



Human Rights Watch Submission to the United Nations Committee on the Rights of Persons with Disabilities

Introduction

This memorandum, submitted to the United Nations Committee on the Rights of Persons with Disabilities (“the Committee”), ahead of its upcoming review of Peru, highlights areas of concern that Human Rights Watch hopes will inform the Committee’s consideration of the Peruvian government’s compliance with the Convention on the Rights of Persons with Disabilities (“CRPD”). Between July and November 2011, Human Rights Watch interviewed 65 persons with disabilities or their relatives as well as more than 35 representatives of disabled persons organizations, legal experts, parliamentarians and government officials in Lima, Cusco, and Puno. A limitation of the research was the lack of available data on people with disabilities, a problem that the government Peru has acknowledged in its report to the CRPD Committee and is working to address.

Human Rights Watch found that Peru has many progressive legal provisions on disability rights in place, such as a national disability law that establishes a national council for persons with disabilities, charged with formulating public policies regarding persons with disabilities, the appointment of an ombudsman specializing in defending the rights of persons with disabilities, and for municipal and regional governments to establish offices to support the inclusion of people with disabilities in local decision-making. However there are other laws and policies still in place in Peru that prevent people with disabilities, particularly those with intellectual or psychosocial disabilities, from exercising fundamental legal rights, including the right to political participation. With no system for supported decision-making in place, Peruvian law provides for a system of guardianship, known as judicial interdiction, which means people have their legal capacity restricted, either in part or in whole, through judicial order and as a consequence cannot exercise or enjoy a range of civil rights. This submission discusses violations of the rights of people with disabilities in Peru that are inconsistent with Articles 5, 12, 14, 19, 25, and 29 of the Convention.

In your upcoming Committee review of Peru, we urge you to question the government about the following key issues:

1. *Deprivation of legal capacity through judicial interdiction;*
2. *Gaps in ensuring everyone enjoys the right to identity and the right to a name;*
3. *Denial of the right to vote and related adverse consequences; registering stigmatizing information;*
4. *Disenfranchisement of people with disabilities in institutions;*
5. *Involuntary detention and forced treatment of people with disabilities.*

Deprivation of legal capacity through judicial interdiction (Art. 12)

Under Peru's General Law on Persons with Disabilities (Law No. 27050), people with disabilities have equal rights as members of the general population, without prejudice to special rights derived from article 7 of the Constitution.¹ However, the Constitution permits the suspension of civil rights in cases of judicial interdiction,² a legal process by which a judge declares a person either absolutely or partially incompetent to take care of one's self and property and appoints a legal representative to act on his or her behalf. Under Peru's Civil Code, people with certain disabilities may be subject to interdiction, and thus deprived of the legal capacity to exercise their civil rights. These include people with multiple sensory disabilities who cannot express their will in an "indubitable manner" and those who are "deprived of discernment", considered as "absolutely incapable."³ People with intellectual disabilities and "those who suffer mental deterioration that prevents them from expressing their free will" are considered "relatively incapable."⁴ Under article 45 of the Civil Code, "legal representatives of the incapable exercise their civil rights."⁵

Human Rights Watch spoke with several people with disabilities who had been interdicted or were at risk of interdiction. In the absence of a mechanism for supported decision-making, their families sought interdiction because under Peruvian law, they perceived this to be the only way to protect them and their property or legal interests, including their right

¹ Ley General de la Persona con Discapacidad, Law N° 27050, 1999, art. 3.

² Political Constitution of Peru, 1993, art. 33(1); see also Organic Elections Law (Ley Orgánica de Elecciones), Law N° 26859, 1984, as amended by Law N° 27163, 1999, art. 10(a) (citizenship rights suspended in case of judicial interdiction).

³ Civil Code (Código Civil), Decreto Legislativo, N° 295, 1984, art. 43. People who are deprived of the capacity to discriminate ("Los que por cualquier causa se encuentren privados de discernimiento") and "deafmute, deafblind, and blindmute individuals who cannot express their will in an indubitable manner" are considered "absolutely incapable."

⁴ Ibid., art. 44.

⁵ Ibid., art. 45.

to pension or social security benefits.⁶ After being interdicted, individuals cannot sign documents on their own behalf, and the National Registry for Identification and Civil Status (Registro Nacional de Identificación y Estado Civil, or “RENIEC”) cannot issue voting assignments to them.⁷

The process of interdiction provided for in the Peruvian Civil Code is incompatible with the government’s obligations under Article 12 of the CRPD, which states that people with disabilities “enjoy legal capacity on an equal basis with others in all aspects of life.” The Organization of American States’ Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities has declared that interdiction is incompatible with article 12 of the CRPD, and issued a directive calling on states to ensure the recognition of legal capacity of all persons, including taking immediate measures to replace interdiction and related practices with supported decision-making, and ensuring that no new cases of interdiction are approved.⁸

Human Rights Watch urges the Committee to question the government of Peru regarding steps it has taken to protect the right to legal capacity and supported-decision making for people with disabilities, including by:

- *Reforming the law on legal capacity to create a system in which all people with disabilities are supported in making decisions rather than placed under guardianship where other persons exercise rights on their behalf, including by*

6 Individuals over 18 years of age who are physically or mentally disabled may be entitled to survivors’ benefits (orphan pension) pursuant to private sector or service work, or through police or military service, but the requirements are distinct. The law governing police and military pensions requires that disability be established through judicial order, thus obligating the beneficiary to be judicially interdicted. Military-Police Pensions Law (Ley de Pensiones Militar-Policial), Decreto Ley N° 19846 of 1972, art. 25(a). By contrast, individuals over 18 years of age can establish their disability, and thus entitlement to orphan pension through other pension systems via a declaration of a medical commission. See National System of Social Security Pensions (Sistema Nacional de Pensiones de la Seguridad Social), Decreto Ley 19990 of 1973, as amended, arts. 26, 61; Law that Establishes the New Rules for Pensions Regime of Decreto Law No. 20530 (Ley que Establece las Nuevas Reglas del Regimen de Pensiones del Decreto Ley N° 20530), Ley N° 28449 of 2004, art. 7 (amending Decreto Ley N° 20530 to eliminate requirement of judicial interdiction). In practice, however, people with intellectual or psychosocial disabilities are often interdicted to receive benefits under each of these systems, as their parents file the paperwork on their behalf. Human Rights Watch email correspondence with Elizabeth Salmón, member, expert committee on legal capacity under Article 12 of the CRPD and professor, Instituto de Democracia y Derechos Humanos, Pontificia Universidad Católica del Perú, March 1, 2012.

7 Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director of electoral activities, RENIEC, Lima, October 25, 2011.

8 Organization of American States (OAS), General Observation of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities on the need to interpret Article 1.2(b) in fine of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities in the context of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, OEA/ Ser.L/XXIV.3.1, CEDDIS/doc.12 (I-E/11) Rev.1, April 28, 2011; OAS, Resolution on General Observation of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities Regarding Interpretation of Art. 1.2(b) of the Inter-American Convention in the context of Art. 12 of the CRPD, OEA/Ser.L/ XXIV.3.1, CEDDIS/RES.1 (I-E/11) (Adopted at the fourth plenary session, held on May 4, 2011). The OAS General Assembly, in turn, has requested the Secretary General to disseminate the Committee’s observations regarding Article 1.2(b) as widely as possible. OAS, Support for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities and its Technical Secretariat, AG/RES. 2663 (XLI-O/11) (Adopted at the fourth plenary session, held on June 7, 2011).

amending the Civil Code so that judicial interdiction resulting in deprivation of legal capacity cannot take place on the basis of a disability;

- *Taking immediate measures to ensure that the legal system does not permit approval of new cases of interdiction based on disability.*

Gaps in ensuring everyone enjoys the right to identity and the right to a name (Art. 18)

Article 2 of Peru’s Constitution recognizes that every person has the right to his or her identity and nationality, and to equality before the law.⁹ RENIEC and the Public Ombudsman’s office have undertaken national campaigns since 2004 to protect the rights to identity and citizenship of people with disabilities (among other marginalized populations), including by providing identity cards free of charge. Despite these campaigns, some people with disabilities, especially those living in rural areas and people living long-term in institutions, remain without identity cards, effectively making them unable to exercise their rights as citizens.

Human Rights Watch’s research found that there appears to be no system to address the situation of some people with disabilities who arrived in institutions without identity cards, are effectively abandoned by anyone who knows them, and are unable to communicate to the staff what their name is, or if they have one. Hence staff may identify such patients with the initials “N.N.” (no name) until they give them names.¹⁰ In some situations this may last for years.¹¹

A 2005 report by the Public Ombudsman identified a “considerable number” of residents in psychiatric institutions who did not have names and identity documents, and urged mental health facilities to take measures to identify the unknown patients and to issue identity cards to all people in institutions.¹² In 2011, the Ministry of Health and RENIEC

⁹ Political Constitution of Peru, arts. 2 (1, 2, 21)

¹⁰ Staff at Hospital Hermilio Valdizán, a private psychiatric facility in Lima, and Hospital Larco Herrera, a public psychiatric facility, also in Lima, said that they had given names to several residents. Human Rights Watch interview with Rafael Navarro Arias, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011; Human Rights Watch interview with staff at Hospital Larco Herrera, Lima, October 26, 2011.

¹¹ Staff at Hospital Hermilio Valdizán gave an example of a patient who had been abandoned at a children’s hospital as a baby, and was without a name when he was transferred to their facility after 16 years. Human Rights Watch interview with Miriam Osorio Martinez, psychiatrist, Hospital Hermilio Valdizán, Lima, October 25, 2011.

¹² Defensoría del Pueblo, “Mental Health and Human Rights: The Situation of People Interned in Mental Health Establishments, Report 102” (“Salud Mental y Derechos Humanos: La Situación de las Personas Internadas en Establecimientos de Salud Mental, Informe 102”) 2005, p. 87 and n. 204 (stating that staff at Hospital Larco Herrera had identified 41 patients without documents). The Public Ombudsman report states that the names given to patients were for internal use. It is not clear whether people’s names were officially recorded when people with “N.N.” were given names or whether

issued identity cards to more than 100 people with disabilities institutionalized in Lima.¹³ However, according to RENIEC, many people in institutions across Peru still remain undocumented.¹⁴

We urge the Committee to question the government of Peru regarding steps it has taken:

- *to provide identity documents to people with disabilities, including in rural areas and in institutions;*
- *to collect complete, accurate data on people with disabilities in institutions who are undocumented, including the number and current location of such persons.*

Denial of the right to vote and related adverse consequences; registering stigmatizing information (Arts. 5, 12 and 29)

RENIEC is charged with issuing national identity cards, which serve, among other things, as the sole document that individuals are required to produce in order to exercise the right to vote.¹⁵ RENIEC's organic law and regulations further establish that in order for the national identity card to have legal effect, it must show or be accompanied by proof that the holder of the card voted in the last elections in which they were obligated to vote or, absent such proof, proof of dispensation from voting.¹⁶

A person who fails to vote and does not have a valid dispensation may be fined and in addition may face “civil death,” that is they are not allowed to engage in civil, commercial, administrative and judicial transactions.¹⁷ Public registrars, notaries, and others are subject to criminal sanctions, including fines and potential imprisonment, for failure to

they remained unregistered and therefore undocumented. People live in institutions for various reasons: they are brought there by family, friends, police or emergency medical services, they are ordered by a court, they themselves are seeking treatment, or they are abandoned there. And, as both the Public Ombudsman and psychiatric institutions have noted, people may be consigned to institutions even absent medical criteria for internment. *Ibid.*, p. 135 and n. 309.

¹³ RENIEC, “RENIEC gives identity cards to patients at Larco Herrera” (RENIEC entrega DNI a pacientes de Larco Herrera), November 30, 2011, <http://www.reniec.gob.pe/portal/detalleNota.htm?nota=527> (accessed April 11, 2012).

¹⁴ RENIEC has acknowledged that many people in psychiatric institutions are undocumented (for example, 40 patients in Hospital Larco Herrera have no national identity document, or DNI), and is working with psychiatric institutions and government agencies such as CONADIS, the National Institute of Statistics and Informatics (Instituto Nacional de Estadística e Informática) to collect accurate information on all persons with disabilities. Human Rights Watch telephone conversation with José Osorio Barrera, in charge of coordination, Sub-management of Social Support Area, RENIEC, April 9, 2012; email communication from José Osorio Barrera, March 12, 2012 and April 9, 2012.

¹⁵ Organic Law of the National Registry for Identification and Civil Status (RENIEC) (Ley Orgánica del Registro Nacional de Identificación y Estado Civil), Ley Nº 26497, July 12, 1995, art. 26; Reglamento de Inscripciones del RENIEC, Decreto Supremo Nº 015-98-PCM, art. 84 (b). The identity card is the main form of personal identification to complete civil, commercial, administrative, and judicial transactions, and all cases where, by law, identification is required.

¹⁶ Organic Law of RENIEC, art. 29; Reglamento de Inscripciones del RENIEC, arts. 84 and 89.

¹⁷ Organic Law of RENIEC, art. 29.

require presentation of an identity card with proof of having voted or dispensation from voting, when such proof is required by law.¹⁸ Lack of an identity card restricts not only the right to vote, but also the ability to do other things like open a bank account, access the health care system, get married, travel, own or inherit property, gain employment, or sign official documents on behalf of dependent children. It also affects access to social security benefits.¹⁹

In 2006, Congress passed legislation that effectively nullified the RENIEC regulation that required the identity card to show or be accompanied by proof of having voted or proof of dispensation from voting in order to carry out specified functions, including to sign a contract, appear in administrative or judicial proceedings, obtain a passport, and enroll in a social security or social welfare scheme.²⁰ There is some legal debate, however, regarding whether the 2006 legislation abolished the restrictions in RENIEC's organic law and sanctions in the election law.²¹ This lack of clarity means that many public and private employees, including public registrars, notaries, and bank staff, continue to require presentation of an identity card with proof of voting to carry out their tasks.

Prior to a change in policy in October 2011, Peruvian authorities actively excluded over 23,000 persons with intellectual and psychosocial disabilities from the voter registry, based on RENIEC policies in place between 2001 and 2011 that denied voting rights to

¹⁸ Organic Elections Law, art. 390(c).

¹⁹ See, e.g., Reglamento de Inscripciones del RENIEC, art. 84; Human Rights Watch interview with Cecilia Reynosa, coordinator, Social Inclusion, Identity and Citizenship Project, Public Ombudsman's Office, Lima, October 26, 2011.

²⁰ See Law that Eliminates Civil, Commercial, Administrative and Judicial Restrictions; and Reduces Fines to Citizens who Failed to Vote (Ley que Suprime las Restricciones Civiles, Comerciales, Administrativas y Judiciales; y Reduce las Multas en Favor de los Ciudadanos Omisos al Sufragio), Ley N° 28859, 2006, art. 1 (derogating Reglamento de Inscripciones del RENIEC, art. 89).

²¹ As a matter of Peruvian law, the 2006 legislation cannot abolish the relevant RENIEC or election law, as ordinary legislation cannot amend organic legislation. In any event, the law is subject to opposing interpretations. Legal scholars and advocates for persons with disabilities have noted that because the 2006 law refers specifically to article 89 of Decreto Supremo N° 015-98-PCM (RENIEC's regulation restricting an identity card's legal effect in case of unexcused failure to vote) but does not expressly derogate or establish a regulation incompatible with related RENIEC and election law, it does not meet Peruvian Civil Code requirements to abolish or repeal related RENIEC and election law, and the latter remain in effect. Carlo Magno Salcedo Cuadros, "La Subsistencia de la Muerte Civil para los Omisos al Sufragio," Legal Express, No. 71, Lima, Gaceta Jurídica, November 2006, p. 6; Dr. Edwin Romel Bejar Rojas, " Sanciones y Restricciones a los Derechos Civiles por el Incumplimiento del Deber de Votar," (unpublished memo on file with Human Rights Watch); Human Rights Watch telephone interview with Dr. Edwin Romel Bejar, Judge, Superior Court of Cusco, January 5, 2012. Indeed, legislation was proposed in 2006 to specifically derogate related provisions in these laws. Proyecto de Ley N° 00075/2006-CR (proposing to derogate article 29 of Law N° 26497, RENIEC's Organic Law, and to modify article 390(c) and 273 of Law N° 26859, Organic Elections Law, referring to limitations on rights of those citizens who have not met their obligation to vote). The counter-argument is that the prior laws are unconstitutional, since the 2006 legislation renders ineffective prior legislation to the contrary and no one should have to do what the law states is not required. Dr. Edwin Romel Bejar Rojas, " Sanciones y Restricciones a los Derechos Civiles por el Incumplimiento del Deber de Votar," Human Rights Watch telephone interview with Judge Edwin Romel Bejar. Advocates have raised concerns that this situation has generated confusion, noting, for example, inconsistent practices among banks and notaries regarding whether to permit transactions by persons without proof of having voted or excuse from voting on their identification cards. Human Rights Watch email correspondence with Erick Antonio Acuña Pereda, researcher, Instituto de Democracia y Derechos Humanos, Pontificia Universidad Católica del Perú, March 15, 2012.

people with such disabilities, notwithstanding that they had not been judicially interdicted.²² Government officials claimed that expunging the names of people with disabilities from the voter registry would prevent voters with disabilities from being penalized for non-participation, since voting is compulsory for all Peruvians between age 18 and 70.²³ The Ombudsman's office concluded that this exclusion was illegal, and along with disability rights advocates, pressed RENIEC to reverse the policy. In November 2010, RENIEC acknowledged that it excluded over 20,000 persons with intellectual or psychosocial disabilities from the voter registry.²⁴

On December 2, 2010, RENIEC notified the Public Ombudsman that it would permit people with disabilities to re-register.²⁵ But the voter registry closed on December 11,²⁶ and with limited time and poor communication about this decision, fewer than 60 people with disabilities were added back to the registry before the election. As a result, thousands of people with disabilities were not registered to vote in the national elections in April and June 2011.

Peruvian law permits the inclusion on the identity card, on a voluntary basis, of information that the person identified has a permanent disability.²⁷ Many people with disabilities told Human Rights Watch that they preferred not to include information on their disability on their identity card, out of concern that doing so will subject them to discrimination based on their disability. This choice is not always respected, however. Human Rights Watch's research documented at least five cases in which RENIEC

22 The Public Ombudsman had documented such cases at least since 1999, and advised RENIEC that denial of voting rights to people with psychosocial and mental disabilities who met criteria for interdiction under Civil Code articles 43 and 44, but who had not been judicially interdicted, violated Constitutional and legal norms against discrimination. Defensoría del Pueblo, Resolución Defensorial N° 28-2004-DP, December 9, 2004. A 2001 policy required adults with "mental disabilities" who had not been interdicted to submit a "registrar's declaration" (later referred to as a "declaration of assistance") when applying for an identity document. This declaration was signed by a parent, grandparent, or caretaker. The policy also required that the identity card "contain the legal restrictions and observations declared." RENIEC, Resolución Jefatural N° 035-2001-JEF/RENIEC, March 14, 2001. A 2004 RENIEC policy required that those who received their identity cards via the 2001 procedures be excluded from the voter registry, justifying the policy on grounds that the declaration was similar to interdiction. RENIEC, Informe N° 118-2004-GAJ/RENIEC, February 16, 2004.

23 Human Rights Watch interview with Malena Pineda Angeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman's Office, Lima, July 26, 2011. See Political Constitution of Peru, art. 31; Organic Elections Law, art. 9.

24 Human Rights Watch interview with Malena Pineda Angeles, Lima, July 26, 2011; Maria Isabel Gonzales, "Peruvians with Down Syndrome: To Vote is Our Right" ("Peruanos con Síndrome de Down: Votar es Nuestro Derecho"), Domingo, February 2, 2011, pp. 12-14. In October 2011, RENIEC identified 23,273 citizens with psychosocial or intellectual disabilities who had been excluded from the voter registry and should be put back on. RENIEC, Resolución Jefatural No. 508 2011-JNAC/RENIEC, October 10, 2011.

25 RENIEC, Oficio N° 4895-2010/GOR/RENIEC, December 2, 2010; Human Rights Watch interview with Malena Pineda Angeles, Lima, July 26, 2011; see also RENIEC, Memorando Multiple N° 000567-2010/GOR/RENIEC, December 1, 2010.

26 The voter registry closed on December 11, 2010, 120 days before the April 10, 2011 general elections.

27 Organic Law of RENIEC, as amended by Article 2 of Law No. 29478, 1999, art. 32(); Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director, Electoral Activities, RENIEC, Lima, October 25, 2011.

employees included the information despite explicit requests by people with disabilities or their family members that this information should not be displayed on the face of the identity card.²⁸

RENIEC issued a resolution on October 10, 2011 that nullified policies excluding people with certain mental and intellectual disabilities from the electoral rolls, made clear that inclusion of information on disability is voluntary, and pledged to issue voting group assignments to people with psychosocial or intellectual disabilities who had been excluded from the rolls. RENIEC also pledged to work with relevant government agencies to promptly address this situation.²⁹ The resolution does not address judicial interdiction, meaning that people with disabilities who have been judicially interdicted can still be denied the right to vote.

Human Rights Watch urges the Committee to question the government of Peru about steps it has taken:

- *to ensure that deprivation of the right to vote does not impair capacity to engage in civil, commercial, administrative, and judicial transactions;*
- *to restore voting rights to all people with disabilities who are excluded from the national voter registry, including people with disabilities subject to interdiction;*
- *to reach out to vulnerable individuals and protect people with disabilities from such violations in the future (including training of all relevant government staff and volunteers).*

De facto disenfranchisement of persons in institutions (Articles 5, 12, 29)

People in institutions have not been able to exercise the right to vote because they lack identity documents or because they have been excluded from the voter registry, as described above. People in institutions have also routinely been prevented from exercising their right to vote when institution directors or staff did not permit them to leave the

²⁸ Human Rights Watch interview with Mario, young man with intellectual disability, Lima, October 21, 2011; Human Rights Watch interview with Juan Roberto, a 43-year old man with intellectual disability, Lima, October 21, 2011; Human Rights Watch interview with Rubby B., 25-year old woman with an intellectual disability, and her mother, Rubby S., Lima, October 21, 2011; Human Rights Watch interview with Vanya, a young woman with Down Syndrome, Lima, October 23, 2011; Human Rights Watch interview with Juan David, a 23-year old man with autism, Lima, July 21, 2011; Human Rights Watch interview with Liliana Mayo, director, Centro Ann Sullivan del Perú, Lima, July 20, 2011. In the case of Juan Roberto, the term “impedido”(or “prevented”) was listed under observations.

²⁹ RENIEC, Resolución Jefatural 508-2011-JNAC/RENIEC, October 10, 2011.

institution to vote or consider them incapable of voting. There is no system or procedure to facilitate their right to vote.³⁰

For example, in Hospital Victor Larco Herrera, Peru's largest psychiatric hospital, staff told Human Rights Watch that none of the 472 permanent residents with intellectual or psychosocial disabilities had voted in the recent elections.³¹ Besides, Human Rights Watch found that not all residents have an identity card, and as such they were unable to vote.³² The director of Hospital Hermilio Valdizán, a privately-run psychiatric hospital in Lima, told Human Rights Watch that of its 160 residents, about 10 voted in the 2011 election.³³ Another staff member at the hospital confirmed that 40 permanent residents in the facility (who were abandoned there or did not have any known family ties) had identity cards with the observation "discapacidad mental" ("mental disability") and no voting group assignment.³⁴

One of the key challenges in implementing the CRPD is the perspective among mental health professionals and lawyers alike that the right to political participation should be qualified for people with disabilities on the basis of competency.³⁵ Another barrier to exercising the right to political participation for people living in institutions is that there is no system or procedure to facilitate their right to vote.³⁶ By law, people are assigned polling stations according to the address indicated on their identity cards and must vote at these locations.³⁷

Staff at Hospital Hermillo Valdizán and Hospital Larco Herrera explained that most residents are not permitted to leave the premises to visit the polling site.³⁸ Some residents

³⁰ Human Rights Watch interview with Carlo Magno Salcedo Cuadros, Lima, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011.

³¹ Human Rights Watch interview with staff nurse, Hospital Victor Larco Herrera, Lima, October 26, 2011; Human Rights Watch telephone interview with Oswaldo Castro Lazaro, director of statistics at Hospital Victor Larco Herrera, January 18, 2012.

³² Human Rights Watch interview with staff nurse assistant, Hospital Hermilio Valdizán, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Victor Larco Herrera, Lima, October 26, 2011.

³³ Human Rights Watch interview with Rafael Navarro Arias, October 25, 2011.

³⁴ Human Rights Watch interview with Miriam Osorio Martinez, psychiatrist, Hospital Hermilio Valdizán, Lima, October 25, 2011.

³⁵ Human Rights Watch interview with Rafael Navarro Arias, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, October 25, 2011.

³⁶ Human Rights Watch interview with Carlo Magno Salcedo Cuadros, Lima, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, October 25, 2011.

³⁷ See Organic Elections Law, arts. 52, 53, 54.

³⁸ Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011; Human Rights Watch interview with staff at Hospital Larco Herrera, Lima, October 26, 2011.

cannot physically vote without significant support. The Peruvian government has not developed any program targeted at people with psychosocial or intellectual disabilities to facilitate their exercise of the right to vote, and does not provide training on how to vote, provide information on political participation or make the necessary accommodations to support the exercise of this right, such as facilitating someone to accompany a person to the polling station.³⁹

To comply with its October 2011 resolution, RENIEC has begun to issue identity cards to people living in institutions that include voting group assignments to qualify them to vote in the next election.⁴⁰ People who have been judicially interdicted, however, remain ineligible to vote.

Human Rights Watch urges the Committee to question the government of Peru about steps it has taken to ensure the right to vote of people with disabilities in institutions, including to ensure that they will be physically permitted to go to assigned polling stations and have the support required to do so, and to permit alternative options (such as mobile voting stations or electronic voting).

Involuntary detention and forced treatment of people with disabilities (Arts. 12, 14, 19, 25)

In July 2011, the government approved Law No. 29737, which amends article 11 of the General Health Law, Law No. 26842, to permit involuntary detention for people with "mental health problems," defined to include people with psychosocial disabilities and those with drug or alcohol dependence. It also permits family members to authorize detention for those "who suffer some level of addiction and due to lack of consciousness of their illness, refuse to give informed consent." In such cases, involuntary detention is subject to periodic review by health professionals and by a judge.⁴¹

³⁹ Human Rights Watch interview with Rafael Navarro Arias, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, October 25, 2011.

⁴⁰ "RENIEC gives identity cards to patients at Larco Herrera;" Human Rights Watch telephone interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2011.

⁴¹ Law that Modifies Article 11 of Law 26842, General Health Law, Regarding Mental Health; and Regulating Procedures for Detention of People with Mental Disorders (Ley que modifica el Artículo 11 de la Ley 26842, Ley General de Salud, referido a la salud mental; y regula los procedimientos de internamiento de las personas con trastornos mentales), Law N° 29737, 2011.

Law No. 29737 adds to existing law permitting involuntary detention for treatment of psychosocial disabilities. As noted above, Peru's Civil Code permits judicial interdiction of people "deprived of discernment" and "those who suffer mental deterioration that prevents them from expressing their free will." Legal guardians of those interdicted can "volunteer" their admission for psychiatric treatment and rehabilitation without their consultation or consent.

Human Rights Watch is concerned that Law No. 29737 and its regulation, and related legal provisions described above, would permit involuntary detention of people with psychosocial disabilities for treatment in an overly broad set of circumstances that threatens rights to liberty and security.

Staff at two psychiatric hospitals in Lima told Human Rights Watch that they medicated patients, in some cases against their will. They explained that if people objected to taking medication, they would hide it in their food; in cases of emergency, they might inject the medications.⁴²

The Public Ombudsman's Office, as well as domestic and international civil society organizations, have documented serious abuses of the rights of persons with disabilities in institutions, including many cases of people detained without consent and against their will.⁴³ Both Paul Hunt, as former Special Rapporteur on the Right to Health, and Manfred Nowak, as former Special Rapporteur on Torture, also raised concerns about the vulnerability of users of psychiatric services, in particular those confined in institutions, to violations of a range of their human rights within care, as well as inappropriate institutionalization of persons with intellectual disabilities.⁴⁴

Human Rights Watch believes that forcible detention may constitute arbitrary detention, in violation of international human rights standards, even if it has a lawful basis provided by

⁴² Human Rights Watch interview with staff nurse, Hospital Larco Herrera, Lima, Peru, October 26, 2011; Human Rights Watch interview with staff psychiatrist, Hospital Hermilio Valdizán, Lima, Peru, October 25, 2011.

⁴³ See, e.g. Public Ombudsman, "Mental Health and Human Rights: Monitoring Policy, Quality of Services, and Attention to Vulnerable Populations, Report 140" ("Salud Mental y Derechos Humanos: Supervisión de la política, la calidad de los servicios y la atención a poblaciones vulnerables, Informe 140"), 2009; Mental Disability Rights International and Asociación Pro Derechos Humanos, "Human Rights and Mental Health in Peru," ("Derechos Humanos y Salud Mental en el Perú"), 2004, http://www.aprodeh.org.pe/public/biblioteca_virtual.htm.

⁴⁴ UN Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Mission to Peru, E/CN.4/2005/51/Add.3, February 4, 2005; UN General Assembly, Interim Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment, Manfred Nowak, A/63/175, July 28, 2008.

Peruvian law. Art. 9(1) of the International Covenant on Civil and Political Rights (ICCPR) states that “No one shall be subjected to arbitrary arrest or detention [or] deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁴⁵ Under the ICCPR, detention may be “arbitrary” even if it is in accordance with the law, but is random, capricious or disproportionate, that is, not reasonable or necessary given the circumstances of the case.⁴⁶ The State party concerned has the burden to show that such factors exist in a particular case.⁴⁷

According to the UN Special Rapporteur on Torture, compulsory treatment of an intrusive and irreversible nature, such as neuroleptic drugs and other mind-altering drugs, without the informed consent of the individual may constitute torture or ill-treatment if it lacks a therapeutic purpose, or is aimed at correcting or alleviating a disability.⁴⁸ Article 12 of the CRPD requires governments to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life,” including the right to decide whether to accept medical treatment. The CRPD inscribes the presumption that persons with disabilities can act in their own best interests and that, when needed, they should be given support to do so. It also makes clear that persons with disabilities – including intellectual and psychosocial disabilities -- enjoy an equal right to health care as others, explicitly recognizing that medical care must be provided on the basis of free and informed consent, and without discrimination based on disability (Art. 25). Mental disabilities do not justify the presumption that a person lacks the capacity to provide informed consent. Forced medical treatment can only be considered in exceptional cases when informed consent is not possible, and it is for the shortest possible time strictly for therapeutic purposes.

The CRPD also provides further protection concerning deprivations of liberty to persons with disabilities.⁴⁹ It not only forbids arbitrary detention but also states “that the existence

⁴⁵ These protections apply not only to those accused of crimes, but also “to all persons deprived of their liberty by arrest or detention” including those detained because of, “for example, mental health difficulties, vagrancy, drug addiction, immigration control, etc.” UN Human Rights Committee, General Comment 8, Article 9, U.N. Doc HRI/GEN/1/Rev.1 at 8 (1994), para. 1.

⁴⁶ Communication No. 458/1991, *A. W. Mukong v. Cameroon* (Views adopted on 21 July 1994), in UN doc. GAOR, A/49/40 (vol. II), p. 181, para. 9.8.

⁴⁷ Communication No. 305/1988, *H. van Alphen v. the Netherlands* (Views adopted on 23 July 1990), in UN doc. GAOR, A/45/40 (vol. II), p. 115, para. 5.8.

⁴⁸ See UN General Assembly, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/63/175, July 28 2008, paras. 47 and 63: “The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual’s health may constitute a form of torture or ill-treatment.”

⁴⁹ CRPD, art. 14.

of a disability shall in no case justify a deprivation of liberty."⁵⁰ There should therefore be some basis, one that does not discriminate based on disability, underlying the deprivation of liberty. For states that, like Peru, have ratified both the CRPD and ICCPR, Article 14 should be applied together with the safeguards against detention in the ICCPR, under the doctrine that the combined effect of any treaties or domestic norms should be interpreted so as to offer the greatest protection to the individual.⁵¹ Additionally, Article 14, particularly when read in combination with Article 19 of the CRPD (the right to live in the community), provides a strong basis for the end of forced institutionalization on the grounds of disability.⁵²

Human Rights Watch urges the Committee to question the government of Peru on the status of Law No. 29737 and other mental health laws, and on efforts to ensure that these laws comply with Articles 12, 14, 19 and 25 of the CRPD.

We hope you will find the comments in this letter useful and would welcome an opportunity to discuss them further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Sincerely,



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⁵⁰ Ibid.

⁵¹ See ICCPR, art. 5(2). The so-called "savings clause" of the ICCPR sets out that the standards in the treaty cannot be used to undermine a higher standard or protection provided elsewhere in law (either international or domestic), and therefore represent only the minimum standard and may be improved.

⁵² CRPD, arts. 14, 19.