



# Convention on the Rights of Persons with Disabilities

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## Committee on the Rights of Persons with Disabilities

### Concluding observations on the initial report of Peru

#### Addendum

### Information received from Peru on follow-up to the concluding observations\*

[Date received: 17 August 2012]

### Reply to the request for information on measures taken to implement the recommendations of the Committee on the Rights of Persons with Disabilities

## I. Background

1. Peru ratified the Convention on the Rights of Persons with Disabilities on 30 January 2008.
2. In accordance with article 35, paragraph 1, of the Convention, on 8 July 2010 Peru submitted to the Secretary-General of the United Nations, for consideration by the Committee on the Rights of Persons with Disabilities, a report on the measures taken to give effect to its obligations under the Convention.
3. The Committee considered the initial report of Peru at its sixty-sixth and sixty-seventh meetings, held on 17 April 2012, and adopted the related concluding observations at its seventy-second meeting, held on 20 April 2012. In that connection, the Committee urged Peru to take certain measures in respect of specific areas of concern.
4. Among the concerns raised, in the subsection “Follow-up to concluding observations and dissemination”, the Committee requested Peru to “provide, within two years and in accordance with article 35, paragraph 2, of the Convention, written information” in relation to specific paragraphs of the initial report, which will be analysed in this reply.
5. The General Directorate of Human Rights within the Ministry of Justice and Human Rights requested information from the following entities:
  - (1) The Ministry of Health, by official communication No. 041-2014-JUS/DGDH, received on 20 January 2014 and answered on 25 February by official communication No. 004-2014-MINSA/CNDH;

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\* The present document is being issued without formal editing.



(2) The National Registry Office, by official communication No. 040-2014.JUS/DGDH, received on 22 January 2014 and answered on 4 March 2014 by official communication No. 000330-2014/SGEN/RENIEC;

(3) The Office of the Ombudsman, by official communication No. 039-2014-JUS/DGDH, received on 20 January 2014 and answered on 20 March 2014 by official communication No. 006-2014-DP/ADHPD-PDEPRODIS;

(4) The National Council for the Integration of Persons with Disabilities, by official communication No. 038-2014-JUS/DGDH, received on 20 January 2014.

## **II. Measures taken to implement the recommendations of the Committee on the Rights of Persons with Disabilities**

6. The Committee requested information on the measures adopted in respect of the following areas of concern: (a) the fact that a number of persons with disabilities do not have identity cards and, sometimes, have no name; (b) article 11 of the General Health Act (Act No. 26842), which permits involuntary detention for people with “mental health problems”, defined to include people with psychosocial disabilities as well as persons with a “perceived disability”; and (c) Technical Norm for Family Planning No. 032-MINSA/DGSP-V.01 which permits the sterilization of persons with “mental incompetence” without their free and informed consent.

### **A. Equal recognition before the law**

7. The Committee urged Peru to initiate programmes in order to provide identity documents to persons with disabilities, including in rural areas and in long-term institutional settings, and to collect complete and accurate data on people with disabilities in institutions who are currently undocumented or do not enjoy their right to a name.

8. Accordingly, the National Registry Office has taken the following actions: (i) provided documentation for persons with disabilities at the national level; (ii) made a proposal to adapt the registration system to persons with disabilities; and (iii) launched a campaign entitled “Your National ID, Your Right to Choose”.<sup>1</sup>

9. In respect of the first action, the Office for Identity Restitution and Social Welfare within the National Registry Office has been developing free documentation for persons with disabilities at the national level as part of the National Plan for Restitution of Identity 2011–2015.

10. In 2013, it issued national identity documents to 2,232 persons with disabilities, of whom 1,841 were adults and 391 were children.

11. In respect of the second action, the National Registry Office has made a proposal to amend the Consolidated Administrative Procedures concerning the registration of persons with physical, sensory, mental or intellectual disabilities with a view to guaranteeing their right to a name and an identity.<sup>2</sup> The proposal is to replace certificates of disability — attestations of disability issued by special basic education centres or medical certificates of disability — with affidavits filed by applicants and subsequently verified.<sup>3</sup>

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<sup>1</sup> National Plan of Action to Address the Issue of Undocumented Persons 2011–2015, as adopted under Administrative Decision No. 016-2011-JNAC-RENIEC of the National Registry Office (*El Peruano*: 18 January 2011) and subsequently renamed the National Plan for the Restitution of Identity 2011–2015 under article 1 of Administrative Decision No. 548-2011-JNAC-RENIEC (*El Peruano*: 18 November 2011).

<sup>2</sup> The 2013 Consolidated Administrative Procedures were approved by Administrative Decision No. 184-2013-JNAC/RENIEC of 6 June 2013 and updated by Administrative Decision No. 217-2013-JNAC/RENIEC of 5 July 2013, Administrative Decision No. 309-2013-JNAC/RENIEC of 17 October 2013, and Administrative Decision No. 345-2013-JNAC/RENIEC of 21 November 2013.

<sup>3</sup> National Registry Office, official communication No. 000330-2014/SGEN/RENIEC, received on 4 March 2014.

12. In respect of the third action, the National Registry Office ran the “Your National ID, Your Right to Choose” campaign from 1 October to 24 November 2013 with a view to updating the national identity documents of 7,524 persons with disabilities living in metropolitan Lima.<sup>4</sup> To this end, from 1 October 2013, 30 registrars were recruited and assigned to mobile units in order to: (i) locate the addresses of persons with mental or intellectual disabilities; (ii) deliver personalized letters; (iii) provide information on exemptions from compulsory voting; (iv) conduct surveys and/or make records of visits; and (v) raise awareness and update national identity documents with the consent of citizens or guardians to ensure that disabilities were included — or not, as the case may be — in new national identity documents and electoral rolls.

## B. Liberty and security of the person

13. With respect to the right enshrined in article 14 of the Convention, the Committee called on Peru to repeal Act No. 29377,<sup>5</sup> amending article 11 of the General Health Act, in order to prohibit the deprivation of liberty on the basis of disability, including psychosocial, intellectual or perceived disability.

14. Peru responded to the Committee’s concern by repealing Law No. 29377 through a special additional provision contained in Act No. 29889,<sup>6</sup> which considers that promotion, prevention, recovery and rehabilitation efforts in the area of mental health care should be undertaken: (i) as part of a community, interdisciplinary, holistic, participatory, decentralized and intersectoral approach; and (ii) preferably on an outpatient basis, in a family, community and social setting.

15. Under article 11 (c) and (d) of Act No. 29889, institutionalization for reasons of mental health care is considered “an exceptional resort permissible only where it is therapeutically more beneficial to the patient than all other possible interventions”. Accordingly, it should be only for as long as is “strictly necessary” in the health-care facility “closest to the user’s home”, and subject to the free, informed and voluntary consent of the user, except in emergency situations.

16. Based on a systematic interpretation of the law, the involuntary commitment of persons with addictions, as provided for in article 11 (g) of the aforementioned Act, is also exceptional. Thus, institutionalization is not a mechanism of first resort, but an exceptional form of treatment for persons incapable of assessing reasonably enough the serious risk that their situation poses to their own rights and interests, or for persons aware of that risk but not fully able to act accordingly to prevent it.<sup>7</sup> Moreover, steps are taken to consistently ensure the well-being of health-service users and respect for their dignity as human beings.<sup>8</sup>

<sup>4</sup> National Registry Office, Administrative Decision No. 508-2011-JNAC-RENIEC, which sets forth provisions relating to the Single Identification Register for Natural Persons, the National Identity Document and others. (*El Peruano*: 11 October 2011). Article 1 of Administrative Decision No. 176-2013-JNAC-RENIEC provides for the extension of all provisions of that Administrative Decision during the 2013 fiscal year (*El Peruano*: 4 June 2013).

<sup>5</sup> Congress of the Republic, Act No. 29737, amending article 11 of Act No. 26842, the General Health Act, which refers to mental health; and governing the procedures for the detention of persons with mental disorders (*El Peruano*: 6 July 2011).

<sup>6</sup> Congress of the Republic, Act No. 29889, amending article 11 of Act No. 26842, the General Health Act, and guaranteeing the rights of persons with disabilities who have mental health problems (*El Peruano*: 24 June 2012).

<sup>7</sup> For details on the grounds for certain measures aimed at avoiding objective, serious and irreparable harm, or “paternalistic” measures, see: Peruvian Constitutional Court ruling No. 00032-2010-PI/TC, Lima, issued on 19 July 2011, legal basis 56; and Tom Beauchamp, “On Coercive Justifications for Coercive Genetic Control”, in *Biomedical Ethics and the Law*, J. Humber and R.F. Almeder, eds. (Plenum Press, New York, 1979), p. 388.

<sup>8</sup> See Inter-American Court of Human Rights, case of *Ximenes-Lopes v. Brazil*, judgment of 4 July 2006, Series C, No. 149, para. 130; and Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, adopted by United Nations General Assembly resolution 46/119 of 17 December 1991, principle 11 (11).

It should be noted that the repealed Act No. 29737 did not contain any provision allowing for institutionalization, including involuntary commitment.

17. Peru, as set out in the first additional provision contained in Act No. 29889, has been promoting the reform of mental health care in line with a community care model that places priority on, inter alia: (i) the restructuring of general hospitals and the provision of beds for users; (ii) the formation of multidisciplinary community care networks; (iii) the development of intermediate infrastructure, such as community health centres, day hospitals, hostels and programmes for persons living or working on the street, among others; (iv) the integration of the mental health component into the training of health professionals and technicians; (v) universal and free access to treatment; (vi) the availability of psychotropic drugs from the primary care level; and (vii) the deinstitutionalization of persons with disabilities living in health facilities.

### C. Respect for home and the family

18. In relation to this right, the Committee urged Peru to abolish administrative directives on forced sterilization of persons with disabilities. Specifically, the Committee's concern was that according to the Technical Norm for Family Planning (No. 032-MINSA/DGSP-V-01), adopted by Ministerial Decision No. 536/2005-MINSA, persons with "mental incompetence" could be "sterilized without their free and informed consent, as a method of contraception".<sup>9</sup>

19. In response to this concern, the Ministry of Health issued Ministerial Decision No. 603-2012-MINSA, article 1 of which "suspends the effects of paragraph 1 (m)<sup>10</sup> of the general provisions of section (A) Provisions in relation to family-planning services". The decision was sent to all health departments and regional health offices, and health administrations for dissemination to all health facilities authorized to provide voluntary surgical contraception.<sup>11</sup>

20. Work is under way to adopt the "Updated Technical Norm for Family Planning", which identifies a number of contraindications for female sterilization, including "women suffering from severe depression or psychiatric illnesses that would prevent them from making decisions for themselves".<sup>12</sup> The update seeks to incorporate the principle of individual autonomy, including the freedom to make one's own decisions, as set out in article 3 (a) of the Convention, in the choice of contraceptive methods.

## III. Conclusions

21. Peru, through its various institutions, has taken affirmative action and made reasonable changes with a view to guaranteeing the rights of persons with disabilities. In particular:

(1) The National Registry Office has: (i) provided documentation for persons with disabilities at the national level, through the Office for Identity Restitution and Social Welfare, as part of the National Plan for Restitution of Identity 2011–2015; (ii) made a regulatory proposal to adapt the registration system to persons with disabilities, enabling the replacement of certificates of disability — attestations of disability issued by special basic education centres or medical certificates of disability — with affidavits filed by applicants and subsequently verified; and (iii) launched the "Your National ID, Your Right to Choose" campaign with a view to updating the national identity documents of 7,524 persons with disabilities.

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<sup>9</sup> Ministry of Health, Ministerial Decision No. 536-2005-MINSA, adopted the "Technical Norm for Family Planning" (*El Peruano*: 18 July 2005).

<sup>10</sup> Ministry of Health, Ministerial Decision No. 603-2012-MINSA, suspended the effects of the provision in the Technical Norm for Family Planning (*El Peruano*: 21 July 2012).

<sup>11</sup> Ministry of Health, official communication No. 004-2014-MINSA/CNDH, received on 25 February 2014.

<sup>12</sup> *Ibid.*

(2) The Congress of the Republic repealed Act No. 29737, amending article 11 of the General Health Act, through an additional provision contained in Act No. 29889, which recognizes institutionalization as an exceptional resort permissible only where it is therapeutically more beneficial to the patient than all other possible interventions, and which promotes the reform of mental health care in line with a community care model.

(3) The Ministry of Health issued Ministerial Decision No. 603-2012-MINSA, article 1 of which “suspends the effects of paragraph 1 (m) of the general provisions of section (A) Provisions in relation to family-planning services”. It is also taking steps to update the Technical Norm for Family Planning, with regard to contraindications for female sterilization, including “women suffering from severe depression or psychiatric illnesses that would prevent them from making decisions for themselves”.

22. Peru assures the Committee of its commitment to promoting and protecting the rights and dignity of persons with disabilities in line with the social model<sup>13</sup> and in recognition of their self-determination,<sup>14</sup> as part of its efforts to mitigate social disadvantages and ensure equal opportunities in all areas.

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<sup>13</sup> See Agustina Palacios, *El Modelo Social de Discapacidad: Orígenes, Caracterización y Plasmación en la Convención Internacional sobre los Derechos de las Personas con Discapacidad*, Spanish Committee of Representatives of Persons with Disabilities and CINCA Editorial Group, Madrid, 2008; Gerard Quinn and Theresia Degener, *Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability*, United Nations document HR/PUB/02/1, New York and Geneva, 2002; and Michael Bach and Lana Kerzner, “A New Paradigm for Protecting Autonomy and the Right to Legal Capacity”, The Law Commission of Ontario, Canada, 2010.

<sup>14</sup> See Constitutional Court of Peru, ruling No. 2313-2009-HC/TC (Lima), issued on 24 September 2009, legal bases 3 to 8.