

**Universal Periodic Review on Peru  
March 2017**

**Summary**

Human Rights Watch has a number of concerns over [Peru's human rights record](#), including violations of women's rights and accountability for unjustified use of force against protestors and detainees. However this submission focuses narrowly on one aspect of Peru's human rights obligations – the right to political participation for persons with disabilities in Peru. Despite some advancements the government of Peru has made to prevent discrimination towards persons with disabilities in recent years, Peruvians with disabilities still face serious barriers to the fulfillment of their political rights. This submission addresses two obstacles to political participation: restrictions to legal capacity and accessibility to voting procedures.

**1. Restrictions to 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 it also provides that exercise of the right depends on the legal capacity of the individual, and article 33 provides that citizenship can be removed by judicial interdiction.

Therefore, although Peru has put in force some legal and administrative provisions to facilitate political participation for people with disabilities, 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.<sup>1</sup>

Peru is a party to the Convention on the Rights of Persons with Disabilities (CRPD), and in the CRPD Committee's first Concluding Observations for Peru adopted in May 2012, it recommended that the government should (1) "restore voting rights to all people with disabilities..., including people with disabilities subject to judicial interdiction".<sup>2</sup> Likewise, the Committee recommended Peru 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."<sup>3</sup> Finally, the Committee recommended to (3) "bring forward a far-

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<sup>1</sup> 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.

<sup>2</sup> CRPD/C/PER/CO/1 paragraph 45.

<sup>3</sup> CRPD/C/PER/CO/1 paragraph 25.

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.”<sup>4</sup>

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

Prior to 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 liable for sanctions in case they did not vote, as is the law. This policy was changed in 2011<sup>5</sup> 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.<sup>6</sup> 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 there is no state-provided system to assist voters with disabilities to get to the polling stations on election day, they need to rely on third parties such as family members to take them. This creates a barrier to registration, as there may not be someone able to assist them to the polls on the day or to help them follow the dispensation procedure.

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In 2012 a new General Law on Persons with Disabilities was adopted (Law number 29973), 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.<sup>8</sup> 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 to 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.

### **Recommendations:**

- Ensure that all 23,000 people who were deleted from the voter registry in 2011 had opportunity to reregister;

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<sup>4</sup> CRPD/C/PER/CO/1 paragraph 7.

<sup>5</sup> 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.

<sup>6</sup> Interview with Liliana Peñaherrera Sánchez, member of the Board of Directives of the *Federación Iberoamericana de Síndrome Down*, Lima, Peru, July 1, 2016.

<sup>7</sup> Ibid.

<sup>8</sup> 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.

- Amend Peru's civil legislative framework to ensure full legal capacity for people with disabilities

## 2. Accessibility to voting procedures

Peru has put in force some legal and administrative provisions to facilitate political participation for people with disabilities<sup>9</sup>, however there 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.<sup>10</sup>

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 underlies the core obligation on governments to ensure people with disabilities enjoy their rights on an equal basis with others and is a prerequisite for persons with disabilities to participate fully and equally in society. As a party to the CRPD, the Peruvian government has an obligation 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.<sup>11</sup> 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 about reports of cases where voters with disabilities cannot rely on family or friends to help them exercise their right to political participation, that the dispensation system

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> ONPE is the autonomous government organization in charge of organizing electoral procedures in Peru.

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.<sup>12</sup> 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.

**Recommendations:**

- Amend the Electoral Code to include a provision to ensure universal design and accessibility obligations in voting procedures, including accessible facilities, voting material (braille ballots), and that voting procedures are appropriate, easy to understand and use.;
- Ensure that dispensation procedures, including sanctions, do not have negative incentives on the willingness of people with disabilities to exercise their right to vote and to be active in the public life;
- Ensure that the new technology designed for political processes, including the electronic voting system, is accessible to all persons with disabilities, including those with physical, sensory or intellectual disabilities.

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<sup>12</sup> Interview with Malena Pineda, head of the disability division in the Peruvian ombudsman, Lima, Peru, June 30, 2016.