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HRW Submission to the CRPD on Peru

In Advance of the Development of List of Issues

Dear Committee Members:

We write in advance of the Committee on the Rights of Persons with Disabilities upcoming review of Peru, to highlight areas of concern that we hope will inform your consideration of the List of Issues on compliance with the Convention on the Rights of Persons with Disabilities. This submission focuses on participation in public and political life for people with disabilities, in particular with regard to continued restrictions on the right to legal capacity and accessibility barriers in Peru. This submission is based on our 2012 report *"I Want to be a Citizen Just like Any Other" Barriers to Political Participation for People with Disabilities in Peru* as well as ongoing monitoring, including a follow up visit in June 2016.

1. Continued restrictions on legal capacity

Peru's Constitution (article 31) establishes that all citizens have the right to participate in political affairs through referendum, legislative initiative, and to promote the removal of public officials and demand accountability from them. It also establishes the right of citizens to be elected. However, the same constitutional provision conditions political rights to legal capacity.

Peru has put in force some legal and administrative provisions to facilitate political participation for people with disabilities.^[1] However, civil legislation in Peru still establishes general rules for interdiction, guardianship and other forms of restriction to the legal capacity of persons with disabilities that limit their political participation, which is not in conformity with its obligations under the CRPD.

In its first Concluding Observations for Peru adopted by the CRPD Committee in May 2012, the Committee recommended that the government should (1) "restore voting rights to all people with disabilities..., including people with disabilities subject to judicial interdiction".^[2] Likewise, the Committee recommended the State Party to (2) "abolish the practice of judicial interdiction and review the laws allowing for guardianship and trusteeship to ensure their full conformity with article 12 of the convention and take action to replace regimes of substituted decision-making by supported decision-making, which respect the persons autonomy, will, and preferences."^[3] Finally, the Committee recommended to (3) "bring forward a far-reaching strategy to implement all the rights enshrined in the

convention and speed up the review of its legislative framework to bring it in full conformity with all provisions of the Convention.”^[4]

While some steps have been taken to address the recommendations put forward by the CRPD Committee in its Concluding Observations of May 2012, Peru has not yet reformed its electoral legislation to enable people with disabilities to fully exercise their political rights

Before 2011 Peru had a policy to remove people with certain disabilities (mostly intellectual or psychosocial disabilities) from the electoral registry even if they were not under guardianship with the intention of ensuring that they could not be subject to sanctions in case they did not vote. This policy was changed in 2011^[5] by a resolution of the National Registry of Citizens for Elections (RENIEC), but not all people who were stricken from the electoral registry have been able to re-register.^[6] Re-registration of voters with disabilities has been slow. One advocate from the disability sector in Peru reported to Human Rights Watch that in some cases, because voters with disabilities need to rely on third parties such as family members to take them to the polling stations on election day, this creates a barrier to registration as there may not be someone willing to assist them to the polls on the day or to help them follow the dispensation procedure.^[7]

In 2012 a new General Law on Persons with Disabilities was adopted (Law number 29 973), which introduces a true shift in approach towards the rights of persons with disabilities, which is based on equality and non-discrimination. This new law recognizes the right of people with disabilities to legal capacity in all areas of life, including political participation. It also establishes an interim provision to create a Congressional Commission to put forward reforms to Peru’s civil legislative framework.^[8] A draft project of the bill to amend the Civil Code was presented to the former legislative body in Peru and a revised draft of the original bill was submitted to Congress in 2017. If passed, this project will remove the restriction of legal capacity established in article 33 of the Peruvian Constitution, enabling persons with disabilities to exercise their political rights. Efforts should be made to expedite this process, and also adopt other legal amendments to the electoral code to provide accessibility in electoral procedures as a whole. Finally, Law number 29973, mentioned above, provides a very sound framework to address the CRPD Committee’s recommendations to implement all the rights enshrined in the Convention, however Peru should still review the rest of its legislation –criminal and administrative– to align it with the standards set forth in international human rights disability law.

We recommend including the following questions and concerns to the list of issues you will adopt in your next session:

- Can you confirm that voting rights have been restored to all 23,000 people who were deleted from the voter registry in 2011? How was this process done?
- Please provide information about the timeline to reform Peru’s civil legislative framework to ensure full legal capacity for people with disabilities.
- Please provide information as to whether the government plans to remove from the Constitution the pre-requisite condition of having legal capacity to exercise voting rights.

2) Accessibility barriers for political participation

Peru has put in force some legal and administrative provisions to facilitate political participation for people with

disabilities^[9], however they are still several shortcomings in law and practice.

Barriers to accessibility, for example, hinder the political participation and political rights of persons with disabilities in Peru. None of the laws currently in force in Peru make it mandatory to ensure accessible conditions in voting polls on election day.

In the last presidential election in 2016, for example, José Isola, a Peruvian citizen who uses a power wheelchair, had difficulties accessing the polling station, which was situated on the second floor of a building with no lift. It was not possible for members of the voting station to move the electronic voting device – a new feature of this election - to the first floor. They offered to carry him upstairs but he refused because his wheelchair is not designed to be carried up stairs. They also offered to carry him in a plastic chair but he considered it was against his dignity and it was not a safe procedure.^[10]

According to the Peruvian Constitution and ordinary electoral legislation, everyone in the country has the obligation to vote, and if they do not comply with it they are subject to fines and other administrative sanctions. In certain situations, a dispensation procedure can be followed to issue a justification for failing to vote. Having a disability is a ground on which one can receive dispensation from voting.

Accessibility is a general principle that governs the implementation of all rights enshrined in the CRPD and is a prerequisite for persons with disabilities to participate fully and equally in society. Under the CRPD, the government bears the responsibility to ensure persons with disabilities enjoy access, on an equal basis with others, to facilities and services open to the public, as well as to information.

The current system in Peru, however, places the burden on the citizen with a disability. A voter with a disability has to submit an accessibility request in advance to ONPE (*Oficina Nacional de Procesos Electorales*), the agency responsible for organizing election procedures.^[11] Once the request is submitted, ONPE refers the person to an accessible voting station, which, according to one RENIEC official with whom Human Rights Watch spoke, might not necessarily be close to his or her home. In case a polling station is not accessible, the person prevented from voting by this barrier can ask for a dispensation to avoid sanctions.

Human Rights Watch is concerned of reports that when voters with disabilities cannot rely on family or friends to help them exercise their right to political participation that the dispensation system is a convenient way for the state to “resolve” the non-exercise of voting rights by persons with disabilities, rather than address the issue of accessibility.

According to one official in the Ombudsman’s Office, the focus of state authorities until now has been on facilitating dispensation procedures instead of creating accessible conditions for persons with disabilities to exercise their political rights.^[12] Families of persons with disabilities have complained to the Ombudsman’s Office that if they don’t file for a dispensation procedure for their relative, that relative can subsequently be excluded from other legal rights, procedures and transactions. Families have reported that if they go to the polling stations on the day of the election and it is inaccessible, then they have to file a new petition in order not to be fined and get a dispensation from voting.

We urge the Committee to include the following questions and concerns in the List of Issues for Peru:

- Please provide information on whether the Electoral Code provides general obligations for the implementation of universal design in voting procedures.
- Please provide information on whether the Electoral Code establishes accessibility guidelines on voting procedures, and other accessibility obligations towards voters with disabilities, including accessible facilities and voting material (braille ballots), and that voting procedures are appropriate, easy to understand and use.
- Please provide information concerning the passage of any administrative resolutions by the National Jury for Elections to prevent people with disabilities from being sanctioned for failing to vote on political elections.
- Please provide information on the procedure to enforce sanctions on people who fail to vote and the impact this might have on political participation for people with disabilities.
- Please provide information on the steps taken to ensure that the electronic voting system is accessible for people with disabilities.

We hope that our research, observations, and recommendations presented for the List of Issues for Peru's next review are useful to the Committee, and we are happy to answer any questions and be of further help to the Committee as it carries out its important work.

[1] Resolución Jefatural N° 224-2006-J/ONPE, Disposiciones sobre la atención preferente a ciudadanos con discapacidad, mujeres embarazadas y adultos mayores durante procesos electorales; Resolución Jefatural N° 074-2012-J/ONPE; Disposiciones sobre el Procedimiento de Designación de Miembros de la Mesa de Sufragio para los procesos electorales, modificado por Resolución Jefatural N° 176-2013-J/ONPE; Ley Orgánica de Elecciones N° 26859; Disposiciones sobre el Voto Rápido, Resolución Jefatural N° 000301-2015-J/ONPE; Disposiciones sobre la Atención Preferente a Ciudadanos con Discapacidad, Mujeres Embarazadas y Adultos Mayores durante Procesos Electorales. Resolución Jefatural N° 224-2006-J/ONPE.

[2] CRPD/C/PER/CO/1 paragraph 45.

[3] CRPD/C/PER/CO/1 paragraph 25.

[4] CRPD/C/PER/CO/1 paragraph 7.

[5] Human Rights Watch, *I Want to be a Citizen Just like Any Other*: Barriers to Political Participation for People with Disabilities in Peru, May 2012.

[6] Interview with Liliana Peñaherrera Sánchez, member of the Board of Directives of the Federación Iberoamericana de Síndrome Down, Lima, Peru, July 1, 2016.

[7] Ibid.

[8] The Congressional Commission was formed by legislators, a representative of the judicial branch, a representative of the National Commission for Disabilities (CONADIS), a representative of law universities, representatives from two civil society organizations and the public defender's office (ombudsman) acting as an observer. After working for more

than a year, the Commission finished a reform bill of the Civil Code that was presented to Congress. The reform project did not pass because no agreement was reached among parliamentarians.

[9] Among them we can mention: Resolución Jefatural N° 224-2006-J/ONPE, Disposiciones sobre la atención preferente a ciudadanos con discapacidad, mujeres embarazadas y adultos mayores durante procesos electorales; Resolución Jefatural N° 074-2012-J/ONPE; Disposiciones sobre el Procedimiento de Designación de Miembros de la Mesa de Sufragio para los procesos electorales, modificado por Resolución Jefatural N° 176-2013-J/ONPE; Ley Orgánica de Elecciones N° 26859; Disposiciones sobre el Voto Rápido, Resolución Jefatural N° 000301-2015-J/ONPE; Disposiciones sobre la Atención Preferente a Ciudadanos con Discapacidad, Mujeres Embarazadas y Adultos Mayores durante Procesos Electorales. Resolución Jefatural N° 224-2006-J/ONPE.

[10] Interview with Silvana Queijas, chair of Sociedad y Discapacidad - Sodis, an NGO that advocates for the human rights for people with disabilities, Lima, Peru, July 1, 2016. Jorge Isola obtained a justification that he was not able to vote because of accessibility barriers. With that document he was supposed to initiate the dispensation procedure.

[11] ONPE is the autonomous government organization in charge of organizing electoral procedures in Peru.

[12] Interview with Malena Pineda, head of the disability division in the Peruvian ombudsman, Lima, Peru, June 30, 2016.

Region / Country

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Topic

- [Disability Rights](#)

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Peru

[9] [https://telegram.me/share/url?url=https://www.hrw.org/news/2017/02/27/hrw-submission-crpd-peru&text=HRW Submission to the CRPD on Peru](https://telegram.me/share/url?url=https://www.hrw.org/news/2017/02/27/hrw-submission-crpd-peru&text=HRW%20Submission%20to%20the%20CRPD%20on%20Peru)