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**Voluntary peer review of consumer protection law and policy:
Peru**

Overview*

* The findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of consumer protection law and policy of Peru.



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I. Introduction

1. In its resolution 70/186 of 22 December 2015 on consumer protection, the United Nations General Assembly reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement and policy. The Intergovernmental Group of Experts on Consumer Protection Law and Policy of the United Nations Conference on Trade and Development (UNCTAD), established by the General Assembly, is mandated, inter alia, to conduct voluntary peer reviews of national consumer protection law and policy, as implemented by national consumer protection authorities.¹ Peru is the third member State of UNCTAD to volunteer.

2. The purpose of voluntary peer reviews is to provide an external and independent assessment of the effectiveness of consumer protection law in a given country; to analyse the legislative, institutional and public policy frameworks, as well as the enforcement of legislation, in order to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures; and to assist countries in implementing relevant recommendations by developing a capacity-building project.²

II. Political, economic and social context

3. Peru is a country in South America with a population of more than 31 million inhabitants and borders with Brazil, Chile, Colombia and Ecuador. Peru is a democratic State governed by the rule of law. It is a sovereign, independent social republic, organized in accordance with the principle of the separation of powers. In 2018, Peru was allocated a value of 0.759 in the United Nations Development Programme human development index, placing it in the high human development category and positioning it at 82 out of 189 countries and territories.³ Between 1990 and 2018, life expectancy at birth increased by 10.4 years, the average number of years of schooling increased by 2.6 years and the expected number of years of schooling increased by 1.9 years. Over the same period, per capita gross national income increased by approximately 148.3 per cent and gross domestic product rose to US\$ 222 billion.⁴

4. Between 2002 and 2013, extreme poverty, i.e. the percentage of the population living on less than \$3.2 per day, fell from 30.9 per cent to 11.4 per cent.⁵ The reduction of inequality continues to pose a challenge: 38 per cent of the population belongs to the lowest class, while 13 per cent belongs to the highest class.⁶ Inhabitants on lower incomes are more likely to be vulnerable consumers and/or in situations of vulnerability and therefore merit greater attention and protection. This situation is compounded by the gender gap: the national illiteracy rate currently stands at 8.3 per cent among women but at 2.3 per cent among men.⁷ The digital divide between urban and rural areas remains considerable: 70.9 per cent of inhabitants in the Lima metropolitan area have access to the Internet, compared to only 13.2 per cent of the population in rural areas.⁸

¹ TD/B/C.I/CPLP/9 and TD/B/C.I/CPLP/9/Corr.1.

² TD/B/C.I/CPLP/6.

³ United Nations Development Programme, “Inequalities in Human Development in the 21st Century: Briefing note for countries on the 2019 Human Development Report – Peru”, *Human Development Report 2019*.

⁴ World Bank, “Peru: Overview”, 2020.

⁵ Ibid.

⁶ INDECOPI, *National Consumer Protection Policy – National Consumer Protection Plan 2017–2020* (Lima, 2017), p. 6.

⁷ National Institute for Statistics and Data Processing, “Analfabetismo y alfabetismo”, 2020.

⁸ National Institute for Statistics and Data Processing, “Estadísticas de las tecnologías de información y comunicación en los hogares. Enero-marzo 2018”, Informe técnico, No. 2 (June 2018), p. 9.

III. Legislative framework

5. The Constitution of Peru of 1993 contains an explicit reference to consumer protection in article 65, which provides: “The State defends the interests of consumers and service users. To this end, it guarantees the right to information in respect of the goods and services available on the market. It is also responsible for ensuring, in particular, the health and safety of the population.” On the basis of the Constitution, Peru has established a strong legislative and public policy framework for consumer protection.

A. The Consumer Code

6. The principal legal instrument in the area of consumer protection is Act No. 29571 of 14 August 2010, through which the Consumer Code was adopted. The Peruvian legislature’s decision to systematize consumer protection legislation in the form of a code takes due account of the specific nature of the subject matter and the need to ensure that consumer protection is reflected in all relevant legislation. This codification has also allowed for the systematic and coherent arrangement of consumer protection law, which helps to provide legal certainty.⁹

7. Given the cross-cutting nature of consumer protection policy, it is inevitable that other bodies of legislation will have an impact on the Code. This has been addressed through the application of the principles of speciality and supplementarity, which are enshrined in the Code itself. In practice, this means that while the Code is comprehensive in its regulation of consumer relations, special legislation, such as that regulating public health and financial services, may complement or supplement it.

1. Principles and objectives

8. The principles that govern the Consumer Code and inform the interpretation of consumer protection norms are set out in article V:

(a) *The principle of consumer sovereignty*, which reaffirms the autonomy, freedom and responsibility inherent in consumer preference;

(b) *The pro-consumer principle*, according to which norms must be interpreted in the consumer’s favour;

(c) *The principle of transparency*, according to which providers have a duty to provide truthful and adequate information about the products or services they offer;

(d) *The principle of the correction of asymmetry*, according to which consumer protection policy aims to correct irregularities or bad practices arising from information asymmetry or imbalances between consumers and providers;

(e) *The principle of good faith*, according to which consumers, providers and consumer associations must approach consumer relations in good faith;

(f) *The principle of minimum protection*, according to which sectoral standards may provide for a higher level of protection;

(g) *The pro-associative principle*, according to which the State has a responsibility to facilitate the activities of consumer associations;

(h) *The principle of the primacy of reality*, according to which the facts must take precedence over the contents of formal texts in the assessment of the nature of a given situation.

9. Article VI of the Code establishes various guidelines for public policies that the State is required to follow. These guidelines are consonant with the objectives of the United Nations guidelines for consumer protection. In addition to protecting health and safety, defending the interests of consumers, upholding their right to information, and developing educational and training programmes, the State is required to recognize the vulnerability of consumers and afford special protection to the most vulnerable and disadvantaged among

⁹ UNCTAD, *Manual on Consumer Protection*, document UNCTAD/DITC/CPLP/2017/1.

them. Other guidelines include ensuring that dispute resolution and redress mechanisms are in place; facilitating citizen participation and the activities of consumer associations; promoting sustainable consumption patterns; and fostering a culture of consumer protection, sustainable consumption, quality goods and services and universal access to health products. It is important to note that the public policy objectives set out in the Code are binding on all State agencies, and that all State agencies are required to monitor compliance with those objectives in their respective areas of competence.

2. Substantive legislation

10. Titles I to IV of the Consumer Code contain the bulk of the substantive legislation on consumer protection. The rights granted to consumers are the same as those found in most modern legislation. Notably – and uncommonly – these rights include the “right to fair and equitable treatment in all commercial transactions and to be free from discrimination on the grounds of origin, race, sex, language, religion, opinion, or economic or other status”. This prohibition of discrimination demonstrates that consumer relations are important for the realization of fundamental rights such as the right to non-discrimination, which is also enshrined in article 2 of the Constitution.

11. The Code provides that consumers have the right to health and safety, to information and to effective protection from products and services that, beyond normal and foreseeable circumstances, could pose a risk to their health or physical integrity. The Code and its implementing regulations establish the right to effective protection from products and services that, under normal and foreseeable conditions, pose a risk to the life, health or physical integrity of consumers, and the right to have the product repaired or replaced, to have the service performed again or to have the amount paid refunded, depending on the circumstances. They also establish that providers are obliged to take measures to reduce or eliminate any unforeseeable risks posed by a product or service, i.e. defects, as soon as they are detected, and set forth a procedure for informing consumers, the market and the authorities accordingly.

12. The regulations governing contracts are exhaustive and cover standard form contracts, unfair terms (their nature, consequences and non-application) and general contract terms, which are subject to prior administrative approval in the case of public services or to economic regulation. The Code has provisions that regulate consumer protection with regard to specific products and services, such as regulated public services; health, educational, real estate and financial products and services; and credit services provided by companies whose activities are not monitored by the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators.

3. Liability and sanctions

13. Title V of the Consumer Code establishes a set of secondary norms that determine the liability of providers and establish what administrative sanctions may be applied by the national consumer protection authority, the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI). Providers are subject to both civil liability, which is governed by the Civil Code and comes under the jurisdiction of the competent judicial authorities, which have sole jurisdiction in cases involving damages, and administrative liability, which is governed by the Code and comes under the national jurisdiction of INDECOPI.

14. When a provider violates the provisions of the Code, administrative proceedings may be initiated ex officio or on the basis of a complaint filed by the consumer concerned or by a consumer association. Once the proceedings have been initiated, INDECOPI has the power to take precautionary measures and may even order the temporary cessation of the operations of the provider concerned. If INDECOPI determines that a violation has occurred, it may impose sanctions of between 50 and 450 tax units, equivalent to approximately \$62,000 and \$560,000, respectively. Exceptionally, the administrators of the offending companies may be declared jointly and severally liable if they are found to have participated in the violation with malicious intent or through gross negligence.

15. During administrative proceedings initiated at the request of the consumer, prior attempts to settle directly with the provider are not taken into account. This means that aggrieved consumers may file a complaint with INDECOPI even if they have not

communicated with or submitted a complaint to the provider. Administrative proceedings are therefore not the last resort but very often the first course of action for consumers who feel that their rights have been violated. This, along with other factors, has contributed to a significantly high level of administrative litigation in consumer relations.

4. Collective defence by consumers

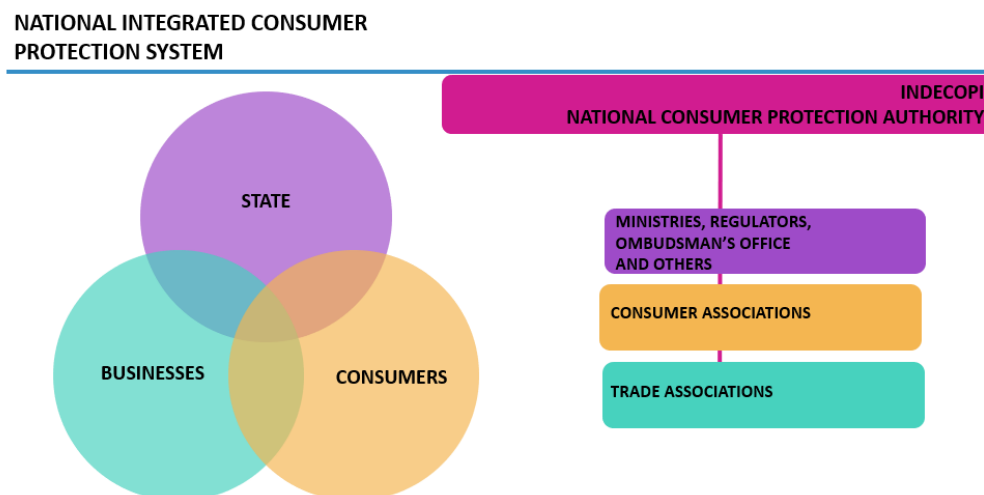
16. Title VI of the Consumer Code determines the nature of the proceedings that may be initiated to protect consumers whose rights have been collectively or indirectly violated. Such proceedings may be conducted at the administrative headquarters of INDECOPI or before the courts. Consumer associations “duly recognized” by INDECOPI are entitled to bring collective action at its administrative headquarters. The Code does not provide individual consumers, whether they are natural or legal persons, with standing to bring collective action.

17. As is common to most jurisdictions, only the courts are competent to award damages to consumers. INDECOPI and consumer associations are entitled to bring collective action before the courts. However, consumer associations are required to obtain prior approval from INDECOPI in order to exercise this power, which may have contributed to the fact that, to date, very few associations have gone to court.¹⁰ Other possible contributing factors are a lack of expertise on the judicial processes involved and insufficient human and financial resources. As a result of these shortcomings, consumer associations are institutionally weak.¹¹

5. National Integrated Consumer Protection System

18. Title VII of the Consumer Code provides for the establishment of the National Integrated Consumer Protection System, which is a set of principles, rules, procedures, techniques and instruments designed to harmonize public policies and optimize the activities of relevant State authorities (see figure 1). The System is administrated by the National Consumer Protection Council, a coordinating body attached to the Office of the President of the Council of Ministers and chaired by INDECOPI in its capacity as the national consumer protection authority. The Peruvian legislature has thus designated INDECOPI as the focal point and principal agency for matters relating to consumer protection.

Figure 1
Structure of the National Integrated Consumer Protection System



19. The National Council for Consumer Protection promotes and coordinates the National Consumer Protection Policy and the National Consumer Protection Plan, which are the cornerstones of Peruvian public policy on consumer affairs and are described in

¹⁰ According to INDECOPI, this has happened only once.

¹¹ Conclusions based on interviews with consumer associations conducted in Peru in September 2019.

detail below. It also makes recommendations regarding the prioritization of measures and norms in certain consumer sectors, issues opinions, raises awareness of consumer protection, encourages the establishment of product and service safety alert systems, evaluates the effectiveness of mechanisms for the prevention and resolution of disputes, channels communication between the public and private sectors and promotes citizen participation.

20. Under the same title, the Code regulates “consumer justice”, which subsumes consumer arbitration, alternative dispute resolution mechanisms and the complaints book. The consumer arbitration model is based on the Spanish model and as such is free and binding. It is administered throughout the national territory by regional and local governments, other public entities and legal persons and the regional offices of INDECOPI. It is tripartite, in that it involves mediation between providers, consumer associations and the public authorities. The complaints book is an internal review mechanism that all businesses are required to make available to consumers upon request, in physical or virtual form, so that they can submit complaints or claims. Providers may choose to resolve such claims or complaints immediately and in any case are required to respond in writing within 30 calendar days. The information contained in a company’s complaints book must be forwarded to INDECOPI upon request for auditing purposes.

21. Consumer associations are also regulated under the National Integrated Consumer Protection System. The regulations set out in this regard in the Consumer Code are in line with the United Nations guidelines for consumer protection, which recommend that consumer associations should be independent.¹² The regulations are also consistent with the conditions for the admission of consumer groups to Consumers International,¹³ i.e. consumer associations must not make a profit, receive funding from providers or have a political affiliation. The Code allows only one means of funding for consumer associations, namely that they may receive a percentage of the funds raised through any fines imposed by INDECOPI and sectoral regulators in proceedings brought at their initiative. This percentage may not exceed 50 per cent of the fine and only 5 per cent may be used for operational purposes. These strict funding rules have helped to shape consumer associations’ business models, which are based on administrative litigation before INDECOPI.

B. Other relevant legislation

22. The principle of speciality is applied comprehensively in the area of consumer protection, reflecting the cross-cutting nature of consumer protection policy. The Consumer Code refers to various laws, most of which correspond to sectors that are regulated under Title IV but some of which relate to private investment in public services, health, real estate development and financial services, among other areas. In addition to the laws explicitly cited in the Code, specific laws have been adopted in areas covered by the United Nations guidelines for consumer protection, such as competition law, the provision of sanitation services, the supply of pharmaceutical products and energy, and data protection.¹⁴

23. One area identified as a priority in the context of the voluntary peer review was the protection of consumer data, which, in Peru, has a legal basis in Act No. 29733 of 3 July 2011 on the Protection of Personal Data. The Act is based on the principles of data subject consent, data bank security and the availability of resources allowing data subjects to assert their rights. The national data protection authority is the Directorate-General for Transparency, Access to Information and Personal Data Protection of the Ministry of Justice and Human Rights. However, the provisions of the Consumer Code are fully applicable in the context of consumer relations, and INDECOPI is the only body competent to ensure compliance with those provisions.

¹² United Nations guidelines for consumer protection, chap. I (Objectives), para. 1 (e).

¹³ Consumers International is an international federation of consumer groups (see www.consumersinternational.org/).

¹⁴ UNCTAD, “World Consumer Protection Map”. Available at <https://unctadwcpm.org/docs/PER.pdf>.

IV. Public policy framework

24. This chapter focuses on the most pertinent public policy instruments, namely the National Consumer Protection Policy and the National Consumer Protection Plan.¹⁵ In defining the scope of study, consideration was given to the areas of interest expressed by Peru, the United Nations guidelines for consumer protection and other relevant international instruments that codify international best practices. This is why a specific section on electronic commerce was included.

A. National Consumer Protection Policy

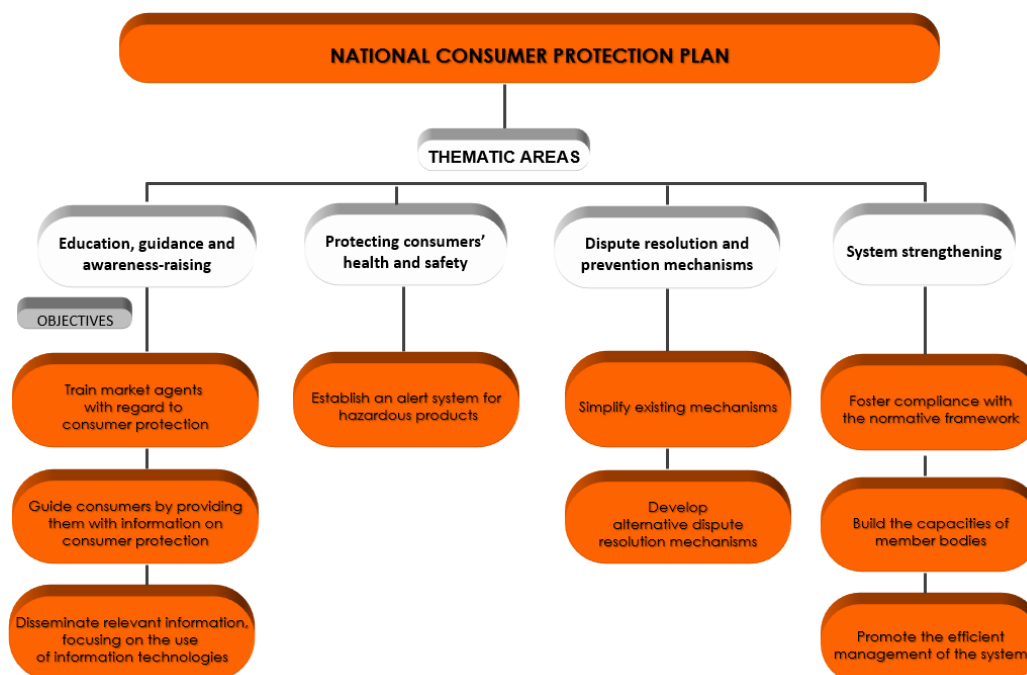
25. The National Consumer Protection Policy is a public policy that applies to all levels of government; it has implications for stakeholders in the public, private and associative sectors. Its current iteration, which runs from 2017 to 2020, is based on empirical information drawn from, inter alia, surveys and social studies conducted in urban areas, i.e. data on habits and skills, public awareness of rights, consumer experience, claims and complaints, vulnerability and discrimination.

26. The National Consumer Protection Policy is structured around four thematic areas: (a) education, guidance and awareness-raising; (b) protection of consumer health and safety (c) mechanisms for the prevention and resolution of disputes between providers and consumers; and (d) strengthening of the National Integrated Consumer Protection System. These lines of action are in turn broken down into a number of strategic guidelines, which are set forth in detail in the National Consumer Protection Plan.

B. National Consumer Protection Plan

27. The National Consumer Protection Plan is an operational tool for the implementation of the National Consumer Protection Policy. It was drafted under the direction of INDECOPI and adopted by its Governing Board. The current iteration of the Plan runs from 2017 to 2020. It defines various indicators for measuring the progress made towards the achievement of the objectives set forth in the National Consumer Protection Policy. These objectives are reflected in figure 2.

Figure 2
National Consumer Protection Plan



¹⁵ INDECOPI, *National Consumer Protection Policy* (see footnote 6 above).

Source: Directorate of the National Consumer Protection Authority – INDECOPI.

C. Electronic commerce

28. One area not fully addressed in the National Consumer Protection Policy or the National Consumer Protection Plan is electronic commerce. It is nevertheless considered as a priority area for consumer protection in Peru and in the United Nations guidelines for consumer protection.¹⁶ The guidelines urge States to work towards enhancing consumer confidence in electronic commerce through the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce. States are also urged to review existing consumer protection policies to accommodate the special features of electronic commerce, with explicit reference to other international instruments, in particular the recommendations of the Organization for Economic Cooperation and Development (OECD), such as the Recommendation on Consumer Protection in E-commerce of 2016¹⁷ and the Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam of 2006.¹⁸

29. In this regard, INDECOPI presented its Digital Agenda in 2018. This document, which is informative in nature, was issued pursuant to Supreme Decree No. 066-2011-PCM of 27 July 2011 on the adoption of the Plan for the Development of an Information Society in Peru: The Peruvian Digital Agenda 2.0.¹⁹ The Plan sets out general objectives and strategies for ensuring that Peruvian society benefits from all aspects of the development of information and communication technologies.

V. Institutional framework

30. Consumer protection policy is cross-cutting in nature and its success requires the support of a variety of institutions, both public and private. While this report focuses on INDECOPI, as the main governmental consumer protection authority, it also makes reference to the consumer protection work of other public entities.

A. National Institute for the Defence of Competition and Protection of Intellectual Property

31. The Consumer Code designates INDECOPI as the main governmental consumer protection authority. It has national jurisdiction, with its headquarters in Lima and local offices in 24 regions of Peru. Sectoral regulators act as consumer protection authorities within their areas of competence, but in most cases INDECOPI retains a general residuary jurisdiction.

32. INDECOPI has a particularly broad mandate that covers not only consumer protection but also free competition, intellectual property, bureaucratic barriers, unfair competition, bankruptcy proceedings, dumping and subsidies. Generally speaking, INDECOPI is governed by Decree-Law No. 25868 of 18 November 1992. In the area of consumer protection, it is also governed by the Consumer Code. INDECOPI has the power to submit legislative proposals through the Office of the President of the Council of Ministers of the Government. According to data from the UNCTAD World Consumer Protection Map,²⁰ INDECOPI has an annual budget of \$10.5 million. It has 529 employees working full time on consumer protection. From a strategic planning perspective, INDECOPI has an institutional strategic plan, whose current iteration runs from 2018 to 2022, and an institutional operational plan for 2019.

¹⁶ United Nations guidelines for consumer protection, chap. V (Guidelines), section I, paras. 63–65.

¹⁷ OECD, *Recommendation on Consumer Protection in E-commerce* (Paris, 2016).

¹⁸ OECD, *Recommendation on Cross-Border Co-operation in the Enforcement of Laws against Spam* (2006).

¹⁹ Peru, Office of the President of the Council of Ministers, *Plan for the Development of an Information Society in Peru: The Peruvian Digital Agenda 2.0* (2016).

²⁰ UNCTAD, “World Consumer Protection Map” (see footnote 14 above).

1. Participation in the legislative process

33. INDECOPI holds a privileged position in the Peruvian legislative process as both the principal national authority in matters of regulatory compliance and the governing body of the National Integrated Consumer Protection System. Although INDECOPI is autonomous and operates independently from the executive branch, it has the power to submit legislative amendments for the consideration of the Office of the President of the Council of Ministers. INDECOPI is also consulted directly by Congress with regard to draft legislation. In 2018, INDECOPI issued opinions on 59 pieces of draft legislation covering such topics as data protection, labelling, the financial and insurance systems, and the price of medicines.

2. Education, guidance and awareness-raising

34. In 2018 and 2019, the Directorate of the National Consumer Protection Authority of INDECOPI carried out various initiatives to educate, offer guidance and raise awareness with regard to consumer rights. For example, it launched the Consumer Map,²¹ an interactive document that presents a visual map of the various ways to submit a claim with the competent authorities in the different sectors of the Peruvian market. It is available in Spanish, Quechua, Aymara, sign language and Braille. It also launched various digital guides, including the “Taxi Checker”,²² the “Airline Checker”²³ and the “University Checker”,²⁴ which can be used to compare the services on offer in those sectors, and the online public portal “*Mira a quién le compras*” (Check on the seller),²⁵ which provides information on sanctions imposed by INDECOPI on companies and providers. INDECOPI organized a hackathon on consumer protection entitled “Digital innovators, supporting consumers”,²⁶ in which technological innovators, web developers and information technology and computer science students were challenged to come up with creative consumer protection solutions.

35. In 2018, INDECOPI organized training on consumer protection for 3,183 consumers and 820 providers. It also produced an interactive consumer guide for micro and small enterprises²⁷ to help them to understand their consumer protection obligations.

36. With its campaign “*Todos somos consumidores*” (We are all consumers), INDECOPI seeks to protect the rights of persons with disabilities by raising awareness of their rights. Radio INDECOPI²⁸ broadcasts programmes such as “*La fuerza del consumidor*” (The power of the consumer) to inform listeners about their rights.

3. Protection of consumer health and safety

37. In view of the cross-cutting nature of the issue of consumer health and safety, Peru has granted various sectoral authorities besides INDECOPI the power to issue warnings about consumer products and services, including the Directorate-General for Environmental Health and Food Safety,²⁹ the Directorate-General for Medicines, Medical Supplies and Drugs,³⁰ the National Fishing Sanitation Body,³¹ and the Ministry of Production,³² which regulates fishing, aquaculture, and micro and small enterprises and industries.

38. The experience of Peru in health and safety matters and its regional activities led to cooperation with other Latin American countries on the establishment of the Organization

²¹ See www.indecopi.gob.pe/documents/51084/123333/Mapa_Consumo_Digital.pdf.

²² See <https://indecopi.gob.pe/-/el-indecopi-pone-a-disposicion-de-la-ciudadania-la-guia-interactiva-que-checka-tu-taxi-sobre-las-condiciones-en-las-que-se-brinda-la-intermediacion-del-ser>.

²³ See www.indecopi.gob.pe/-/que-checka-tu-aerolinea.

²⁴ See www.indecopi.gob.pe/documents/20182/3043340/Que-checka-tu+uni-2019-Indecopi-SUNEDU.pdf/142e304d-ac15-538f-f988-023f233d80ac.

²⁵ See <https://servicio.indecopi.gob.pe/appCPCBuscador/>.

²⁶ See www.consumidor.gob.pe/hackathonconsumo.

²⁷ See <https://enlinea.indecopi.gob.pe/guiaconsumomype/>.

²⁸ See www.indecopi.gob.pe/radio-indecopi.

²⁹ See www.digesa.minsa.gob.pe.

³⁰ See www.digemid.minsa.gob.pe.

³¹ See www.sanipes.gob.pe/web/index.php/es/.

³² See www.gob.pe/produce.

of American States (OAS) Consumer Safety and Health Network,³³ of which Peru is a founding member. INDECOPI operates a hazardous products and services alert system,³⁴ which includes a system for monitoring the number of accidents caused by consumer products according to reports from health clinics and hospitals. As shown in the table below, the number of recall campaigns reflects an upward trend, but there is still room for greater transparency in the marketplace, especially if we compare data from Peru with data from Australia, for example, where 697 recalls were requested in 2019.³⁵

Alerts issued and units concerned, 2012–2019

<i>Year</i>	<i>Alerts issued</i>	<i>Units concerned</i>
2012	5	705
2013	19	24 650
2014	38	183 878
2015	33	49 280
2016	35	66 277
2017	81	1 902 293
2018	92	145 852
2019	66	52 695
Total	369	2 425 630

Source: Directorate of the National Consumer Protection Authority – INDECOPI.

4. Protection of the economic interests of consumers, dispute resolution and redress

39. Peru has a strong system for protecting consumers' economic interests, in line with the United Nations guidelines for consumer protection. INDECOPI protects consumers' economic interests and discourages practices that are harmful to consumers and violate the provisions of the Consumer Code through administrative penalty proceedings and investigations. In cooperation with other State institutions, INDECOPI promotes dispute resolution mechanisms, especially alternative and extrajudicial mechanisms, and encourages companies to settle disputes without external mediation on a voluntary basis. Only the judicial authorities and arbitration boards are competent to rule on consumer redress. The legal basis for the exercise of these powers is contained in the Consumer Code, as mentioned above. This section is divided up into subsections on investigations, administrative proceedings for dealing with complaints and claims, dispute resolution and collective action.

5. International cooperation

40. Peru is a regional and international leader in the area of consumer protection and boasts a number of achievements in the area of international cooperation. INDECOPI has concluded bilateral cooperation agreements with 10 countries.³⁶ Its bilateral cooperation is primarily based on information exchange and mutual assistance. Peru also cooperates with Chile on alternative dispute resolution and cross-border claims.

41. INDECOPI is also involved in various regional consumer protection initiatives, such as the OAS Consumer Safety and Health Network, the Andean Platform for the Protection of Consumer Rights, the Pacific Alliance, the Ibero-American Forum of Government Consumer Protection Agencies and the UNCTAD COMPAL programme.³⁷

42. In terms of informal multilateral cooperation, INDECOPI participates in the work of the International Consumer Protection and Enforcement Network, the OECD Committee on

³³ See http://portal.oas.org/en/sla/cshn/about_cshn.asp.

³⁴ See www.alertasdeconsumo.gob.pe/.

³⁵ See www.productsafety.gov.au/recalls/browse-all-recalls.

³⁶ Argentina, the Plurinational State of Bolivia, Canada, Chile, Costa Rica, El Salvador, Mexico, Panama, Paraguay and the United States of America.

³⁷ See <http://unctadcompal.org/>.

Consumer Policy and the UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy. In 2018, Peru contributed voluntarily to the work of the Intergovernmental Group of Experts, presenting a virtual catalogue of international best practices in consumer protection and competition.³⁸

B. Other public entities

43. The institutional framework for consumer protection in Peru is well established, with several public institutions playing a role. The Consumer Code establishes the governing principles and determines the distribution of powers and is supplemented by special and sectoral regulations. The National Council for Consumer Protection coordinates between the relevant bodies (see figure 3). INDECOPI prepares an annual report, entitled “*Estado de la protección de los consumidores en el Perú*” (The State of Consumer Protection in Peru), which contains information on the main activities undertaken by other public institutions in the area of consumer protection.³⁹

Figure 3

Composition of the National Council for Consumer Protection



Source: INDECOPI.

44. One of the priorities of the National Council for Consumer Protection is to promote the participation and build the capacities of local and regional governments in the area of consumer protection. According to Organic Act No. 27867 of 18 November 2002 on Regional Governments and Organic Act No. 27972 of 27 May 2003 on Municipalities, regional and local governments have wide-ranging responsibilities in the area of consumer protection, since they are responsible for ensuring that the persons under their jurisdiction can fully exercise their rights and enjoy equal opportunities, and are required to promote social development, capacity-building and equity. However, only 33.3 per cent of regional

³⁸ TD/B/C.I/CPLP/15.

³⁹ INDECOPI, *Estado de la protección de los consumidores en el Perú* (2018).

governments and 45.9 per cent of local governments have conducted training and orientation activities for consumers and providers. It is important for both regional and local governments to have trained staff who can act as focal points for consumer protection in their areas of responsibility.

VI. Participation of the associative and private sectors

45. Consumer protection requires the participation of all stakeholders in order to achieve and maintain adequate protection of the population as consumers, as stated in the United Nations guidelines for consumer protection. It also requires the support of market agents, i.e. businesses and consumer groups and associations.

A. Consumer associations

46. Consumer associations in Peru protect, inform and represent consumers. They operate independently, in accordance with the United Nations guidelines for consumer protection.⁴⁰ As mentioned above, the Consumer Code provides for a system of funding whereby associations receive a percentage of the funds raised through fines and sanctions to cover the legal expenses incurred by their lawyers.

47. Consumer associations in Peru have too few members to make a dues-based funding model financially viable. To address this situation, consumer associations should diversify their funding channels with the support of the public authorities by changing their business model and applying for competitive grant funds.

48. Consumer associations in Peru, as in other countries, rely heavily on the activism of persons committed to improving the well-being of their fellow citizens.⁴¹ This is one of the strengths of the consumer association and should be promoted. However, this model depends on personal availability and is not suited to medium- and long-term monitoring activities. The professionalization of members of consumer associations, through the organization of training on the Consumer Code, administrative proceedings, management and administration, communication, fundraising and teaching methods, is therefore to be encouraged.

B. Providers

49. Modern consumer protection policies consider companies to be key stakeholders. Companies are no longer considered to be mere subjects of law that are fundamentally obliged to consumers, but rather as having social responsibility. As such, they have an interest in promoting consumer protection policy. While the formal employment sector in Peru is very dynamic in all areas, the informal employment rate exceeds 70 per cent and the informal sector represents 18 per cent of gross domestic product.⁴² It is important to take this into consideration when analysing the participation of businesses in consumer protection.

50. Companies in Peru are of course subject to the rule of law, and the Consumer Code establishes primary and secondary norms by which they must abide. In 2018, the largest penalty imposed by INDECOPI on a company for a violation of consumer protection law was \$550,000, according to INDECOPI's register of violations and sanctions, "*Mira a quién le compras*".⁴³ According to this database, the cumulative total of all the penalties imposed in 2019 was \$11,785,796.26.⁴⁴ This public register, which is available online, contains information on every penalty imposed by INDECOPI on companies and providers since 2011. It serves both as a general prevention tool and as a means of informing and

⁴⁰ United Nations guidelines for consumer protection, chap. I (Objectives), para. 1 (e).

⁴¹ UNCTAD, *Manual on Consumer Protection* (see footnote 9 above), p. 30.

⁴² National Institute for Statistics and Data Processing, *Producción y empleo informal en el Perú: Cuenta satélite de la Economía informal 2007–2018* (Lima, 2019).

⁴³ INDECOPI, "*Mira a quién le compras*" (see footnote 25 above).

⁴⁴ Ibid.

empowering consumers. It is recommended that the register be widely disseminated in the media.

51. One challenge for consumer protection in Peru is the enforcement of legislation in the context of the digital economy, especially collaborative enforcement. Platforms without headquarters in Peru can operate in the country under international free trade agreements. Occasionally, this has led to situations in which such companies neglect to reply to consumer complaints or fail to send a representative to participate in administrative penalty proceedings. This situation is contrary to the law and must be remedied as quickly as possible. The Consumer Code and Peruvian legislation in general are fully binding on all providers offering services in the country, and it is the responsibility of the public authorities to ensure that the law is applied in a universal and uniform manner. One option that could be explored is to introduce legislative amendments that provide guidance on the correct interpretation of international treaties so as to ensure that all providers operating in Peru comply with consumer protection regulations. In parallel, INDECOPI could initiate a dialogue with the companies concerned to encourage them to participate in voluntary dispute resolution mechanisms. INDECOPI could also strengthen cross-border cooperation on the enforcement of legislation with peer agencies in other countries, especially those countries in which the companies concerned have their headquarters.

52. With regard to best business practices, it is important to stress that the nine trade associations interviewed⁴⁵ for this report had experience in raising awareness of consumer protection issues among their affiliates through training and consultations. INDECOPI actively promotes best business practices through its “*Primero, los clientes*” (Customers first) contest.⁴⁶ To promote a culture of consumer protection, INDECOPI launched a guide on best practices in the wine industry and an interactive consumer guide for micro and small enterprises,⁴⁷ which can be used as awareness-raising tools, even in the informal sector.

53. Companies that have made consumer protection an essential part of their business culture are constantly taking steps to reduce, avoid and resolve disputes with consumers. In addition to their client support services, these companies have introduced systems for handling customer complaints, such as “*Aló Banco*”, “*Aló Seguros*” and “*Aló Auto*”, which are telephone call centres that operate by sector located within the INDECOPI headquarters. There are also consumer trade watchdogs set up and funded by the companies in a given sector, with which consumers can file a claim if they are dissatisfied with the way in which a company has handled their complaint. Claims must be resolved within a period of between 30 and 60 days.⁴⁸ The decisions of these watchdogs are binding on companies but not on consumers. In 2018, private dispute resolution mechanisms handled around 8,200 claims.⁴⁹

54. Some providers in Peru have experience of self-regulation in the area of consumer protection, particularly providers in the banking and advertising sectors.⁵⁰ A recent initiative to promote a culture of consumer protection is the launch of voluntary compliance programmes, whereby companies take on a series of commitments to avoid or reduce violations of consumer protection law in exchange for a reduction in the penalty applied for non-compliance.⁵¹

⁴⁵ Automotive Association of Peru, Association of Banks of Peru, Association of International Air Transport Companies, National Association of Advertisers of Peru, Peruvian Association of Insurance Companies, Foreign Trade Society of Peru, National Chamber of Tourism, Peruvian Chamber of Construction and the National Council for Self-Regulation in Advertising.

⁴⁶ See www.indecopi.gob.pe/web/proteccion-al-consumidor/primero-los-clientes.

⁴⁷ See footnote 27 above.

⁴⁸ Resolution No. 216-2016-INDECOPI/COD of the Office of the President of the Governing Board of INDECOPI.

⁴⁹ INDECOPI, *Estado de la protección de los consumidores en el Perú* (see footnote 39 above), p. 301.

⁵⁰ See, for example, the Code of Advertising Ethics issued by the National Council for Self-Regulation in Advertising.

⁵¹ Supreme Decree No. 185-2019-PCM approving the regulations that promote and regulate the voluntary implementation of regulatory compliance programmes in the areas of consumer protection and commercial advertising.

VII. Conclusions and recommendations

55. On the basis of the study carried out for this report, it may be concluded that Peru has a strong consumer protection system, which has achieved many nationally and internationally recognized successes. The legislative and public policy framework is extensive and balanced and integrates almost all of the United Nations guidelines for consumer protection and various international best practices. The institutional framework for consumer protection is equally satisfactory. INDECOPI, as the main consumer protection agency, fulfils its role as the leader of the inter-institutional coordination system and combines this with effective enforcement of legislation. Furthermore, INDECOPI has established a prestigious public profile, both among public, associative and private institutions and among consumers in general. Other public institutions with a stake in consumer protection are actively involved in consumer protection activities. The private and associative sectors are dynamic and have contributed to the establishment of a strong culture of consumer protection in Peru.

56. The result of this analysis is clearly positive. However, there are some areas where improvements could be made to strengthen consumer protection, with regard to which various recommendations have been formulated. Many of these recommendations are directed towards INDECOPI, as the main consumer protection agency, while others relate to areas that are outside of the jurisdiction of INDECOPI and are addressed to other institutions in the executive, legislative and judicial branches of government and the associative and private sectors. The overarching recommendations laid out below are broken down into more specific recommendations in the full report (UNCTAD/DITC/CPLP/2020/1).

A. Legislative framework

57. The Office of the President of the Council of Ministers, which has the power to submit legislative proposals, should provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses by harmonizing and improving administrative procedures and promoting collective action before the courts. This could be achieved by establishing a single procedure for consumer complaints before all competent public bodies, including a single portal for submitting complaints and single-person settlement bodies or new forms of summary settlement. Prior contact between consumers and companies should be required before a complaint can be filed and INDECOPI should be given the power to decide whether or not to initiate administrative proceedings at the request of a party. Lastly, consumer associations and ad hoc consumer groups should be permitted to bring collective action directly before the courts, without prior authorization from INDECOPI.

58. The Office of the President of the Council of Ministers should review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace, drawing on international best practices such as those set out in the OECD recommendations and in the United Nations guidelines for consumer protection. It should also ensure that companies operating in the Peruvian market, especially those that do not have an operational headquarters in the country, comply with consumer protection obligations. Lastly, the electronic notification of providers should be permitted for consumer protection purposes.

B. Public policy framework

59. The Office of the President of the Council of Ministers, INDECOPI and the other members of the National Integrated Consumer Protection System should further orient the National Consumer Protection Policy and the National Consumer Protection Plan towards vulnerable and disadvantaged consumers, especially poor persons in rural areas, and make this focus one of the documents' core themes. They should also expand the scope of the publication "*El perfil del consumidor*" (The Consumer Profile) to include rural areas.

60. These same institutions should give electronic commerce a more central role in the Policy and the Plan and make it a core theme. They should also expand the scope of “*El perfil del consumidor*” to include digital consumers. Consumer protection should also be incorporated into higher-level national policies, such as the Bicentennial Digital Development Plan.

61. INDECOPI and the other members of the National Integrated Consumer Protection System should promote the amicable settlement of disputes and their handling by the private sector, by making full use of existing means of dispute resolution, such as conciliation, mediation and consumer arbitration. Providers should also be encouraged to settle disputes without outside mediation.

62. The Office of the President of the Council of Ministers should strengthen collaboration between the members of the National Integrated Consumer Protection System, especially with regard to the participation of regional and local governments in consumer protection. This could be achieved by appointing focal points for consumer protection in regional and municipal governments. INDECOPI and the Ministry of Education should take further measures to educate, provide guidance and raise awareness with regard to consumer protection through educational curricula and by organizing training for teaching staff. INDECOPI should raise awareness of the consumer information initiatives launched by members of the National Integrated Consumer Protection System, such as “*Identicole*”, an initiative of the Ministry of Education, and “*Caliapp*”, an initiative of the National Standards Institute.

C. Institutional framework

63. INDECOPI and the other members of the National Integrated Consumer Protection System should take steps to strengthen the measures taken by institutions responsible for consumer protection to protect vulnerable and disadvantaged consumers, especially poor persons in rural areas. This could be done by building the capacities of the regional offices of INDECOPI; strengthening educational campaigns aimed at persons who are poor and who live in rural areas; promoting multilingual initiatives; and fostering collaboration with entities that have deep roots in areas with a high concentration of vulnerable and disadvantaged consumers, especially persons who are poor and who live in rural areas, such as the Ministry of Education, the National Commission against Discrimination and municipal governments.

64. To strengthen consumer protection in the area of electronic commerce, INDECOPI should develop a plan of action that addresses specific aspects of the digital economy, such as publicity, payment methods and online dispute settlement. It should also continue to participate in regulatory processes, to develop mechanisms to educate and raise awareness among consumers and providers, to promote the auditing of electronic commerce operations and to encourage online dispute settlement.

65. INDECOPI, the Directorate-General for Environmental Health and Food Safety and the Directorate-General for Medicines, Medical Supplies and Drugs should take steps to strengthen the consumer product safety network. To this end, they should introduce an alert system, establish formal communication channels between entities responsible for recalling products and take further action to educate and raise awareness among consumers and businesses. They should also increase the use of laboratory testing and coordinate their efforts to ensure that alerts are communicated to the public.

66. To strengthen inter-agency cooperation on consumer protection in the area of financial services, INDECOPI and the Office of the Superintendent of Banking, Insurance and Private Pension Fund Administrators should ensure mutual assistance in the performance of their duties in accordance with the principles of the distribution of powers and sincere cooperation.

67. To strengthen inter-agency cooperation on consumer privacy and data protection, INDECOPI and the Ministry of Justice should coordinate the distribution of powers to deal with complaints.

68. INDECOPI should improve its internal processes to maximize the impact of its actions by bringing collective action before the courts, providing training on this issue to its

staff and consumer associations and prioritizing measures to combat consumer discrimination, among other initiatives.

69. INDECOPI should strengthen its international and cross-border ties in the area of cooperation on consumer protection, particularly with regard to the enforcement of legislation and the settlement of cross-border disputes. It should also continue to demonstrate regional and international leadership in forums such as the Ibero-American Forum of Government Consumer Protection Agencies, the International Consumer Protection and Enforcement Network, OECD, OAS and UNCTAD.

D. Participation of the associative and private sectors

70. To strengthen consumer associations, INDECOPI should explore new funding methods, such as competitive grant funds. INDECOPI should also encourage associations to conduct education campaigns and should train their staff in areas such as communication, management and fundraising. Lastly, INDECOPI should convene a national consumer congress to bring together the entire associative network, providers and public institutions.

71. To promote private sector participation, INDECOPI, providers and the other members of the National Integrated Consumer Protection System should continue to support consumer trade watchdogs and methods of dispute settlement that do not involve external mediation, promote self-regulatory and co-regulatory initiatives and develop and monitor the voluntary compliance system. In particular, they should consider taking special measures to promote a culture of consumer protection in the informal business sector.
