



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Seventh session

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Consideration of reports submitted by States parties under article 35 of the Convention

Concluding observations prepared by the Committee on the Rights of Persons with Disabilities

Peru

1. The Committee considered the initial report of Peru at its 66th and 67th meetings, held on 17 April 2012, and adopted the following concluding observations at its 72nd meeting, held on 20 April 2012.

I. Introduction

2. The Committee expresses its appreciation to the State party for its initial report, which was prepared in accordance with the Committee's reporting guidelines (CRPD/C/2/3), as well as for the written replies to the list of issues (CRPD/C/PER/Q/1/Add.1).

3. The Committee expresses its appreciation for the constructive dialogue held between the delegation and the members of the Committee. The Committee appreciates the presence of the high-ranking delegation, including the Viceminister of Women and Vulnerable Populations, and the President of CONADIS (National Council for the Integration of Persons with Disability), the latter an expert with disabilities, among its honourable members.

4. The Committee commends the State party for having ratified the Optional Protocol to the Convention in 2007.

II. Positive aspects

5. The Committee notes with satisfaction the efforts made by the State party to implement the Convention through the adoption of laws, policies, plans and programmes, including the following:

- (a) adoption of Act No. 29392 in August 2009 defining offences and establishing penalties for breach of the General Act on Persons with Disabilities;
- (b) adoption of the Plan on Equality of Opportunities for Persons with Disabilities 2009-2018;
- (c) adoption of a pilot programme on psychosocial integration of persons with disabilities in the region of Tumbes;
- (d) draft bill on the rights of the persons with disabilities, submitted to the Congress in March 2011;
- (e) adoption of the Law 29535 on sign language;
- (f) increased level of expenditure on its programmes for persons with disabilities.

III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1 - 4)

6. The Committee is concerned at the absence of a coherent and comprehensive strategy to implement the social model that the Convention establishes, including affirmative actions, to achieve the *de facto* equality of persons with disabilities and the full realization of the rights enshrined in the Convention, at all levels, including in rural areas. The Committee is further concerned that the State party's legislative framework for disability is not yet in full conformity with the Convention, *inter alia*:

- (a) Law 27050 on Persons with Disability provides a definition of disability based on a medical, rather than a social perspective and does not include references to the core principles contained in Articles 2 and 3 of the Convention;
- (b) Absence of reference to denial of reasonable accommodation and discrimination by association as forms of disability-based discrimination;
- (c) Existence of discriminatory requirements to acquire Peruvian nationality that prohibits persons with intellectual and psychosocial disabilities to do so.

7. **The Committee recommends the State party to bring forward a far reaching strategy to implement all the rights enshrined in the Convention and to speed up the review of its legislative framework to bring it in full conformity with all provisions of the Convention, including its core principles, and in particular:**

- (a) amend the Law 27050 to include a comprehensive definition of person with disability;**
- (b) define denial of reasonable accommodation and discrimination by association as forms of disability-based discrimination;**
- (c) amend the Act for Foreigners in order to eliminate the requirements that discriminate against persons with intellectual or psychosocial disabilities.**

8. While recognizing positive developments, such as the creation of a Permanent Multi-Sectoral Commission and the establishment of the CONADIS (National Council for the Integration of Persons with Disability), the Committee regrets the lack of meaningful participation of persons with disabilities, in particular the involvement of children and women with disabilities, and their representative organizations in the design of the legislation, as well as in other policy and decision-making processes.

9. **The Committee recommends that the State party take specific measures to ensure active participation of persons with disabilities, including children and women with disabilities, in planning, executing, and monitoring of public decision-making processes at all levels and in particular in the matters affecting them.**

10. While taking note with appreciation of the adoption of a number of provisions, such as the public budget acts which authorize local and regional governments to allocate 0.5% of their budgets to the improvement or provision of accessibility features, the Committee is concerned at the lack of information regarding compliance of municipalities with those regulatory provisions.

11. **The Committee urges the State party to implement the provisions of the Convention in all its territory and to regularly assess compliance and impact of policies and programmes aimed at further equalizing opportunities for persons with disabilities, including at regional and local levels.**

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

12. The Committee is concerned that, albeit the existence of a large number of different ethnic groups in Peru, indigenous and minority persons with disabilities are not considered as being at high risk of suffering multiple discrimination and that no data on their number and situation exists. In this connection, the Committee expresses its concern at the situation of indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons with disabilities of African descent.

13. **The Committee urges the State Party to improve its data gathering in order to have clear statistics on indigenous and minority persons with disabilities. The Committee recommends the State party to place emphasis on the development of policies and programmes on indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons of African descent, in order to address the multiple forms of discrimination that these persons may suffer.**

Women with disabilities (art. 6)

14. The Committee is concerned at the lack of measures directed towards women with disabilities in the Law 27050 and in the National Plan for Persons with Disabilities 2009-2018. The Committee wishes to remind the State party that women can be subjected to multiple forms of discrimination, as already noted by CEDAW in its last concluding observations (CEDAW/C/PER/CO/6). The Committee further notes with concern that women with disabilities do not benefit from special protection in the National Plan against Violence towards Women 2009-2015.

15. **The Committee urges the State party to accelerate its efforts to eradicate and prevent discrimination against women and girls with disabilities, by incorporating gender and disability perspectives in all programmes, as well as by ensuring their full and equal participation in decision-making. The Committee urges the State party to amend its legislative framework to provide special protection to women and girls with disabilities, as well as to adopt effective measures to prevent and redress violence against women and girls with disabilities.**

Children with disabilities (art. 7)

16. While taking note that the Code on Children and Adolescents (Law 27337) recognises certain rights of children with disabilities, the Committee is concerned at their de facto enjoyment of those rights. The Committee is concerned at the invisibility of children with disabilities, in particular indigenous children, in statistical data of the State party.

17. The Committee recommends the State party to make special care and assistance to children with disabilities, in particular indigenous children, a matter of high priority, and to invest to the maximum extent of available resources in the elimination of discrimination against them, as well as to gather accurate data to monitor the upholding of their rights. The Committee further recommends the State party to take steps to prevent violence, abuse and extreme abandonment of children with disabilities.

Awareness-raising (art. 8)

18. While taking note of some steps taken by the State party to raise awareness on the rights of persons with disabilities, such as the national radio broadcasts, the Committee remains concerned at the insufficiency of these measures and at the existence of private fundraising initiatives using negative stereotypes and charity based approach (such as the Peruvian Telethon). The Committee draws attention of the State party that, far from promoting rights and empowering persons with disabilities, these campaigns perpetuate and reproduce stigma and, thus hinder the possibility of constructing a culture in which persons with disabilities are recognized as part of human diversity and society.

19. The Committee calls upon the State party to take proactive measures to enhance awareness of the Convention and its Optional Protocol at all levels, to develop policies and programmes implemented to ensure elimination of stereotypes and to focus on the dignity, capabilities and contributions to society of persons with disabilities.

Accessibility (art. 9)

20. The Committee regrets the lack of information on the level of implementation of the State's requirement to have, by 2010, 60 per cent of public facilities accessible for persons with disabilities, as well as the absence of information on compliance with accessibility standards by private companies.

21. The Committee urges the State party to speed up the plans and programs directed to make public facilities, communications and public transportation, in the urban and rural areas, accessible for persons with disabilities and to ensure that private entities duly take into account all aspects of accessibility for persons with disabilities.

Equal recognition before the law (art. 12)

22. The Committee is concerned at the reports that a number of persons with disabilities, especially those living in rural areas and in long-term institutional settings, do not have identity cards and, sometimes, have no name.

23. The Committee urges the State party to promptly 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 and/or do not enjoy their right to a name.

24. The Committee notes with concern that legislation of the State party (article 7 of the Constitution, articles 564 and 565 the Civil Code) is not in conformity with article 12 of the Convention, as it establishes substitute decision-making instead of supported decision-making and permits the suspension of civil rights of persons with disabilities in cases of judicial interdiction. The Committee is also concerned by the lack of information concerning the number of persons that have been subjected to guardianship and trusteeship and the lack of legal remedies and safeguards, such as independent review and right to appeal, that are in place in order to revoke those decisions.

25. The Committee recommends the State party to 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 to take action to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will, and preferences.

26. The Committee is concerned that the State party's Civil Code denies the ability to exercise the right to marry to the "deaf-mute, blind-deaf and blind-mute persons, as well as to mentally handicapped persons and those suffering from mental deterioration".

27. The Committee urges the State party to amend the Civil Code in order to adequately guarantee the exercise of civil rights, in particular the right to marry, to all persons with disabilities.

Liberty and security of the person (art. 14)

28. The Committee notes with concern that article 11 of the General Health Law No. 26842 permits involuntary detention for people with "mental health problems", defined to include people with psychosocial disabilities as well as persons with a "perceived disability" (persons with a drug or alcohol dependence).

29. The Committee calls upon the State party to eliminate Law 29737 which modifies article 11 of the General Health Law, in order to prohibit the deprivation of liberty on the basis of disability, including psychosocial, intellectual or perceived disability.

Freedom from Torture (art 15)

30. The Committee is concerned at consistent reports of the use of continuous forcible medication, including narcoleptics, and poor material conditions in psychiatric institutions, such as the hospital Larco Herrera, where some persons have been institutionalized for more than ten years without appropriate rehabilitation services.

31. The Committee urges the State party to promptly investigate the allegations of cruel, inhuman or degrading treatment, or punishment in psychiatric institutions, to thoroughly review the legality of the placement of patients in these institutions, as well as to establish voluntary mental health treatment services, in order to allow the persons with disabilities to be included in the community and release them from the institutions.

Right to live independently and be included in the community (article 19)

32. The Committee is concerned at the absence of resources and services to guarantee the right of persons with disabilities to live independently and to be included in the community, in particular in rural areas.

33. The Committee urges the State party to initiate comprehensive programs to enable persons with disabilities to access a whole range of in-home, residential and other community support services, including personal assistance necessary to support

living and inclusion in the community, and to prevent isolation or segregation from the community, especially in rural areas.

Respect for home and the family (art. 23)

34. The Committee is deeply concerned that, according to the technical Norm for Family Planning 536/2005 - MINSA from 26 July 2005, persons with “mental incompetence” can be sterilized without their free and informed consent, as a method of contraception.

35. The Committee urges the State party to abolish administrative directives forced sterilization of persons with disabilities.

Education (art. 24)

36. While taking note with appreciation of a number of Ministerial Directives aimed at establishing the framework of an inclusive education system, the Committee is concerned at the existing gaps in the de facto implementation of these provisions, in particular at the illiteracy rate among the indigenous peoples and Afro-Peruvian communities, and the impact that this may have on the indigenous and minority children with disabilities.

37. The Committee recommends the State party to allocate sufficient budget resources to achieve advances in the progress for inclusive education system for children and adolescents with disabilities, and take appropriate measures to identify and reduce illiteracy among children with disabilities, especially indigenous and Afro-Peruvian children.

Right to health (art. 25)

38. The Committee is concerned that, according to State party’s replies to the list of issues, no rehabilitation services exist for 81% of the population with a disability, and only 1.42% of persons with disabilities are covered by social security programs. The Committee is also concerned at the lack of health services, in particular in rural areas, as well as numerous limitations to persons with disabilities imposed by the Supreme Decree 004-2007-SA on Comprehensive Health Insurance. It further regrets the lack of early detection programmes of deafness for children in order to minimize and prevent further disabilities.

39. The Committee urges the State party to elaborate comprehensive health programs in order to ensure that persons with disabilities are specifically targeted and have access to rehabilitation and health services in general. The Committee further recommends the State Party to

- (a) review its legal framework in order to ensure that insurance companies and other private parties do not discriminate against persons with disabilities;**
- (b) apply budgetary resources and the creation of skills among health personnel, in order to effectively comply with the right to healthcare of persons with disabilities, ensuring that hospitals and health centres are accessible to persons with disabilities;**
- (c) provide services of early identification of disabilities, in particular deafness, designed to minimize and prevent further disabilities, including among children.**

Work and employment (art. 27)

40. While taking note with appreciation of the State party’s efforts to increase the level of employment of persons with disabilities, in particular the Supreme Decree No. 027-

2007-PCM which requires institutions within the public sector to have at least 3 % of the total workforce composed of workers with disabilities, the Committee remains concerned at the high rate of unemployment and underemployment of persons with disabilities that, according to the State response to the List of Issues, go up to nearly 60 per cent and 35.3 per cent respectively.

41. **The Committee urges the State party to develop new policies that promote the inclusion of persons with disabilities to the labour market that could include tax incentives for companies and persons who employ persons with disabilities, the recruitment of persons with disabilities in public administration and the development of self-employment programs. The Committee further recommends the State party to adopt educational programs to capacitate persons with disabilities in order to include them in the labour market.**

42. The Committee appreciates the State party's concern with the widespread poverty of persons with disabilities.

43. **The Committee urges the State party to address the negative impact of poverty by mainstreaming disability inclusive socio-economic development.**

Participation in political and public life (art. 29)

44. The Committee commends the State Party for issuing a resolution in October 2011 that nullified previous policies excluding persons with certain psychosocial and intellectual disabilities from the electoral rolls, as well as for updating the National Identity and Civil Status Registry (RENIEC) accordingly. However, the Committee remains concerned at:

- (a) The fact that persons with disabilities, who have been judicially interdicted, remain ineligible to vote and the names of those excluded from the national voter registry have not yet been fully restored;
- (b) The lack of information on measures taken in order to inform the persons with disabilities on the above-mentioned developments and prevent such violations from happening in the future;
- (c) Numerous cases of persons in institutions who have not been able to exercise their right to vote because they lack identity documents or because of the interdiction to leave the institution, absence of special assistance or the distance from the polling station.

45. **The Committee recommends the State party to**

- (a) **Restore voting rights to all people with disabilities who are excluded from the national voter registry, including people with disabilities subject to judicial interdiction;**
- (b) **Reach out to vulnerable individuals and protect people with disabilities from such violations in the future, including through relevant training.**
- (c) **Guarantee the right to vote of people with disabilities in institutions, by ensuring that they are physically permitted to go to assigned polling stations and have the support required to do so, or to permit alternative options.**

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

46. The Committee regrets the low level of disaggregated data on persons with disabilities. The Committee recalls that such information is indispensable to understanding

the situations of specific groups of persons with disabilities in the State party who may be subject to varying degrees of exclusion, especially indigenous people, women and children with disabilities and persons who live in rural areas; developing laws, policies and programmes adapted to their situations; and assessing the implementation of the Convention.

47. **The Committee recommends that the State party systematize the collection, analysis and dissemination of data, disaggregated by sex, age and disability; enhance capacity-building in this regard; and develop gender-sensitive indicators to support legislative developments, policymaking and institutional strengthening for monitoring and reporting on progress made with regard to the implementation of the various provisions of the Convention, taking into consideration the changes from the medical to the social model.**

National implementation and monitoring (art. 33)

48. The Committee is concerned at the lack of clarity as to the functions and division of responsibilities of Multi-Sectoral Permanent Commission and CONADIS, as well as the fact that they are not compliant with the Paris Principles.

49. **The Committee recommends the State party to specifically designate a national monitoring mechanism that is in conformity with the Paris Principles, and to ensure, as a matter of priority, the full participation in the monitoring process of persons with disabilities and their representative organizations.**

Follow-up to concluding observations and dissemination

50. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. The Committee recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in the relevant Ministries, the Judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector, and the media, using modern social communication strategies.

51. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in accessible formats.

52. The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its second periodic report.

53. The Committee requests the State party to provide, within two years and in accordance with article 35.2 of the Convention, written information on the steps undertaken to implement the recommendations contained in paragraphs 23, 29 and 35.

Technical cooperation

54. The Committee recommends that the State Party avail itself of technical cooperation from the member organizations of the Inter-Agency Support Group (IASG) for the Convention for the purpose of obtaining guidance and assistance on implementing the Convention and the present concluding observations.

Next report

55. The Committee requests the State party to provide its next periodic report by April 2016.
