

INTEGRATION OF SINEFA AND CNS IN THE IDENTIFICATION OF FUNCTIONAL NON-COMPLIANCES OF EFAS IN PERU 2020-2022

Ms. Keiichi Oleshka Chirinos Fernández

ORCID: 0000-0001-5955-6546

UNIVERSIDAD NACIONAL DE TRUJILLO

Dr. Erik Francesc Obiol Anaya

ORCID: 0000-0002-3513-5592

eobiol@unitru.edu.pe

UNIVERSIDAD NACIONAL DE TRUJILLO

Abstract:

This article is prepared within the framework of a doctoral thesis, and its objective is to make a proposal to integrate the National Environmental Assessment and Control System (hereinafter, SINEFA) and the National Control System (hereinafter, SNC) in the identification of the functional non-compliance of the Environmental Enforcement Entities (hereinafter, EFAs), to ensure that there are no reprocesses, thereby allowing environmental management to be improved in the country.

By virtue of this, it is necessary to describe the SINEFA, especially the functions performed by the governing body when it supervises the EFAs; Likewise, conceptualize the SNC, whose governing authority executes the control services, placing greater emphasis on the control services that determine alleged functional administrative responsibility of civil servants.

In the investigation carried out, it has been verified that during the period 2020 to 2022 the Environmental Assessment and Supervision Body-OEFA has issued 1,080 supervision reports in which it identified year after year alleged non-compliance in the environmental oversight functions of the EFA, the which were referred to the Comptroller General of the Republic-CGR, showing that no report was used as input for the preparation of a subsequent control service that determines an alleged functional non-compliance, which demonstrates the dissociation that exists between state entities.

Keywords: economic agents, Covid-19, Indecopi, ordinary procedure, unrecognized operations.

1. Introduction

One of the countries with the greatest megadiversity is Peru, for this reason, a National System of Environmental Evaluation and Inspection (SINEFA) has been implemented, in order to monitor that economic activities make a real sustainable use of our resources, complying with their auditable environmental obligations; in addition, it has empowered the governing body of the aforementioned system, the OEFA, to supervise the EFAs, in order to verify and monitor the performance of the environmental inspection functions assigned to them by law, issuing a supervision report for each action executed, and if applicable, proposing recommendations to the EFAs so that they adopt actions that allow the full fulfillment of their functions.

It should be specified that, in the event of functional non-compliance with the EFAs, the OEFA cannot sanction an EFA, because it is not within its competences, with the exception of solid waste infrastructures; however, in view of this circumstance, the SINEFA Law (2009) establishes that the non-execution of the powers of the EFAs entails functional non-compliance, which must be reported to the Office of the Comptroller General of the Republic of Peru (CGR) as the governing authority of the National Control System.

In this way, it is necessary to mention some antecedents, which, although they are not direct investigations, are related, such as the background of environmental control and management services, which will serve as the basis for this research.

With respect to control services, Rozas (2013) indicates that the SNC, through procedures and methods, seeks to carry out government control of public resources. Its competence not only verifies the budgetary or financial part of the entities, but also the operational and performance activities of the officials involved in them. (p. 1-5)

Bonilla (2015) points out that public control in Peru has a positive effect on the national strategic plan, since the institutional budget allows for adequate management of institutions improving the well-being of citizens, but it is necessary to review the situation of public finances and existing rules and regulations (p. 8)

In environmental management, Villegas (2021) proposes the design of a decentralized system that affects the structured implementation of operational planning and technical assistance for capacity building at the three levels of government, for coordinated management between the Ministry of the Environment, Regional Governments, and local governments to link administrative processes and raise the level of environmental protection. (p.3)

For this reason, the main objective of this article is to make a proposal to integrate the SINEFA and SNC in the identification of the functional non-compliances of the EFAs, for this it is essential to analyze whether the reports referred by the OEFA to the CGR, have contributed to the preparation of government reports that identify alleged functional responsibilities in the EFA servers.

CONTENT

National System of Environmental Assessment and Inspection

The Sinefa Law (2009) states that its purpose is to ensure compliance with environmental legislation, as well as to ensure that the functions of the macro-process in environmental matters (control, supervision, evaluation and sanction), delegated to the EFAs, are carried out effectively.

To this end, the Ministry of the Environment (Minam), the Environmental Inspection Entities of the national, regional or local level (EFA), and the Environmental Assessment and Inspection Agency (OEFA), the latter as the governing body of Sinefa, have been established as authorities that are part of SINEFA.

The Environmental Assessment Agency - OEFA

The OEFA, is a public sector entity specialized in environmental control, uses the macro-process of environmental inspection over its subjects; but also, it carries out tasks as the governing body of Sinefa, from the regulations in environmental control, and the supervisory function of the EFAs.

Therefore, with respect to the functions delegated as the governing body of Sinefa, the OEFA has the competence to verify and monitor the environmental inspection tasks delegated to the EFAs (OEFA, 2020) at the national, regional and local levels, because the latter have the obligation to carry out the supervision and evaluation of the economic activities that are carried out within their jurisdiction and competence in order to determine that their subjects comply with their environmental obligations.

Environmental Inspection Entities

The EFAs are entities of the public sphere that are located at the three levels of government and are assigned functions of the macro-process of the audit over all those natural or legal persons that carry out activities within their jurisdiction and competence. These functions are carried out within the environmental regulatory framework and the provisions issued by the OEFA but without transgressing its autonomy (OEFA, 2020, p. 11)

The actions of the environmental inspection macro-process (evaluation, supervision and sanctioning power) aim to ensure the observance of the auditable environmental obligations by all those who carry out activities that may have an impact on the environment within the jurisdiction of the EFA, who are known as administrated.

National System of Government Control

The SNC seeks in a comprehensive and permanent way, that state management is carried out in an effective manner in search of the benefit of the citizens who receive public services directly or indirectly; as well as the verification of the execution of the

State's resources and the use of its assets.

In order to meet this objective in government control, two types of control are established, internal and external, the first of which is the responsibility of the entity itself, while external control is exercised by the CGR, in both types there are three moments in which control can be carried out, Thus, it can be prior, simultaneous and subsequent. (R.C No. 295-2021-CG, 2021)

Of the three types of control service, the one of relevance for this article is the subsequent control service, because only the reports from a subsequent control service that have been issued by the organs of the SNC in which responsibilities are identified and the commission of an infraction is attributed, it enables the evaluation of the initiation of a sanctioning process by the CGR, in order to verify whether there is a functional responsibility at the administrative level and impose a sanction, if applicable. (Law No. 31288, 2021).

Therefore, according to item VII of Comptroller's Resolution No. 295-2021-CG (2021), in the subsequent control service, the following modalities may determine functional administrative responsibility:

- The performance audit seeks to determine whether public entities execute their activities effectively in the dimensions of their scope.
- The Compliance Audit verifies whether the management by processes in the entities is carried out within the legal framework, provisions or contracts signed.
- The Specific Control Service for Facts with Alleged Irregularity verifies whether the management by processes in the entities is carried out within the legal framework, provisions or contracts signed, but a concrete and specific fact.

As can be seen, with these three modalities of subsequent control services, service commissions can identify possible functional breaches of civil servants, in order to ensure that they provide an honest and sound performance of their functions, which have an impact on the fulfillment of goals and results in favor of Peru.

For the purposes of this research article, the supervision reports that the OEFA made to the EFAs and that were sent to the CGR during the period 2020 – 2022 have been considered; showing how many of them contributed to the preparation of subsequent control service reports that made it possible to identify alleged functional administrative responsibility in the public servants of the EFAs.

TABLE N° 01: SUPERVISION REPORTS PREPARED BY THE OEFA THAT IDENTIFIED ALLEGED FUNCTIONAL NON-COMPLIANCES

Year	N° Reports
2020	411
2021	252
2022	425
Total	1088

Source: OEFA

TABLE N° 02: REPORTS DERIVED FROM OEFA TO THE CGR THAT CONTRIBUTED TO THE DEVELOPMENT OF A SUBSEQUENT CONTROL SERVICE

OEFA Organic Unit	OEFA Supervision Reports			Referrals to CGR	Control Service
	2020	2021	2022		
FROM AMAZONAS	14	1	14	29	0
FROM ANCASH	0	22	22	44	0
FROM APURIMAC	12	24	24	60	0
FROM AREQUIPA	150	23	44	217	0
FROM AYACUCHO	13	28	26	67	0
FROM CAJAMARCA	2	6	10	18	0
FROM CUSCO	7	10	5	22	0
FROM HUANCANELICA	5	0	1	6	0
FROM HUANUCO	3	19	17	39	0
FROM ICA	42	8	34	84	0
FROM JUNIN	40	11	30	81	0
FROM LA LIBERTAD	35	7	15	57	0
FROM LAMBAYEQUE	23	10	18	51	0
FROM LORETO	10	11	14	35	0
FROM MADRE DE DIOS	0	5	7	12	0
FROM MOQUEGUA	0	4	5	9	0
FROM PASCO	12	13	19	44	0
BY PIURA	1	3	15	19	0
FROM PUNO	9	10	12	31	0
FROM SAN MARTIN	24	13	26	63	0
FROM TACNA	1	8	18	27	0
FROM UCAYALI	3	7	12	22	0
HEY CHIMBOTE	5	4	15	24	0
OE CORACORA	0	0	17	17	0
HEY COTABAMBAS	0	0	4	4	0
OE PICHANAQUI	0	0	6	6	0

Source: OEFA and CGR

During the period between 2020 and 2022, the OEFA submitted 1080 supervision reports to the CGR in which they identified year after year alleged functional non-compliances of the EFAs.

However, of all the reports submitted, none contributed to the development of a subsequent control service that would determine an alleged functional non-

compliance, despite the fact that the SINEFA Law, Art.11 (2009), establishes that once these non-compliances are detected, the OEFA must inform the CGR so that it can adopt the functions that correspond to it.

This demonstrates the dissociation that exists between State entities, due to the fact that an entity such as the OEFA with specialized personnel, verifies through supervision the performance of the functions delegated to the EFAs, determining whether it has complied with the recommendations contained in its supervision reports, findings that are conclusive for effective environmental oversight to take place. which translates into ensuring that economic activities are properly used sustainably.

But this is not reflected in reality, since year after year there are continuous and constant breaches of the EFAs, which finally ignore the indications of the governing body because there is no consequence, because the only body that can sanction these breaches is the CGR, which does not consider the reports sent, archiving them regardless of the serious consequences that continue to occur in the environment.

It is undeniable that the efforts made by the OEFA are not having the expected result, since they trust that another entity (CGR) with sanctioning powers can contribute to these efforts that have an impact on the whole society, because the environmental issue is transversal, and if they do not work in a concatenated manner, the expected changes will not occur. and much less will it be possible to safeguard one of the rights that the Political Constitution of Peru contemplates in its Article 2 (1993); which is the right that everyone has to live in an ideal environment to develop their lives.

CONCLUSIONS

Sinefa is a system that seeks to ensure that environmental inspection guarantees compliance with environmental obligations, thereby promoting environmental sustainability. To this end, the OEFA, as the governing body, has among its functions to verify and monitor the tasks delegated to the EFAs at the three levels of government, related to the supervision and evaluation of the economic activities that are carried out within its jurisdiction and competence, in order to determine that its subjects comply with their environmental obligations.

With respect to the SNC, its governing authority is the CGR, which has within its functions to supervise the execution of policies and use of goods and state budget, and for the fulfillment of these functions it carries out an external control within which are the subsequent control services that through certain modalities (performance audit, Compliance Audit and Specific Control Service) determine

possible functional breaches, which enable the initiation of a sanctioning procedure, in order to identify whether there are functional responsibilities at the administrative level and impose a sanction, if applicable.

During the period 2020 - 2022, the OEFA submitted 1080 supervision reports to the CGR in which they identified alleged breaches in the environmental inspection functions of the EFAs, however, of all the reports submitted, none was used as an input for the preparation of a subsequent control service that would determine an alleged functional non-compliance. which demonstrates the dissociation that exists between state entities, so the efforts are not having the expected result, since they trust that this entity (CGR) with sanctioning powers can contribute to the efforts that have an impact on society as a whole.

RECOMMENDATIONS AND/OR PROPOSALS

- It is necessary for the OEFA and the CGR to identify the methods to be followed during the supervision and issuance of the report made by the OEFA, so that the information that is transferred to the CGR complies with sufficient and appropriate evidence of the alleged non-compliance, in this way it will allow the CGR to initiate the planning process to execute one of the modalities of the subsequent control service that allows identifying responsibilities and attributing the commission of an infraction, which in turn would enable the initiation of a sanctioning procedure to evaluate whether there is administrative functional responsibility and impose a sanction, if applicable.
- This would prevent the supervision processes that are carried out every year from reaching the identification of the same non-compliances and conclusions, and the real objective of environmental inspection work, which is to seek compliance with environmental obligations, can be met.

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