It appears that judicial decision makers' attention to women in relation to domestic violence and dealing with women more broadly seems limited. Interviews revealed scope to strengthen the justice system's capacity to adopt a proper gendered perspective of the victim's situation that considers their point of view. In addition, anecdotal evidence from the OECD missions suggests that many judges are insufficiently trained to deal with matters relating to domestic violence and violence against women and may not consider the history of violence in relationships.

Moreover, interviews revealed concerns about limited gender-sensitive/gender-specific training of police officers who often do not demonstrate the proper capacity to manage cases of violence against women. Hence, according to a 2017 study where the Ombuds Office interviewed 117 women victims of domestic violence and users of the judicial system, 62% reported not trusting the behaviour of the national police (Defensoría del Pueblo, 2017[14]).

In the last few years, Peru has made considerable efforts to create a more robust legal framework (Law 30364 of 2015), programmes and institutional arrangements to improve capacity to meet the needs of women victims of violence in the country. This is the case of MIMP's AURORA Program. Within this programme, there are specialised services for women and other family member victims of violence, such as the CEM, the Hotline 100, the Chat 100, the Urgent Attention Service (Servicio de atención urgente, SAU) and the Rural Strategy (Chapter 3). The SNEJ was created in 2018 as the institutional co-ordination mechanism on violence against women (Chapter 3). The MINJUSDH has also created a hotline and offers legal defence for women victims of violence.

The implementation of intersectionality in cases of violence against women includes the creation of the Guidelines for the Incorporation of an Intercultural Approach in the Prevention, Attention, and Protection in Cases of Sexual Violence against Indigenous and Native Children, Adolescents, and Women (approved through Supreme Decree 009-2019-MC), which promote access to justice services that respect cultural

and linguistic diversity. Furthermore, the Protocol for Care of the Women's Emergency Centres includes dispositions for differentiated treatment for vulnerable populations, including Indigenous communities and the Afro-Peruvian population; as well as the Protocol of Joint Action between the CEM and police stations, which follows an intercultural approach. However, the CEM and other justice services should improve the implementation of intersectionality in cases of pregnancy of minors resulting from sexual violence, violence against Indigenous and native women, and women with disabilities.

Some Peruvian institutions have taken initial steps to improve the services provided in police stations. For instance, Peru's national police has created specialised police stations for crimes against women; public officials working in police stations are being trained in gender issues (mainly by the Escuela Nacional de Formación Profesional Policial, according to responses to the OECD questionnaire). CEM (Chapter 3) have been established in 7% of police stations (184 out of 1 318) nationwide to support victims when denouncing a case of violence with legal guidance and advice, judicial defence, psychological counselling and social assistance.

However, as the gateway to access justice pathways for women victims of violence, services provided by police commissariats could still be improved, mainly by implementing actions to enhance people's trust. There is also scope to strengthen temporary and public shelters for women victims of violence and their children. Both the judiciary and CEM oversee identifying the risk level when a woman victim of violence presents a claim. Once the risk is identified, they decide whether to send victims or potential victims and their children to shelters. However, it appears there are insufficient public shelters, and given that maintenance support for these shelters depends on subnational governments, not every municipality considers these shelters a priority.

Mirroring trends in OECD Member countries and other countries in the world, women victims of violence in Peru experience a high number of legal problems and some of these are not directly related to the violence. Therefore, there is still no exact information on the exact nature of women victims of violence legal needs. The AURORA Program has determined their principal needs, however. These include:

- **Protection**: Appropriate protection measures in the context that the victim is in, including safe houses and referral to support networks.
- **Justice against abusers**: A need for access to justice to ensure justice in relation to their abusers and for appropriate sanctions to be applied.
- **Simplified processes**: Receiving justice through the formal justice system can have excessive formalities and documentation, which can take too long for most victims. There is a need for these processes to be "short-circuited".
- **Information**: Victims need information about legal services to help them navigate these effectively.
- **Recovery support**: Victims need psychological, medical, and other support, both immediately and ongoing, to help them through the process and to recover.
- **Assistance**: The justice process is complex, and informants suggested that it is too difficult to navigate without assistance, especially if dealing with unsympathetic attitudes of police and other officials.

Indigenous people's justice experiences

Stakeholder interviews revealed that Indigenous peoples tend to experience multiple forms of disadvantage. The high rates of interaction with criminal justice experienced by Indigenous people are often reported to be linked to such factors as lifetime cycles of poverty and intergenerational trauma that accumulate over time. Indigenous people thus face specific needs given their socio-economic situation. They may also face further barriers, including financial costs, lack of familiarity with court language and living in remote regions. Reliance on community and informal justice dispute resolution mechanisms as

opposed to official justice institutions can also be a factor preventing Indigenous communities from seeking certain types of assistance, protection or benefits they would otherwise be entitled to (OECD, 2021[1]).

There are 55 Indigenous groups in Peru (MINJUSDH, 2018[22]). Rural and native communities are Indigenous communities that, according to where they are in the national territory, are called one way or the other. There are, however, Indigenous communities that do not correspond to either of these groups (rural or native). The Peruvian Constitution establishes that rural and native communities have legal existence and are corporate entities (Chapter 2). These different terminologies used to identify themselves (different from "Indigenous") might be because most of the Indigenous populations in Peru tend not to identify themselves as such (Ardito-Vega, 2012[12]).

According to the First Census of Peasant Communities, the Department of Puno concentrates the largest number of Indigenous communities, followed by Cusco and Ayacucho. According to the last census implemented by the INEI in Peru, 20.7% of the surveyed population lives in rural areas of the country. Also, the First Census of Rural Communities (*comunidades campesinas*) reveals that the departments with the largest number of peasant communities are Madre de Dios, San Martin and Ica. According to the 2017 INEI Census on Population Housing, among the 40 original languages most spoken by the native communities in Peru are the Asháninka (19.23%), Awajún (15.5%), Kukama Kukamiria (7.99%) and Quechua (7.77%). According to this census, the most common language within rural communities (*comunidades campesinas)* is Spanish, followed by Quechua and Aymara (INEI, 2018[23]).

Interviews revealed that the most common barriers reported by Indigenous people when trying to access a justice service tend to relate to distance and lack of connectivity. They also face barriers related to system complexity, corruption and ethno-linguistic barriers. Further, Indigenous populations have also encountered barriers when accessing justice services to defend their fundamental rights. To address some of the system's complexity and linguistic barriers, Peruvian authorities have been implementing actions and making institutional arrangements to enhance and promote an intercultural approach, such as increasing the number of interpreters.

Despite these efforts, stakeholders reported that, notwithstanding laws that aim to protect Indigenous rights, in many remote areas, there is a dearth of public prosecutors and public defenders, and when they are present, Public Defenders and sometimes even the police tend to be unable to communicate using local Indigenous languages. The result is that illegal activity goes unprosecuted, and Indigenous rights go undefended in many circumstances. Further, when agencies (police) are potentially available, a lack of specialisation in environmental topics or laws regulating Indigenous land can exacerbate access-to-justice barriers for Indigenous people.

Limited environmental prosecutor's offices and courts and the lack of public defenders that see environmental cases limit access to justice for Indigenous communities.

Evidence also suggests that many Indigenous populations do not trust ordinary justice or justice institutions. In fact, according to the results of a study implemented in the Department of Cuzco, 89% of the surveyed population (rural population) declared not trusting ordinary justice ("the justice from the city"). Indeed, most people surveyed recognised that community justice is more suitable for resolving the conflicts of the rural population. One indicator of this is the answer to the question, "Which justice system best serves the women within the community?" About 90% of the surveyed population stated it is community justice (Brandt, 2017[24]). However, there is still no exact information on what Indigenous people (including native and rural communities) do to solve their legal needs.

Despite this, several cases have been reported in which Indigenous representatives, including native and rural communities, have reached out to community justice (peasant patrols or *rondas campesinas* or other Indigenous community leaders) and Justices of the Peace to solve their problems (civil, family and criminal matters that affect individuals and families) (see Chapter 3). In this connection, for Indigenous people in remote areas, access to Justices of the Peace and peasant patrols is often more proximate, timely and

trusted. Periodically, some Indigenous representatives reach out to ordinary justice in cases where they consider their fundamental rights violated or at risk of being violated. Also, there are cases of Indigenous people reaching out to ordinary justice when they disagree with the decision of Indigenous justice.

The most common cases presented by Indigenous populations in Puno (where the judiciary recently piloted the ethnic variable of the Integrated Judicial System [SIJ]) and in San Martin (where the OECD conducted a fact-finding mission in October 2023) are related to alimony, child support and violence against women. Furthermore, for Indigenous people in remote areas, it was reported that a major negative outcome from the state's absence is a lack of protection against the activities of illegal miners, loggers, drug traffickers and invaders of Indigenous lands. Lack of adequate policing and public prosecution to counteract illegal activity and public defence services to represent Indigenous communities were reported to have undermined the confidence of Indigenous groups in the state or the court's capacity to effectively enforce their rights.

Consequently, in terms of the needs in relation to available services, there are two issues of relevance:

- **the civil, family and criminal matters that affect individuals and families**, and which for people in certain regions generally fall within the jurisdiction of the Indigenous justice system (including Justices of the Peace, *rondas campesinas* and the authorities of other native communities).
- **the community and individual legal issues** resulting from the erosion of their rights and the loss of land and resources due to the actions of illegal miners, loggers and invaders, which require action on the part of ordinary justice (and the government).

The LGBTQI community's justice experiences

The Peruvian state started collecting statistical information on the LGBTQI population in 2017 with its First Virtual Survey for LGBTQI People. The survey established that 62.7% of the surveyed population (belonging to the LGBTQI community) reported having been victims of violence or discrimination, while 17.7% reported being victims of sexual violence. The survey also reported that in cases of discrimination, 33% of the aggressors were public officials, and 22% were administrative staff of a public service provider in Peru (INEI, 2017[25]). The survey revealed that only 4.4% of the total number of people attacked or discriminated against reported the incident to the authorities, and of these, 27.5% said they had been treated poorly at the service where they reported the incident, and 24.4% reported having been treated very poorly (Inter-American Court of Human Rights, 2020[26]). Moreover, according to the II National Human Rights Survey, 51% of the surveyed population reported that the LGBTQI community faces discrimination and lack of guarantees to be treated in a dignified manner. Likewise, 71% of the surveyed population perceive that the LGBTQI community are the most discriminated group in Peru (MINJUSDH, 2020[27]).

Peru has also started to take steps towards incorporating differentiated approaches on behalf of the LGBTQI community. According to the judiciary, judges are being trained as agents of change in the guarantee, for example, of the rights of the LGBTQI population. Also, the Protocols adopted in the Framework of Violence against Family Members have included the LGBTQI population, MIMP reported to the OECD mission. The national police has also recently adopted guidelines on human rights, including LGBTQI rights. Furthermore, according to the responses to the questionnaire conducted for this review, the Public Ministry has recently implemented a Criminological Study of Intentional Deaths of LGBTQI People in Peru 2012-2021, which assessed those cases in which victims were members of the LGBTQI community to identify the most salient circumstances or facts surrounding the violent deaths of this population group. This study aimed to generate valid and reliable information about this type of crime, which is mostly motivated by discrimination.

However, precise information about the exact nature of the LGBTQI community's legal needs in Peru is still lacking. One of the possible areas could be related to potentially discriminatory treatment, including from public officials (Inter-American Court of Human Rights, 2020[26]). Stakeholder interviews highlighted

that other areas for legal needs of this population could relate to changing one's sex, changing one's name and the need for physical or medical analysis. Domestic violence services were sometimes also criticised, including by members of the transgender community, for being too narrow (not inclusive) in their approaches (Inter-American Court of Human Rights, 2023[28]).

In recognition of these challenges, the 2018-2021 National Plan of Human Rights included the objective of keeping a record of cases of discrimination against the LGBTQI community (MINJUSDH, 2018[22]). According to the 2020 (third) Follow-up Report on the National Plan of Human Rights, prepared by the MINJUSDH, this goal is yet to be reached, however.

Overall, stakeholder interviews revealed that to gain access to justice services, Peruvians face several contextual barriers, including low levels of trust in state institutions; limited knowledge and awareness concerning services and pathways to justice; limited economic resources that would enable effective participation in the formal legal system; and widespread (perceived) corruption within the system. In this context and in view of geographical and system complexity, many vulnerable populations in Peru are opting for non-formal justice services and community justice mechanisms to solve their problems. For people in remote areas, access to Justices of the Peace and Indigenous area options such as rondas campesinas are often more proximal, timely and trusted. However, when these avenues do not address the problems concerned or are not available, the result may be not using any service at all to solve problems. This choice invariably leads to a worse outcome. For women, women victims of domestic violence and the LGBTQI community, barriers are also evident, including instances of institutional discrimination and lack of trust. As in many countries, violence survivors in Peru reported facing substantial obstacles to reporting incidents and seeking protection.

As such, Peruvian justice institutions are currently facing the challenge of guaranteeing access to justice for all people, especially those who are in vulnerable conditions, in a way that overcomes all forms of discrimination. In this sense, Peruvian justice service providers should work to provide Peruvians with safeguards to ensure that they feel equal under the law and that the system can effectively meet their legal needs.

6.5. Justice service delivery: An analysis using a people-centred approach

According to the *OECD Recommendation on Access to Justice and People-Centred Justice Systems* and OECD criteria for people-centred design and delivery of legal and justice services, accessible services are those with a human-centred approach, designed, delivered, implemented and evaluated considering the perspective and needs of specific communities and groups in vulnerable situations to actively overcome the range of barriers to the assistance people require. Targeted and inclusive services have to do with the specific access needs of groups of a population. Depending on the national country context, particular strategies may need to be developed, for example, for youth and children, women, elderly people, Indigenous groups, migrants and refugees, people with disabilities and other minorities to address the legal and justice needs they may be experiencing during specific stages of lifecycles. In fact, a people-centred justice system would have services appropriate to the distinct levels of capability of the people experiencing legal problems. The challenge for governments is to provide not just a wide range of service options but also options that are particularly appropriate to the needs of each group (OECD, 2021[1]).

Peru has made efforts to improve its justice system and increase access to justice for its population. The country has taken steps to enhance the number and types of justice services available to its citizens. This includes expanding the presence of courts, diversifying judicial services, expanding ADR mechanisms and adopting community justice mechanisms. Specialised courts and programmes, such as the Justice of the Peace and judicial mechanisms to improve the intercultural approach, have also been established to address the unique needs of vulnerable populations (see Box 6.7). In Peru, public defence and legal aid services are also available to assist individuals who cannot afford legal representation.

However, the accessibility of these services and their ability to respond to the particular needs of vulnerable populations can vary in practice. As discussed in Section 6.3, structural barriers, such as lack of trust and awareness, affect access to justice services in Peru. There are other specific limitations that vulnerable populations face when accessing each available service as well; there may be regional disparities in the availability of justice services, with more remote areas facing challenges in accessing adequate legal representation and support. Additionally, socio-economic factors, language barriers and cultural differences can also pose obstacles for vulnerable populations in accessing justice services.

This section assesses available justice services in Peru to identify if they are accessible and if they actively overcome the range of barriers to the assistance people require, particularly those targeting vulnerable populations (women, including women victims of violence; Indigenous populations; and the LGBTQI community).

6.5.1. Formal justice services provided by the judiciary, the Public Ministry, the national police and the constitutional jurisdiction

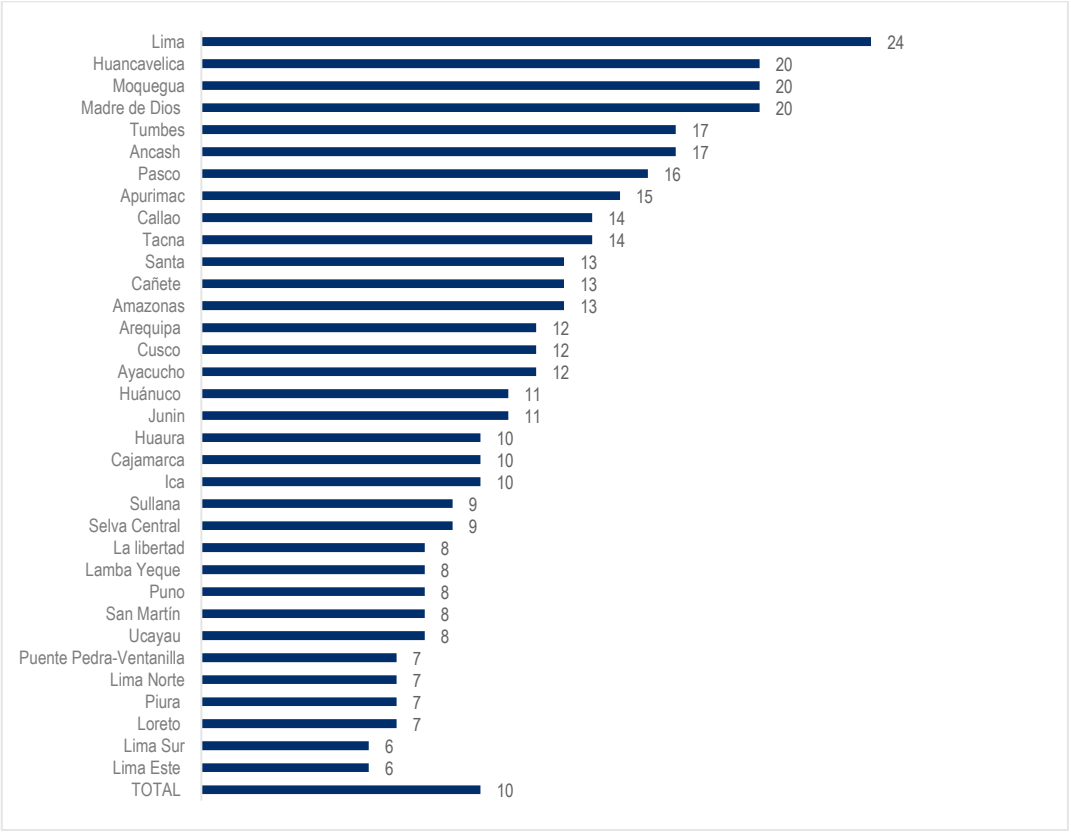
Access

The judiciary considers the number of inhabitants in each judicial district to assign judges in each district (including ordinary judges, who oversee ruling in first-instance constitutional cases). Hence, the judicial district of Lima has the highest number of judges, while the judicial district of Lima Este has the lowest number (Figure 6.2). Peru appears to have only half the number of judges per capita compared to European OECD member countries. Indeed, there are around 10 judges per 100 000 inhabitants in Peru, compared with 18 in European OECD member countries. However, Peru appears to have a higher number of judges than other OECD members in the region, including Colombia, Chile and Mexico, with 11.5, 7.5 and 4.5 judges per 100 000 inhabitants respectively (CEJ, 2023[29]) (INE, 2019[30]) (IEP, 2023[31]).

Additionally, there appears to be at least one judge and one prosecutor in all provinces of Peru. In the framework of a recent decentralisation process, both the judiciary and the Public Ministry have assigned additional judges and prosecutors (*fiscales*) for judicial districts with higher populations.

Furthermore, other initiatives from the judiciary, such as integrated models and mobile strategies, aim to reach out to rural and remote populations with in-court services (Box 6.4).

Figure 6.2. Number of judges per 100 000 inhabitants in each judicial district in Peru



Note: The numbers on the figure correspond to the number of judges in each judicial district per 100 000 inhabitants. The calculation was made calculating the number of judges in each judicial district by 100 000 divided by the number of inhabitants in the corresponding judicial district. According to this, at the national level, with 33 726 000 inhabitants in Peru (2023), there are 10 judges per 100 000 inhabitants.
Source: Poder Judicial del Perú, 2022.

Box 6.4. Strategies implemented by the judiciary to improve access to justice in Peru

Mobile services

The Itinerant Justice Service is an initiative created by the judiciary through which judges (including Justice of the Peace judges) and other justice operators regularly travel to remote areas of the country, in all judicial districts – including Indigenous communities, where there are limited communication and Internet resources and where there is a high number of vulnerable populations. This service aims to guarantee the effective exercise of people's fundamental rights and provide judicial services in clear and simple language, considering the predominant language of the area. Claims are collected and reviewed beforehand to allow decisions to be made *in situ*.

The judiciary delivers mobile justice services through the Superior Courts in all 35 judicial districts. In this sense, in 2017, the judiciary approved the Protocol of Itinerant Justice for People in Vulnerable Conditions with the purpose of regulating this service (Poder Judicial del Perú, 2022). According to the judicial branch, the most common cases presented before judges in the framework of the Itinerant Justice Service are related to alimony; violence against women and other family members; designation of supports and safeguards for people with disabilities; and notary proceedings. The judiciary reports

that from 2018 to 2021, this initiative beneficiated 110 112 people, carried 2 582 hearings, 4 245 lawsuits were presented, and 2 009 judgements (*Sentencias*) were issued (Poder Judicial del Perú, 2022). There are low levels of awareness of Itinerant Judges, with no one outside the judiciary having heard of them.

Justice fairs

The judiciary has implemented the initiative, Ferias Llapanchikpaq Justicia, which aims to bring justice services closer to the people through sessions where judges provide basic information to the population (mostly vulnerable) regarding their rights, using clear and simple language. Justice fairs are conducted by Superior Courts of Justice throughout the country twice a year (sometimes with judge involvement), which provide a form of remote service (mainly information) (Poder Judicial del Perú,2022).

Modules for the Judiciary User

The Modules for the Judiciary User are virtual or physical offices (in the 35 High Courts in the country) through which people can ask questions or consult on their cases. Created by the judiciary in 2020, these modules aim to standardise the services provided to users of judicial services.

Judicial Advisors

Judicial Advisors are women community leaders trained and accredited by the judiciary on issues regarding violence against women. They guide and advise people (free of charge) in their communities regarding violence against women, including justice pathways. Peruvian stakeholders reported to the OECD mission that there are currently 600 women serving as Judicial Advisors throughout the country. For 2030, the goal is to have 1 980 accredited Judicial Advisors in Peru with 47 528 beneficiaries (mostly vulnerable populations) (Poder Judicial del Perú, 2022).

Source: Poder Judicial del Perú (2022), *Plan Nacional de Acceso a la Justicia de Personas en Condición de Vulnerabilidad 2022-2030 [National Plan of Access to Justice for vulnerable populations 2022-2030]*, Poder Judicial del Perú, Lima.

Furthermore, Peru has made notable efforts to guarantee prosecutors where there are judges in all judicial districts in the country.

In addition, the Public Ministry counts on forensic medicine experts to collect evidence. Despite the importance of these services, they are not present nationwide, according to the Public Ministry's communications with the OECD mission. To address this, the Institute of Forensic Medicine provides certain doctors and psychologists with a technical guide to function as experts in judicial procedures. However, it is not yet clear if these efforts are enough to guarantee the presence of forensic medicine experts throughout the country to develop the important task within many justice pathways.

In the case of police commissariats, this institution is acknowledged as particularly important as the most widely distributed state presence throughout the country. In some areas, it is the only agent of the state. The Directorate of Criminality (Crimes Unit) of the national police is the organ in charge of organising, supervising and practising official expert testimonies (peritajes) and issues expert criminalistic reports (informes periciales) as part of investigations, which are required by the police, the Public Ministry and the judiciary. To improve Peruvians' physical access to these services, additional Specialized Police Commissariats were assigned in remote and rural areas of the country.

Further, accessibility to the constitutional jurisdiction may vary across regions, depending on the availability of ordinary judges in the different judicial districts. However, there is a lack of knowledge and capacities and ordinary courts specialising in constitutional issues (Consejo para la Reforma del Sistema de Justicia, 2021[7]). This can result in unequal access to justice and disproportionately affect marginalised communities.

Despite efforts to improve the physical accessibility of formal justice services in Peru, geographical barriers remain for targeted populations. There are not enough formal justice services throughout the national territory, and mobile services seem insufficient to reach the rural population. This includes CEM, public defenders and criminal experts from the Public Ministry (e.g. forensic medicine, which is a key institution in cases of violence against women). Also, it is reported that there are not enough judges present or actively engaged in remote areas to prevent certain minor crimes (e.g. illegal logging and land theft).

Broader efforts to deliver specific services for vulnerable populations within the framework of mobile justice service delivery initiatives would be needed to improve access to justice for those populations. To do so, there is a need to create a consensus among different institutions (justice service and other service providers) and enact regulations. Other initiatives implemented by Peruvian institutions to improve physical access to justice, such as additional Specialized Police Commissariats in remote and rural areas of the country and the Hotline 100 (under the AURORA Program) (see Chapter 3) to reach out to victims of domestic violence are a good first step toward overcoming geographical barriers. However, the impact of these initiatives has not yet been measured. Further, measures requiring technology such as the Modules for the Judiciary User are not accessible for rural and Indigenous populations with limited or no Internet connections.

This challenge follows the trend in other OECD Member countries where the prohibitive cost of seeking justice in rural and remote areas is an increasing policy issue. While this challenge can be mitigated with outreach services (e.g. justice houses in Colombia and France) and the use of technology, it is particularly acute in some places (e.g. for Indigenous and native groups living in remote areas in several member and partner countries) (OECD, 2015[32]).

Moreover, to improve targeted populations' accessibility to formal justice services, there is a need to address other barriers, as mentioned in Section 6.3, that should also be considered and addressed. These include low levels of trust in the system. Indeed, stakeholders report that trust in the national police, for example, seems to have been affected by alleged cases of integrity breaches, discriminatory behaviour, especially against Indigenous, peasants and LGBTQI groups and high levels of staff turnover. Indeed, citizens still tend to perceive that officials in police stations managing cases of violence against women tend to have limited training in this area. As mentioned in Chapter 3, one of the main challenges that the police face, and a challenge that affects its ability to perform its duties and functions effectively, is its relationship with citizens and communities, notably in certain regions of the country. This wider interpretation of the right of access to justice would also imply upgrading it to a fundamental right, enhancing mechanisms for its protection.

In this regard, some Peruvian justice institutions have made initial progress by reaching out to citizens to generate trust and empower them (see Box 6.5).

Box 6.5. Initiatives to build trust in justice institutions in Peru

Multiple entities in Peru, including law enforcement, the judiciary, government ministries and NGOs, are collaboratively launching a range of initiatives aimed at building and strengthening public trust in justice institutions.

The national police has created a participation division in charge of sensitising the citizenry to trust the institution in every police commissariat. The national police has also implemented strategies with neighbourhood councils (*Juntas Vecinales*) for this same purpose. The Ombuds Office and MIMP (through the CEM) also reported to the OECD mission that they are constantly implementing activities with Indigenous communities and women to promote legal literacy. Furthermore, MIMP has also

implemented the Rural Strategy to Prevent Violence Against Women in rural areas of 72 districts throughout the country.

The judiciary has recently launched a programme called Peace in School Justice (Justicia de Paz Escolar), which not only aims to promote and preserve peace within public schools nationwide but also generate trust in institutions (within school communities) and sensitise children on family violence and other forms of violence and legal problems that can occur in school or within their households. In this sense, judges oversee sensitising and promoting legal literacy within the school community and of training elected school representatives (secondary students elected by the board of students), who would serve as peace judges within their schools, providing counsel and conciliation services to solve conflicts of daily conviviality. These peace judges also inform school directives on conflicts and problems detected both at school and in students' households.

Regarding violence against women, Peru is actively conducting awareness campaigns to encourage the identification and reporting of sexual violence, aiming to boost women's confidence in justice institutions by clearly informing them about appropriate referral points and the necessary procedures to follow. However, these currently mainly target an adult audience, including young adults. Given that relationship interactions are set early, creating campaigns targeting younger youth would make sense. One example is the Spanish #pasiónnoesposesión campaign, consisting of a rap video and associated flyers and radio ads. H

Source: Poder Judicial del Perú (2022), *Plan Nacional de Acceso a la Justicia de Personas en Condición de Vulnerabilidad 2022-2030 [National Plan of Access to Justice for vulnerable people 2022-2030]*, Poder Judicial del Perú, Lima; (OECD, 2022[20]), *Gender Equality in Peru: Towards a Better Sharing of Paid and Unpaid Work*, https://doi.org/10.1787/e53901b5-en.

Although these initiatives are a good starting point, there is still scope for Peru's justice services (including courts, prosecutorial and police services) to lean into fostering trust and being user-friendly and culturally appropriate services that are free of bias and discrimination towards different communities, including vulnerable groups, to ensure they can reach fair resolutions. To this end, some practices in OECD Member countries might inspire Peru to increase trust in formal justice institutions (Box 6.6).

Box 6.6. OECD Member practices to increase trust in formal justice institutions and services

In **Sweden**, an ongoing court-based project designed to increase public confidence and trust in the courts conducted both internal and external dialogue on how their court was functioning and perceived to be functioning. The initiative included interviews with people involved in a court case directly after the case was concluded. This input from the users of court services informed several key policy reforms, both in terms of how judges interact with parties and on common policies for reception in courthouses, information for parties and how judgements are written.

In **England and Wales (United Kingdom)**, individual service providers and justice institutions also took active measures to develop a targeted understanding of both their clients' and users' justice needs and how they experience the justice system on an ongoing basis.

In other countries, the need for services to be culturally appropriate included a combination of specific group services that are community-controlled and staffed, such as in **Australia** with the Aboriginal and Torres Strait Islander justice services.

Source: (OECD, 2021[11]), *OECD Framework and Good Practice Principles for People-Centred Justice*, https://doi.org/10.1787/cdc3bde7-en.

Awareness

In accordance with stakeholder interviews, systematic communication regarding the availability and access modes of services to the public – or indeed to other parts of the justice system – tends to be limited in Peru. Indeed, senior informants identified a lack of knowledge among the population in relation to their rights and the actions they can take to defend those rights, as well as a lack of available information. Indigenous people, teenagers and victims of domestic violence were all identified as specific cases of people who lacked awareness of their rights and awareness of the justice system. Furthermore, although the police are very well known and their importance was noted among Peruvians, there is a low level of awareness of Itinerant (mobile) Judges.

The justice fairs, led by the judiciary (Box 6.4) and involving several stakeholders, is one initiative-taking strategy conducted by the judiciary to improve the awareness of rights and available services for the community. However, Peru has yet to conduct impact assessments regarding the implementation of these fairs, and there is still space to improve Peruvians' (e.g. targeted vulnerable populations') awareness of these events.

People-centred justice services should be designed based on the premise that most people will require guidance and assistance in reaching the most appropriate service for their needs. Sound problem triage and referral processes consistent with a "no wrong door" approach are essential, particularly in complex societies such as Peru's. Such processes are likely to exist or be developed when there is co-ordinated planning and service delivery between all services involved. This, in turn, will likely require strong leadership by an appropriate executive agency, such as the MINJUSDH. Further, clear and transparent information about the types of dispute resolution options and when they are appropriate, their cost and duration, and the likelihood of winning should be available to facilitate choices (OECD, 2021[1]). The case of Portugal can be useful to illustrate this (Box 6.7).

Box 6.7. OECD practices regarding a one-stop-shop to support the resolution of disputes

Portugal is currently preparing a basis for establishing online systems that could support the resolution of disputes. These systems could help diagnose the legal problems of citizens and businesses and inform them of their rights and options to help protect them and resolve their disputes by using big data. They can also provide an assisted negotiation stage, which could be followed by a seamless transition to an adjudication, depending on the nature of the dispute and involved stakeholders. This type of one-stop-shop for dispute resolution can facilitate the creation of a justice ecosystem and transform the resolution of disputes. To take the "one-stop justice shop" further, the initiative is scheduled to be linked to the existing citizens' portal to facilitate early identification of problems and provide a unique interface for citizens.

Source: (OECD, 2020[33]), *Justice Transformation in Portugal: Building on Successes and Challenges*, https://doi.org/10.1787/184acf59-en.

Cost

Vulnerable populations in Peru still face barriers relating to cost when accessing formal justice services. For example, the level of judicial fees (*Aranceles Judiciales*) as a condition to access justice services can often act as a barrier, particularly for individuals with limited financial resources. These fees refer to the costs associated with filing lawsuits, requesting legal actions and accessing court services. Specific fees may vary depending on the nature of the case, the court involved and the type of procedure.

In contentious administrative proceedings, the judicial fees for 2023 start at PEN 50 (Peruvian soles) (EUR 12) (El Peruano, 2023[34]). Further, according to *Doing Business*, the cost of a commercial case is

35.7% of the claim value, higher than the Latin American and Caribbean average (31.4%) and well above the average for OECD high-income countries (21.2%) (World Bank, 2020[35])These charges can harm lower-income litigants. For example, when the imbalance is greater between the litigants (e.g. in cases between a mining company and a peasant community, between a bank and a client), the most powerful party can assume the judicial fees, while these are detrimental to the weakest parties, discouraging them from accessing judicial services. In addition to judicial fees, there are also indirect costs, such as lawyer's fees, because Peru's judicial system establishes the mandatory presence of a lawyer. In cases with no mandatory judicial fees, additional charges must be paid for the state to provide certain documentation, such as copies of identity documents, criminal records and personal ownership certificates (Ardito-Vega, 2012[12]).

In Peru, efforts have been made to implement the Constitution's principle on gratuity regarding judicial services to reduce economic barriers to accessing justice services. According to responses to the questionnaires conducted for this review, this constitutional principle has two scopes: one procedural in the sense of free processes and another related to the right of free defence of people with limited resources. The recently adopted Criminal Procedural Code includes the gratuity of criminal proceedings (except for procedural costs), while legal assistance to people of modest or no means is regulated in Article 24 of the Organic Law of the Judicial Power (approved by Decree-Law No. 017-93-JUS of 1993). Despite this, Peru could continue improving the implementation of the gratuity principle to avoid inhibiting deprived populations from reaching out for formal justice services. Some OECD Member countries have implemented fee-waiver systems, and legal aid programmes are available to individuals who cannot afford court costs. In the United States, some states have implemented sliding-scale fee structures based on income. Public awareness campaigns and education programmes also aim to inform people of their rights and available resources.

Inclusiveness

Regarding intercultural justice, Peruvian authorities, notably the judiciary, have taken steps towards guaranteeing a co-ordinated and effective implementation of intercultural justice, considering international standards (Box 6.8).

Box 6.8. The judiciary's efforts to enhance and promote the intercultural approach in Peru

- Institutional arrangements, such as the creation within the judiciary of the National Office of Peace and Indigenous Justice (ONAJUP) (see Chapter 3) and an internal division to promote co-ordination and assistance in intercultural matters in the Public Ministry (created through Resolution No. 375-2022-MP-FN of 17 March 2022) are potential improvements to upgrade and showcase the intercultural approach in strategic and policy-making scenarios.
- In 2011, a Work Commission was created within the judiciary to prepare a roadmap for co-ordination between the judiciary and community justice, aiming to consolidate a justice system that responds to the multi-ethnic and cultural reality of Peru and provide public officials with guidelines to implement a differentiated approach when assisting or orienting justice service users.
- Peruvian authorities have also been implementing legislation and regulations to promote the application of an intercultural approach to service provision, such as Ministerial Resolution No. 108-2021-JUS, which confirms that the provision of public defence services and access to justice should adopt an intercultural approach in favour of Indigenous or native peoples (see Chapter 3).
- Efforts have been made to increase the number of Indigenous language-speaking interpreters in Peru. In 2019, the judiciary created the National Registry of Interpreters and Translators for

Indigenous or Native Languages (RENIT). Today, this registry includes 92 interpreters/translators of Indigenous or native languages. However, the current number of available interpreters is insufficient given the demand (in the 35 judicial districts and a population of 57 718 855 Indigenous people); this would mean 1 interpreter for more than 62 000 Indigenous people. Also, these interpreters speak only 16 of the more than 40 Indigenous languages. However, interpretation efforts do not guarantee that the worldview and rights of Indigenous populations are respected in cases where their justice overlaps with common justice, as assessed in Section 6.4.

- Peru has also made considerable efforts to train public officials' legal defenders in multicultural justice issues. As a result, some legal defenders speak original languages. Judges and prosecutors have also received training on multicultural issues.

Source: Public Ministry Resolution N° 375-2022-MP-FN of 17 March 2022; Ministerial Resolution No. 108-2021-JUS; Plataforma digital única del Estado Peruano (2021), *Política*.

Although the judiciary has been the main actor in working to promote the intercultural vision in the justice administration system, other central institutions, such as the Public Ministry, the national police and the Public Defence system, have also implemented specific actions to improve and adapt their services considering the multicultural diversity of the country. Yet, much remains to be done for these institutions (and others delivering justice services) to introduce a robust intercultural justice policy (Zambrano, 2017[36]).

The judiciary has also made efforts to improve access to justice for specific population groups by creating a Judicial Alert System, as part of the SIJ, the internal information system of the judiciary with information on all judicial processes. The Judicial Alert System identifies priority cases, depending, for example, on the age of the victims, improving access to justice for specific populations. In this sense, this system identifies and alerts judges and judicial operators to cases of elderly people (over 75 years old) so that they are treated in a specific fashion and their cases are decided faster. Moreover, the Public Ministry created specialised prosecutor's offices *(Fiscalías)* to investigate cases of violence against women (but not more courts or public defenders; see Chapter 3). Prosecutors in Peru have also received training on multicultural and gender issues.

Good practices in OECD Member countries, such as appropriate entry points, could inspire Peru to deliver more inclusive and targeted justice services. In fact, whether targeting disadvantaged people or the community in general, justice services require appropriate entry points designed from a people-centred perspective. For example, in Australia, in recent years, telephone legal helplines have been established in several states as a key entry point to legal assistance or related services for the community. These helplines are generally designed to provide initial information and referral for the client (OECD, 2021[1]).

6.5.2. Legal defence and legal aid services

Access

The public institutions in charge of providing public defence services, the number of services and the cases in which they proceed are described in Chapter 3. Beyond these institutions, Peru has a Bar Association that supports freedom of defence. The Junta de Colegios de Abogados del Perú is present across the national territory, providing pro bono services in Peru. However, this association has no records of the cases where they functioned as legal defenders or provided legal aid. Also, there appear to be no incentives in Peru to accept cases pro bono.

As to targeted vulnerable populations' access to the Public Defence service (MINJUSDH), efforts have been made to increase the number of these services nationwide to overcome geographical barriers. The Public Defence District Directorates from the MINJUSDH provide mobile legal defence and conciliation

services in co-ordination with PAIS, which provides services in rural areas through mobile and fixed mechanisms. However, rural populations are still unfamiliar with these services.

Despite these advances, legal defence and legal aid services still face challenges that affect these targeted vulnerable populations' effective access to them and other justice services, including:

- **Geographical barriers:** There appears to be limited presence of Public Defence in rural and remote areas. Also, in remote areas, there are no lawyers or pro bono options for the Indigenous and rural communities.
- **Insufficient staff** (i.e. public defenders) and limited digital means to react more efficiently in cases regarding vulnerable populations.
- **Relative quality of assistance:** The quality of public defence and legal aid services can vary depending on several factors. While some public defenders and legal aid lawyers in Peru are highly skilled and committed to providing quality representation, others may face challenges due to heavy workloads, limited resources and inadequate training. This might also affect Peruvians' equal access to these services and their right to a fair outcome.

Awareness

Public Defence services (see Chapter 3) are well-recognised and considered important by most Peruvians. Yet, awareness of these services can vary among different population segments and may be influenced by factors such as education, socio-economic background, geographic location and previous exposure to the legal system.

Efforts have been made by the Peruvian government, civil society organisations and legal aid providers to promote the availability and benefits of public defence and legal aid services through various means, including:

- **Outreach programmes:** Legal aid organisations and public defender offices often conduct outreach programmes and campaigns to inform communities about their services. These initiatives involve community workshops, legal clinics, public presentations and collaborations with local organisations to reach out to specific target groups.
- **Information campaigns:** The government and legal aid providers have launched awareness campaigns through media channels, including television, radio, newspapers and social media. These campaigns aim to educate the public about their legal rights, the availability of free legal assistance and the importance of seeking legal support when needed.
- **Government websites and information resources:** The Peruvian government, particularly the MINJUSDH, maintains websites and information resources that provide details about Public Defence services, legal aid centres and other legal assistance options. These online platforms can serve as valuable resources for citizens seeking information on available services.

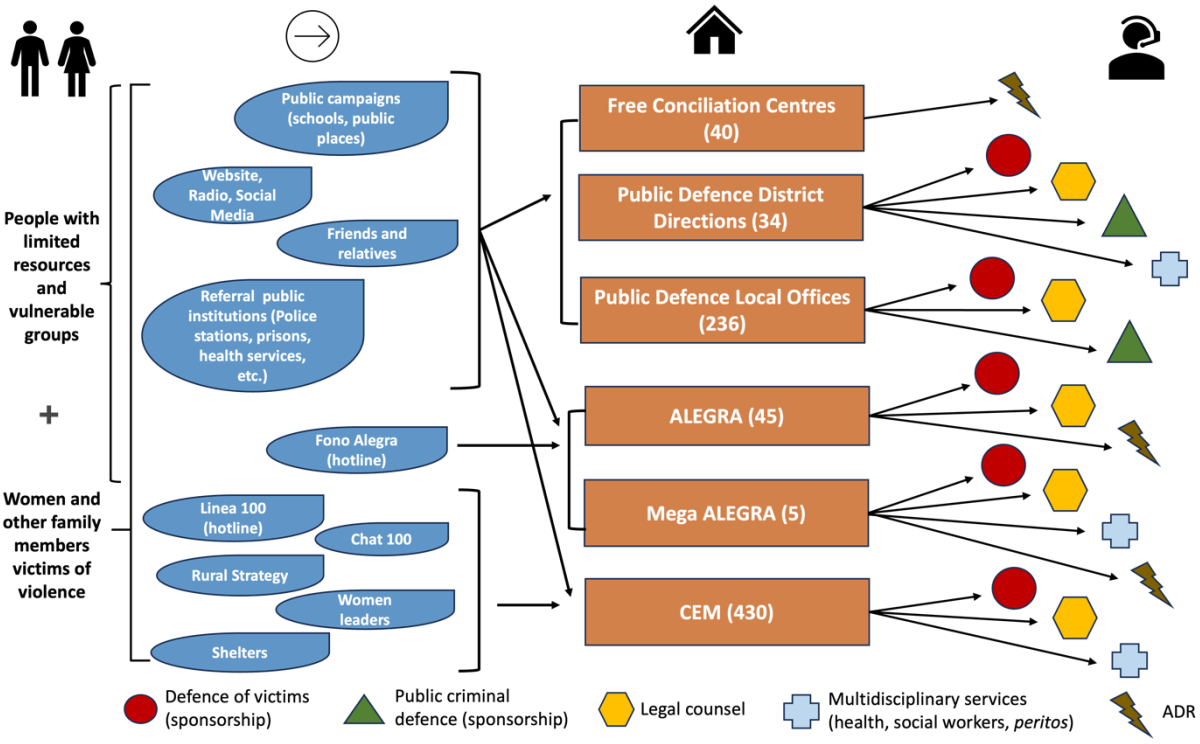
However, Peru could benefit from continuing to improve awareness of the existence of conditions and ways to gain access to legal aid and legal assistance services for its population's diverse groups. Peru could, therefore, further explore partnerships with community organisations to provide information on these services. Collaboration between legal aid providers and community organisations, such as NGOs, women's groups, and Indigenous associations, could help raise awareness about legal services among specific populations. These partnerships could include joint events, training sessions and information dissemination through established community networks. An OECD Member country practice that can serve as an example to improve awareness of these types of services is the case of the Netherlands (Box 6.9).

Box 6.9. OECD Member practices to improve awareness of public defence and legal aid services

The Dutch legal aid service, Jurisdisch Loket, makes its services available at many legal service counters across the Netherlands and through Rechtwijzer (Signpost to Justice), an online legal guidance website which is also a virtual first stop for legal aid. The website offers a database of template legal letters so that individuals can initiate a legal process; a roadmap to justice, a "decision tree" that helps people interactively find solutions for their issues; and an online dispute resolution platform.

Source: (OECD, 2021[1]), *OECD Framework and Good Practice Principles for People-Centred Justice*, https://doi.org/10.1787/cdc3bde7-en.

Figure 6.3. Pathways to public legal aid in Peru



Note: The figure provides information about the pathways Peruvians follow to existing public defence and legal aid services when experiencing legal and justice problems, including defence of victims (sponsorship), public criminal defence (sponsorship), legal counsel, multidisciplinary services and ADR mechanisms (conciliation).
Source: OECD with information from Law 29360, Public Defence Service Law; Law 30364, Law for the Prevention, Sanction, and Eradication of Violence against Women and Family Members; Law 26872, Conciliation Law; and information provided by the MINJUSDH and the AURORA Program during interviews from March 2023.

Cost

These services currently do not address all matters but only those that demand legal assistance (such as criminal defence and the defence of victims – including cases related to alimony, child support and arbitration). For other matters, legal assistance is expensive and difficult to obtain for disadvantaged people wherever they are. While possibly unaffordable, Lima and other urban centres have lawyers who could, in theory, be hired.

This cost-related limitation is common across most OECD Member countries. As a result, access to justice services is being hampered. Studies show that between 42% and 90% of individuals who decide not to

seek legal assistance cite (perceived or actual) cost as the reason for not doing so (although there might be differences between actual and perceived costs). The cost of legal representation is also often cited as one of the primary reasons for the increase in the number of people appearing in court without legal counsel (self-represented litigants [SRLs]), as evidenced across a range of OECD Member countries, where this number goes as high as 50%. Depending on the legal capability of citizens or businesses, this situation may lead to less optimal outcomes than those who receive legal assistance (OECD, 2015[32]).

Peru has established free legal assistance centres (ALEGRAs) to overcome this limitation. These centres provide free legal assistance services and are aimed mainly at people with limited economic resources or belonging to a vulnerable population. Additionally, ALEGRAs offer free Public Defence services in family, civil and labour cases.

OECD Member countries have implemented a series of mechanisms to improve public defence and legal aid services. These include incentives to accept pro bono cases and consider cost subsidies or legal aid for ADR mechanisms if certain procedures favour certain groups (OECD, 2021[1]).

Inclusiveness

To qualify for public defence or legal aid in Peru, individuals must demonstrate that they lack the financial means to hire a private attorney. Eligibility is typically determined based on income and other relevant factors, such as family size and socio-economic circumstances. In this regard, according to Law 29809 of 2011, a person is considered to have limited resources when he or she cannot pay for the services of a lawyer without risking their subsistence or their family. Also, according to the Supreme Decree 009-2019-JUS, vulnerable populations with the right to legal defence services are, among others: children and adolescents, older adults, women, people with certain health conditions, people with disabilities, members of the LGBTQI community, members of Indigenous and native communities, and foreigners deprived of liberty.

Consequently, these services are targeted and inclusive in Peru. However, there is still space to broaden the scope of these services for other groups, for example, those who are not the most economically deprived. In this sense, some OECD Member countries have implemented legal assistance planning to reflect the needs of those who, despite not falling into the lowest income categories, cannot afford justice services on their own. This is because, in several countries, the lowest-income group has significantly better access to assistance than the second-lowest and middle-income groups (OECD, 2021[1]).

6.5.3. ADR mechanisms and services: Conciliation, arbitration and mediation

Access

Access to effective ADR mechanisms can be as important as access to courts. Chapters 4 and 6 presented the main components of Peru's ADR mechanisms. This section will assess access issues in this area, notably on the part of vulnerable groups.

Peru has made initial efforts to create justice services accessible for all citizens, regardless of their income; thus, no-cost conciliation services exist. Also, to promote the use of ADR mechanisms to solve common and ordinary disputes among citizens, the government created the Popular Arbitration mechanisms, which proceed when claims do not exceed the maximum amount established by the law. The Centre for Popular Arbitration (Arbitra Perú) is a low-cost arbitration service aimed at solving conflicts, especially among MSMEs and civil society in general. Although this mechanism aims to promote the use of ADRs and make it more accessible for certain populations, there is still not enough information on how many people use arbitration services, their characteristics and whether people trust them.

Despite these efforts, ADR mechanisms remain underused by Peruvians (Chapter 4). This might be due to insufficient ADR services throughout the territory. In fact, the small number of pending cases and cases solved in judicial and extrajudicial conciliation (mentioned in Chapter 4), compared to the country's total population, might indicate insufficient services of this type nationwide. Therefore, the remaining barriers potentially impeding targeted vulnerable populations in Peru from accessing ADR mechanisms include geographical, cultural and awareness barriers. However, the Peruvian government has made efforts to address them:

- **Geographical barriers**: To address these, since 2021, Peruvian authorities have launched virtual mass conciliation exercises (*Conciliación*). Inspired by similar exercises in Colombia, the MINJUSDH implements these exercises by providing free-of-charge extrajudicial conciliation services to citizens, aiming to reach the greatest possible number of people. The Peruvian government reported during the 2022 OECD mission that after the pandemic, these exercises were delivered virtually through a 3-day session, reaching 150-180 conciliations per month, on average. Although coverage still seems low, these exercises aim in the right direction toward promoting the use of ADR mechanisms to reach out to rural and economically deprived populations.
- **Cultural barriers**: For some Indigenous communities, ADR services solve problems superficially, not considering the social context and particularities of the parties. This is why some maintain that while ADRs are a mechanism to solve certain conflicts, community justice mechanisms are forms of administering justice (Ardito-Vega, 2012[12]).

Awareness

Peruvian stakeholders reported implementing sporadic activities, such as campaigns and massive conciliation exercises (Conciliatones), to disseminate information on legal aid services; they also reported that the information disseminated through these activities is accessible and understandable to citizens.

However, the number of people accessing extra-conciliation services is still low compared to Peru’s total population. There is little awareness of available free conciliation and arbitration services among Peruvians. This may indicate a need for greater efforts to promote and educate the public about these services.

Peru could benefit from improving dissemination activities on ADR mechanisms and their benefits (in terms of cost and more efficient resolutions compared to in-court services). Peru could also co-ordinate the delivery of this information better; in fact, co-ordination of legal information and other services is important for streamlining service delivery most appropriately and avoiding duplication and waste. Partnerships with community organisations, mentioned above, to raise awareness concerning the availability of these services might also be helpful.

Some OECD Member countries have implemented triage systems as a good example of one-stop-shop structures for justice services, consistent with a "no wrong door" approach, where users can find, through technology, the dispute resolution mechanism best suited to meet their needs, as well as information and advice (an example of this is the case of Portugal, mentioned above).

Cost

One of the major advantages of these services is that they are no-cost or very low-cost justice service options. Vulnerable populations often face financial constraints and may struggle to afford the expenses associated with traditional court proceedings, as already described in this chapter. No-cost or low-cost ADR services can reduce the financial burden by providing accessible dispute resolution options that do not require significant financial resources. This affordability factor ensures that vulnerable populations can pursue justice and resolution without being hindered by economic limitations.

Inclusiveness

The creation of the ALEGRAs, through which no-cost conciliation services are provided, constitutes a major step toward offering targeted services to vulnerable populations in Peru. This initiative seems to be inspired by other initiatives implemented in Latin American countries, such as the Rights House *(Casa de Direitos*) in Brazil, the Justice Houses *(Casas de Justicia)* in Colombia, and the Centers for Access to Justice (*Centros de Acceso a la Justicia*) in Argentina. Thus, the model goes beyond providing a unique justice service to providing comprehensive legal services for victims. According to MINJUSDH, there are 46 ALEGRAs and 5 mega ALEGRAS (ALEGRAs with bigger space and multidisciplinary teams) nationwide.

Despite available ADR mechanisms in Peru, there are limitations regarding the problems they can solve, as is the case in most countries where they exist (e.g. they cannot be used in cases regarding domestic violence or violence against women). Yet, they do provide targeted services for some vulnerable populations in Peru. Indeed, given that they are no-cost or low-cost services, extrajudicial conciliation and Popular Arbitration are also initiatives that move in the right direction toward improving access to justice for specific and vulnerable populations. They could still expand their impact and establish follow-up mechanisms to measure said impact.

6.5.4. Justice of the Peace judges and other community justice mechanisms

Access

The Justice of the Peace (*No Letrada*) provides an opportunity for greater user input and more accessible and affordable justice services in local regions (i.e. for rural, native and Indigenous communities). They are reported to be more trustworthy than services provided by other justice institutions, mostly in rural areas, where this justice has seemed to adapt better to the social context than the judge or court that imposes legal standards without much consideration of the effect it will have on the parties. Yet, there is still the need to strengthen this institution by creating or adapting an information system where Justice of the Peace judges could include information on the cases they decide on. Also, their scope and co-ordination within the Peruvian judicial system should be regulated by law. These reforms could be proposed by the ONAJUP or the Local Offices (located in each district and attached to the Superior Courts) in Charge of Supporting Peace Justice (ODAJUP). Moreover, Justice of the Peace judges are assigned without considering existing geographical barriers. This means there are still limitations for remote populations to access these services, as these judges do not have the means to travel.

On the other hand, community justice mechanisms are considered by some targeted vulnerable populations as a “tailor-made” justice system, trusted, usually operating within the communities (to overcome geographical barriers), where the same language of the parties is spoken. Even in areas where Spanish is spoken, community justice mechanisms use understandable and non-technical language.

Both the Justice of the Peace and community mechanisms can offer advantages for vulnerable populations by providing culturally appropriate and accessible justice options. These mechanisms recognise and respect vulnerable communities' cultural identity, traditions and values; they may also help overcome language barriers, increase trust in the justice system, and ensure community participation. Further, both mechanisms imply – usually verbal – swift procedures with no formalities. While Justice of the Peace and community justice mechanisms have helped targeted vulnerable populations in Peru to overcome most of the barriers that usually exist when accessing formal justice services, they can still be strengthened and articulated with formal justice institutions and services, as it is important to ensure that community justice processes align with human rights standards, gender equality and the protection of individual rights. (Chapter 3).

Awareness

The Justice of the Peace and community mechanisms are perhaps the most known justice services in Peru; rural and remote populations and Indigenous and economically deprived populations often use these services. Yet, more and clearer information on the type of cases, the type of users and resolutions delivered by these mechanisms could be improved.

Cost

Communal authorities do not charge when they administer justice. Only in some very isolated cases has there been the payment of fees when there was conciliation. In the Justice of the Peace, small fees are usually paid but are, in any case, much lower than judicial fees. The cost advantages of these mechanisms help overcome financial barriers that usually keep vulnerable populations from using formal justice services.

Inclusiveness

While these mechanisms constitute an important effort in terms of creating services aimed at improving access to justice for specific vulnerable populations, there is still space to better train Justices of the Peace on human rights and gender issues, for instance, to strengthen criteria for them to decide on protection measures in cases of violence. Also, as most Justices of the Peace, the leaders of the patrols and the presidents of the communities are men, there is still space for considering the gender scope within these mechanisms and for women to fully exercise their rights.

Moreover, community mechanisms also have limits regarding the justice problems they can solve. In rural populations, as in urban areas, there may be situations of social differentiation and concentration of power, the same ones that proper administration mechanisms of justice could reinforce. Frequently, it is gender differences that are reinforced in these mechanisms. There are other types of conflicts, such as homicides and drug trafficking, which are out of the scope of community justice mechanisms. Finally, it is important to recognise that some sanctions may violate citizens' fundamental rights.

Having an intercultural justice system and service delivery approach is key to delivering quality access to justice for all. Peru has made important progress towards this goal (Box 6.8). However, the Peruvian Constitution does not go deep into Indigenous populations' right to justice; nor does it establish an Indigenous jurisdiction. In fact, the only autonomous jurisdiction recognised by the Constitution besides the ordinary is the Military Jurisdiction (Article 139). Further, in Peru, no laws develop or regulate international standards to properly implement Indigenous justice or articulate it with ordinary justice. The implementation of Indigenous justice in practice and its articulation with ordinary justice is not evident, jeopardising the cultural outlook and beliefs of Indigenous people as well as their effective access to justice and their trust in justice institutions. Moreover, although most Indigenous populations in Peru do not identify themselves as such (as discussed in Section 6.3), it is not clear whether community justice guarantees respect of the cultural outlook/worldview of all Indigenous communities.

OECD Member countries and others have further developed laws and autonomous jurisdictions to guarantee Indigenous communities' right to administer justice within the framework of the national judicial system but in a way that respects these communities' cultural outlook/worldview. Examples of how other countries have implemented intercultural justice systems might be useful (Box 6.10).

Box 6.10. Autonomous Indigenous systems in Colombia and Bolivia

Colombia's 1991 Constitution establishes an autonomous and independent Indigenous jurisdiction, which is part of the judicial branch. Also, the Colombian Constitutional Court has produced rulings in

favour of the independence of Indigenous justice that has set a standard for other Latin American countries.

The Colombian Constitution (1991) guarantees legal and cultural visibility and acknowledges Indigenous identity by recognising the authority of Indigenous groups within their territories "in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic" (Article 246). The Constitution establishes that the law should set out the forms of co-ordination of this special jurisdiction with the national justice system. Furthermore, the Constitutional Court established the obligation to comply with the principle of ethnic and cultural diversity, which is to be harmonised with the Constitution. The scope of the Special Indigenous Jurisdiction (Jurisdiccion Especial Indígena) is not confined to criminal matters but also includes administrative, environmental, education and health matters. Moreover, many differences exist among Indigenous jurisdictions, unlike the national justice system, which is built on common principles and leans towards homogenisation. In practice, cases are solved by the main authority of each town hall (*Cabildo*), and all, including formal justice operators, must respect the rulings. The Colombian Constitutional Court has imposed limits on the legal competence of the Special Indigenous Jurisdiction about due process, human life and personal integrity. Minimum guarantees must be complied with, including the principles of legality, impartiality, competency, publicity, presumption of innocence and proportionality of sanction.

The Bolivian Constitution (2009) places Indigenous justice on an equal footing with ordinary justice. In particular, the Bolivian Constitution creates a new institution: the Indigenous Constitutional Court, which comprises Indigenous and non-Indigenous people, is the first such institution in Latin America. Furthermore, in 2010, Bolivia enacted the Jurisdictional Demarcation Law of Bolivia (Ley de declined jurisdictional de Bolivia). This law, although criticised for submitting, in its implementation, Indigenous justice to ordinary justice, is the only existing law of co-ordination between Indigenous justice and ordinary justice in all Latin America.

Source: (CEJA, 2021[37]; OECD, 2020[5]).

Looking ahead, Peru could benefit from strengthening Indigenous justice, if not by constitutionally creating an (autonomous and independent) Indigenous jurisdiction, then by developing a legal framework to recognise the legal status (*personería jurídica*) of all Indigenous communities, and not only for those nominated rural or native communities.

Peru could also benefit from developing legal or regulatory provisions that regulate co-ordination and interaction between the Indigenous community and the ordinary justice systems. Such regulation could reduce the chance of double jeopardy and redundant procedures.

Despite the current broad range of justice service options both in and out of court, including community options, some are not necessarily readily accessible to everyone experiencing legal needs to help them resolve their problems. Lack of awareness also limits people's willingness and ability to obtain information about justice options available to satisfy their legal needs. Economic barriers to access justice services should spur all institutions providing justice services (also non-court services) to conduct analysis on how to deliver zero-cost services. There is also still a gap in meeting the needs of Indigenous populations; targeted service delivery can be improved by strengthening cultural awareness among public officials delivering justice services and creating policies and programmes with a differential approach. There is space to create a proper Indigenous jurisdiction articulated with the judicial system and other justice services in the country.

As such, there is scope in Peru to strengthen the provision of targeted and inclusive people-centred services to all Peruvians. In this regard, Peru could pursue work on tailoring services to identify and meet

the specific needs of targeted vulnerable populations. A valuable tool that can be applied to support this work is a legal needs survey (LNS). In this connection, in 2024, the OECD will work with the MINJUSDH and other relevant partners to design and conduct such a survey in Peru's pilot regions: Lima and San Martin. The results of this LNS will be used to issue a complementary report to this review on access and pathways issues in 2024. They could pave the way for Peru to conduct a national LNS on a regular basis and update the evidence base on needs and access issues accordingly.

6.6. Summary assessment

Peruvian institutions have taken initial steps to improve access to justice services, and notably for Peru's most vulnerable populations, through recent institutional reforms and by adopting a robust normative system to improve vulnerable populations' access to justice. Progress has also been made in recent years to increase the availability and accessibility of justice services across the territory, with the aim of reducing geographical barriers and procedural burdens (e.g. through mobile services). Also, Peru's institutions have started to respond to the need for more integrated services through co-ordination strategies to deliver clusters of services that better meet the population's needs (e.g. through the ALEGRAs). Peru has also made progress by creating targeted initiatives that can serve as a starting point on the path to responding to the needs of specific populations (e.g. Justice of the Peace judges, no-cost extrajudicial conciliation and Popular Arbitration).

Yet, there is further scope to strengthen the coherence, co-ordination and accessibility of legal and justice services in Peru. This first requires empowering and strengthening the capacity of the MINJUSDH to take on a leadership and co-ordination role for planning and delivering justice services, with appropriate allocation of resources. Currently, the relative power and scope of policy and service mandates and responsibilities that have been assigned to the judicial system tend to go beyond the traditional administrative and adjudication functions, which could generate systemic barriers to engaging in the effective implementation of justice reforms that place people at the centre of the justice system and focus on the full range of legal and justice services, beyond the judiciary.

Taking steps to empower the MINJUSDH and related institutions to play a stronger role in the planning and delivery of a broader range of legal and justice services could bring Peru closer to OECD Member country practices by adopting progressively more people-centred approaches to justice as the country modernises its justice system. In order to do this, there is also scope for Peruvian institutions within both the executive and the judiciary to strengthen their roles (e.g. through greater resourcing and capacity-building activities) and their interagency/institutional co-ordination. Indeed, Peru could benefit from reforms that build on recent achievements within the judiciary that a whole-of-state and long-term vision regarding justice in the country has framed. Adopting the spirit of the Public Policy for the Reform of the Justice System regarding access to justice could guide further reforms in the pursuit of this goal.

Furthermore, Peruvian justice institutions are currently facing the challenge of guaranteeing access to justice to all, especially those in vulnerable conditions. Notably, while having specific justice and legal needs, vulnerable populations are more prone to experience barriers to accessing justice services, many of which are still related to remoteness, system complexity and cost. These barriers are mostly faced by women, including victims or potential victims of violence, Indigenous and Afro-Peruvian communities, rural populations and the LGBTQI community. These barriers could be better identified to improve justice services and to guarantee access to specific populations. As such, Peru's justice institutions have scope to enhance access to justice policies and programmes by reducing and eliminating institutional, cost and policy barriers and by ensuring that these policies and programmes effectively respond to people's legal needs.

In this context, Peru is encouraged to identify and measure the legal needs of the most vulnerable populations, going beyond those who reach formal justice institutions such as courts, tribunals and

traditional legal processes, but also considering those legal problems and needs experienced by the community that do not or cannot make it to the formal justice system. Peru could also benefit from identifying "what works" in terms of services responding to the most vulnerable populations' needs. To do so, it needs to consider people, circumstances and emotions; pathways to resolution and support regarding how people experience legal and justice problems; and how they engage along these available pathways to address them. In addition, legal assistance, legal aid, and various mechanisms for resolving disputes (e.g. courts, conciliation) could be better connected to users' needs while enhancing trust in justice services. Justice of the Peace and other community justice mechanisms could also be further strengthened and articulated with other justice institutions and services.

Finally, there is strong scope to enhance justice service awareness among vulnerable populations to equip them with the knowledge and skills to navigate the justice system so that they can successfully address their own legal issues.

6.7. Recommendations

In light of the above assessment, Peru could consider implementing the following recommendations:

6.7.1. Key recommendations

Implement measures including assigning increased human and financial resources to overcome remaining geographical and system complexities, cultural, language, and financial barriers to access justice services. To facilitate the implementation of this recommendation Peru may consider:

- **Expanding the presence of key justice institutions throughout the national territory** (e.g. police, public prosecution, and public defence services) into areas of greatest need.
- **Introducing measures to improve the implementation of the gratuity principle.** This would avoid inhibiting deprived populations from reaching out for formal justice services, aiming at no-cost justice services for vulnerable populations. In the case of no-cost public defence and legal aid, Peru should be encouraged to implement incentives to raise pro bono cases.
- **Implementing efforts to guarantee and promote institutions that are sensitive to cultural diversity**. The inclusion of specialised experts or institutions such as the amicus curiae that can enlighten the court regarding the cosmovision of Indigenous communities and the existence of a body of translators or interpreters, as well as the existence of processes, practices and institutions adapted to Indigenous requirements, are all measures that could be incorporated into ordinary justice to guarantee that access to justice is genuinely possible for Indigenous people.
- **Increasing technological literacy for all Peruvians and design technological services considering population-specific circumstances.** This could be done by increasing their access to the Internet and the use of ICT, considering that in certain areas, service providers may need to use low-tech solutions. Also, modernise all justice institutions and co-ordinate efforts to provide users with holistic and articulated technological tools to improve their access to justice services.
- ***Strengthening public defence and legal aid services to ensure access to justice for all individuals and vulnerabilities. Strengthening the role of relevant institutions and establish clear justice pathways to facilitate people's access to justice services.*** These services help bridge the justice gap by providing free or affordable legal assistance to those who cannot afford private representation. Strengthening these services helps to uphold the principle that everyone should have equal access to legal remedies and protection of their rights. To facilitate the implementation of this recommendation Peru may consider:
    - ***Strengthening the public defence service*** (MINJUSDH) with sufficient staff (i.e. public defenders) and digital means.

  - ***Raising pro bono options*** for rural communities, including the Indigenous people. Implementing incentives could be a first step towards this goal.
  - ***Improving co-ordination and co-operation between institutions*** in order to provide legal aid and legal defence by enhancing a unified information system regarding public defence and legal assistance.
- ***Strengthening the role of relevant institutions (e.g. police commissariats and shelters) and establishing clear justice pathways for women victims of violence.*** Also, consider better disseminating the roles of these institutions and pathways. The creation of survivor-centred justice pathways, as well as their integration with services that remove women's (victims of violence) barriers to access services, is vital.
- ***Considering regulating and co-ordinating justice mobility/itinerant services in the country.*** Itinerary justice services can bring legal services directly to underserved areas with limited access to justice. By regulating these services, Peru can ensure that they are provided in a consistent and organised manner, reaching remote and rural communities that may have limited access to legal representation and court facilities. Further, regulating itinerary services facilitates co-ordination and collaboration among different stakeholders in the justice system, such as legal aid organisations, courts and community-based initiatives. Peru can establish guidelines and protocols for these services to ensure effective communication, collaboration and referral mechanisms. This promotes a comprehensive approach to access to justice and prevents duplication of efforts, benefiting the communities being served.
- ***Implementing measures to improve co-ordination across justice services*** and the institutions that design and deliver them to provide the best response to citizens. Specific recommendations on this aspect are detailed in Chapter 3.

6.7.2. Medium/long-term recommendations

Pursue a whole-of-state effort to design and implement a comprehensive, integrated policy on access to justice in Peru. To implement this recommendation Peru may consider:

- ***Implementing a strategic approach with a broader definition of the right of access to justice.*** This could be achieved through legislation and, if necessary, constitutional change to extend its scope beyond the framework of judicial due process and in-court justice services to encompass justice as a public service, where there is a people-centred design and delivery of legal and justice services. This wider interpretation of the right of access to justice would also imply upgrading it to a fundamental right, enhancing mechanisms for its protection.
- ***Enhancing institutional mandates to become people-centred****.* The judiciary, the Ministry of Women and Vulnerable Populations (MIMP) and the MINJUSDH all demonstrate a solid commitment to the constitutional, legal and institutional mandates they currently have. However, work needs to be done to ensure these mandates are reviewed and amended to be more people-centred and that the awareness and buy-in of the centrality of a people-centred approach spread across the system and becomes embedded – hard-wired – within it. Adapting these mandates to be more people-centred will, over time, see progressive shifting attitudes and actions towards people-centred approaches. This will be a challenging and long-term task and may involve the reinterpretation of "the administration of justice". For instance, resources could be committed to reviewing how the justice system and its key institutions can achieve more people-centred mandates.
- ***Implementing additional measures to improve vulnerable populations' access to justice.*** Peru would benefit from reforms (some that build on recent achievements) based on a whole-of-state and long-term vision regarding access to justice in the country. The spirit of the Public Policy

for the Reform of the Justice System regarding access to justice could be a first step towards this goal.

As a key tool to design and implement a comprehensive, integrated policy on access to justice, carry out a legal needs survey (LNS) regularly on a national scale. To implement this recommendation Peru may consider:

- ***Implementing ongoing national people-centred LNSs and other methods to identify the major legal and justice needs of the national population, especially the most vulnerable (women, Indigenous groups and LGBTQI communities).*** These needs assessment tools should focus on engaging directly with the people to understand the types of problems they experience, the impact they have on their lives, the realistic pathways and available services, and ultimately, to gain insight into what the people themselves want in terms of outcomes and pathways.
  - ***Peru could use the first LNS pilots in the two regions of Lima and San Martin as a basis upon which to build a national-scale LNS.*** A more detailed subregional-level focus will be useful for effectively planning and delivering services for a territorialisation strategy that integrates all justice institutions and develops a continuum of options for identifying, anticipating, preventing and resolving legal issues.
  - ***Consider strengthening the Ombuds Office's targeted studies.*** As a support measure to an eventual national LNS, targeted studies conducted by the Ombuds Office could be strengthened, so that they broaden their scope and include all vulnerable populations in Peru.
- ***Pursuing and expanding the justice sector's current system-wide efforts to identify the most effective, efficient and sustainable strategies for service delivery.*** This applies especially to those led by the Commission for Access to Justice for Vulnerable People and Justice in Your Community, the AURORA Program, and the Ombuds Office). A national "what works" process for the justice sector could be established under the MINJUSDH to ensure lessons learned are captured, communicated, and available for application in other parts of the justice sector. Also, a greater emphasis should be placed on engaging with the users of services to survey their satisfaction with processes and the effectiveness of outcomes. A strategic approach should be taken to conducting people-centred evaluations of services and new initiatives, as appropriate.
- ***Enhancing civil society's engagement and participation in policy making and law making*.** Civil society's voice should be better reflected in the design of legal and justice services between providers and potential users to consider users' needs and experiences to feel equal under the law. These measures would have a direct impact on Peruvians' trust in justice institutions and in fair processes and outcomes.

Identify and remove structural and systemic barriers to access to justice and continue working on eliminating existing barriers for vulnerable populations to access justice services in Peru. To implement this recommendation Peru may consider:

- ***Identifying and assessing vulnerable populations' barriers when accessing justice services*** to defend their fundamental rights to improve their access to justice. Barriers and problems faced by women (not necessarily victims or potential victims of violence), Indigenous groups, representatives of rural populations and the LGTBTI community could be better identified and visualised to improve justice services and to guarantee access to specific populations.
- ***Enhancing mechanisms to reduce discriminatory practices*** hampering vulnerable populations' access to justice services in Peru. This would imply, among others:
  - ***Creating a national register of cases of discrimination against women, Indigenous and LGBTQI populations***. Make the contents of the register accessible across the judicial system and to key stakeholders.

  - ***Enhancing justice operators' training and capacity to eradicate stereotypes and prejudices***. Consider adopting measures to raise awareness and train public officials on violence against the LGBTQI community. Also, consider adopting a protocol for the investigation and delivery of justice services regarding cases of violence against LGBTQI people.
  - ***Continuing training and sensitising public officials (e.g. judges and police) in pathways.*** Raise the availability of training programmes on the ground in various regions and communities across the country. Implement actions to enhance people's trust in them. Public officials can be further trained to adopt a gender perspective to address cases of violence against women.
- ***Implementing awareness activities with the communities that interface with all justice system components***. This could be achieved by implementing clear and accessible language communication strategies about justice services (emphasising ADR mechanisms). In addition, encourage a systematic focus on identifying target audiences and target communities for services and seeking to employ the most effective communication mechanisms for that audience. Partnerships with community organisations and sound problem triage and referral processes consistent with a "no wrong door" approach might be helpful to reach this goal.

Continue strengthening institutions for a better delivery of people-centred justice services. To implement this recommendation Peru may consider:

- ***Strengthening Justice of the Peace and community justice services*** to ensure they operate in the best possible ways and avoid potential conflicts between customary and formal legal systems while ensuring human rights safeguards and protections. This could be done by:
- ***Providing greater support (in terms of training) to the Justices of the Peace and the Indigenous dispute resolution mechanisms.*** This would allow them to ensure they operate at the best possible level and as closely as possible with constitutional, human rights and gender-informed processes.
  - ***Enacting and implementing a law to regulate the scope of Justice of the Peace judges* (no letrados) *and their co-ordination with the rest of the justice system***. In addition, Justice of the Peace Judges could be trained on human rights and gender issues. Also, consider creating or adapting an information system where Justice of the Peace Judges could include information on the cases they decide on.
  - ***Progressively adapting and implementing an information system to*** register ***cases and decisions within the community justice mechanisms.***
  - ***Enacting and implementing a law to define the scope of the Indigenous justice jurisdiction and its co-ordination and interaction with the formal jurisdiction.*** This law should:
    - Comply with international standards regarding Indigenous justice.
    - Clearly define and regulate interaction and co-ordination between the Indigenous/community and the ordinary justice systems, based on fostering intercultural dialogue, guaranteeing co-ordination capacity, fostering jurisdictional exchange, and guaranteeing the protection and promotion of Indigenous rights to cultural and ethnic diversity.

Establish clear limitations for implementing Indigenous justice to ensure consistency with constitutional and human rights standards.

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OECD Justice Review of Peru

TOWARDS EFFECTIVE AND TRANSPARENT JUSTICE INSTITUTIONS FOR INCLUSIVE GROWTH

This report provides an in-depth analysis of Peru's justice system and offers concrete recommendations, based on OECD countries' experience and best practices, for how to make it more effective, efficient, transparent, accessible, and people-centred. Building on the OECD's Recommendation on Access to Justice and People-Centred Justice Systems, the report suggests how Peru can best implement its challenging justice reform agenda so that access to justice is available to all, including the most in need. In particular, it proposes actionable solutions for modernising Peru's institutional and functional arrangements to improve the administration of justice and people-centred service delivery, bringing it closer to OECD standards and best practices in this area.

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