



HUMAN  
RIGHTS  
WATCH

# “I Want to be a Citizen Just like Any Other”

Barriers to Political Participation for People with Disabilities in Peru



## **“I Want to be a Citizen Just like Any Other”**

**Barriers to Political Participation for People with Disabilities in Peru**

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## **Barriers to Political Participation for People with Disabilities in Peru**

<b>Summary and Key Recommendations .....</b>	<b>1</b>
<b>Easy to Read Version of Summary and Recommendations.....</b>	<b>18</b>
<b>Methodology.....</b>	<b>27</b>
<b>Acronyms .....</b>	<b>30</b>
<b>I. Background.....</b>	<b>31</b>
Disability in Peru .....	31
National Electoral Framework .....	33
International and Peruvian Law and Policy Relevant to Political Participation of Persons with Disabilities .....	35
<b>II. Findings .....</b>	<b>47</b>
Deprivation of Legal capacity: Judicial Interdiction .....	47
“Invisible Citizens” Denial of the Right to Identity and the Right to a Name .....	51
Stigmatization and Other Consequences of Registering Disabilities and Denying the Right to Vote .....	54
Current Efforts to Address Disenfranchisement .....	56
Failure to Provide Accommodations .....	61
Access to Information about the Election Process, Political Parties or Candidates.....	67
Exclusion from Election Monitoring Obligations .....	69
Barriers to Standing for Office .....	70
Barriers to Participation in Local Decision-Making.....	75
<b>III. Efforts of International Actors and National Civil Society.....</b>	<b>78</b>
International Actors .....	78
Good Practices among Civil Society.....	80
<b>IV. Recommendations.....</b>	<b>85</b>
<b>Acknowledgments.....</b>	<b>89</b>

## Summary and Key Recommendations



**“I Want to be a Citizen  
Just like Any Other”**

Barriers to Political Participation for People with Disabilities in Peru





Peru has no system in place to support people with disabilities in making their own decisions. In the absence of such a mechanism, family members of people with disabilities, like Vanya (second from right) are considering interdiction because they perceive this to be the only way under Peruvian law to protect their property or legal interests.

*The Convention [on the Rights of Persons with Disabilities] says that we have equal recognition as a person before the law. I have the right to vote. I have the right to work. It's not someone else's decision.*

MARIA ALEJANDRA VILLANUEVA, A YOUNG WOMAN WITH DOWN SYNDROME,  
PERUVIAN ASSOCIATION OF PEOPLE WITH DOWN SYNDROME, JANUARY 2012

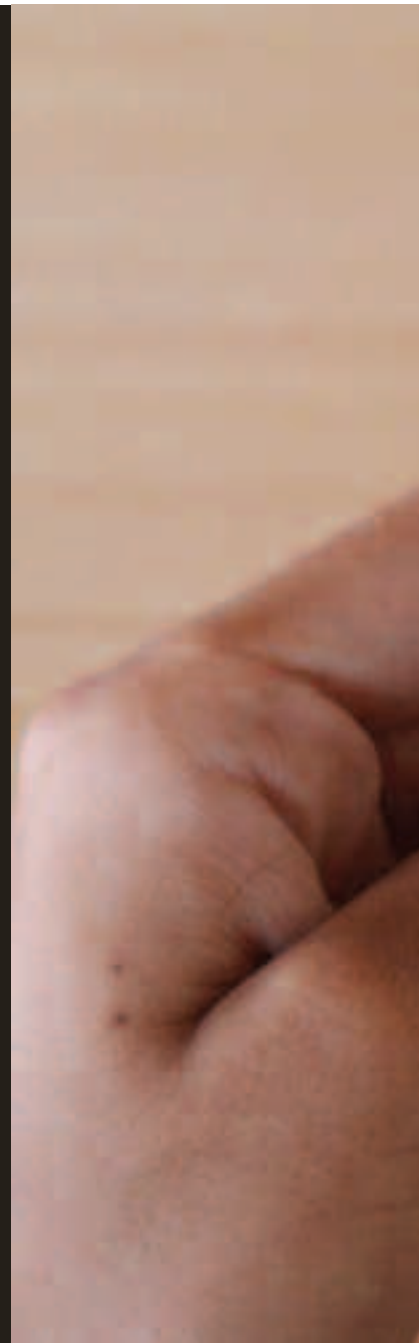
**Peru was among the first countries in the world to become a party to the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. This step signified its commitment to ensure equal rights for all persons with disabilities, including the right to political participation, which encompasses the right to vote, stand for office, and participate in decisions about public affairs.**

Peru has inscribed disability rights protections in a wide range of domestic laws and public policies. Peru's national disability law, enacted in 1999, establishes a national council for persons with disabilities, charged with formulating public policies regarding persons with disabilities. The 1999 law also requires the Public Ombudsman to appoint 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. Congress, government agencies, and civil society have been engaged in policy and legal reforms to ensure that national laws conform to the

CRPD, including on the right to political participation of people with disabilities, and for dedicated budgets to advance such reforms.

However, despite ratifying the CRPD and having many progressive legal provisions on disability rights, other laws and policies still in place in Peru mean that people with disabilities, particularly those with intellectual or psychosocial disabilities, may be prevented from exercising fundamental legal rights including the right to vote.

This report documents legal, physical, communication and attitudinal barriers experienced by people with different disabilities in exercising their right to political participation







just like others in society. It also examines how restrictions on legal capacity impact the ability of people with intellectual and psychosocial disabilities in particular to enjoy a range of rights, including the right to own or inherit property, be employed or legally represent their children.

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 three regions in Peru (Lima, Cusco and Puno). These regions were chosen because of their geographic and demographic diversity (including people from

A national identity card, shown here, is required for voting as well as for financial matters, such as opening a bank account. Human Rights Watch interviewed people with disabilities who have been unable to obtain these cards or have cards marked with the phrase “mentally disabled” and do not designate a polling station.

rural or indigenous communities) and because there are active organizations working with persons with disabilities that offered to facilitate interviews with people with disabilities.



Maria S., the mother of Javier, a 22-year old man with a mild intellectual disability, told us about her son's experience at the bank, when they asked him for his identity card. "They check for the voting number and the sticker. When there is no sticker, it's like they ignore them, their capacity as an adult, as a person."

Human Rights Watch spoke with several people with disabilities who had been interdicted or were at risk of interdiction, a legal process provided for in Peru's Civil Code by which a judge declares a person either absolutely or partially incompetent to take care of one's self and property and imposes another person as guardian to act on their behalf, in effect suspending their civil rights.

Peru has no system in place to support people with disabilities in making their own decisions. In the absence of such a mechanism, family members of people with disabilities sought interdiction because they perceived this to be the only way under Peruvian law to protect their property or legal interests, including their right to pension or social security benefits.



Marcelino, the father of three young men with intellectual disabilities, shows his sons' identity cards, all of which are marked with the phrase "mentally disabled".

The process of interdiction provided for in the Peruvian Civil Code is incompatible with the government's obligations under 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' (OAS) Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities has called on states parties to ensure the recognition of legal capacity of all persons, including all persons with disabilities, for example, by replacing interdiction and related practices with supported decision-making. The CRPD Committee, which monitors implementation of the treaty, has further called on the Peruvian government to "abolish the practice of judicial interdiction."<sup>1</sup>





(above) Members of FEDEPRODDIS gathered in the center of Cusco city after a demonstration on the rights of persons with disabilities.

(right) Aquiles Delagado Cosio, president of FEDEPRODDIS, which has worked with local disabled persons' organizations throughout the region to support their engagement in participatory budgeting processes.

People with disabilities in Peru also face challenges related to identity cards, an important document for all citizens in Peru. The possession of a national identity card with proof of or, absent such proof, dispensation from voting is essential for an individual to complete civil, commercial, administrative, and judicial transactions. Without such a card, Peruvians face obstacles in practically all spheres of life: travel, employment, owning or inheriting property, opening a bank account, accessing the healthcare system, getting

<sup>1</sup> UN Committee on the Rights of Persons with Disabilities, "Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Peru," CRPD/C/PER/CO/1, April 20, 2012, paras. 25.





Claudia (left), a 24-year old woman with Down Syndrome, with her mother Gina. Claudia voted in the 2010 and 2011 municipal and presidential elections. If she were to be judicially interdicted, a process which would declare her legally incapable and appoint her a legal guardian, she would lose her right to vote under Peruvian law.









Javier Diez Canseco is among five parliamentarians with disabilities in the national Congress.



Wilfredo Guzman, president of CONADIS, the national disability council, ran for Congress in 2011.



Susana Stiglich, an advocate for the deaf community, told Human Rights Watch that communication barriers limit deaf persons' opportunities to stand for election: "I think few deaf people want to run for office because there are many limitations."



In October, 2011, members of SENSE International Peru, an NGO that works with people who are deafblind, marched to the municipal government office in San Borja, Peru to demand their rights. This was the first time that members of the deafblind community had been engaged in political advocacy.

married, or legally representing their children. They also have difficulty accessing government social security benefits.

The National Registry for Identification and Civil Status (Registro Nacional de Identificación y Estado Civil, or RENIEC, one of three independent institutions constitutionally mandated with coordinating and conducting elections) 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 invisible as citizens. In fact, some people with disabilities who arrived in institutions without

identity cards have for years been identified with the initials "N.N." (no name); it falls to hospital staff to decide to give them names. In November 2011 RENIEC established a government working group to address disenfranchisement linked to undocumented status, and also launched a campaign to provide identity cards with voting assignments for people living in institutions. An identity card with a voting assignment signifies that the holder is eligible to vote.

By law, people with disabilities can choose whether to include information about their disability on their identity card. Many people with disabilities told Human Rights Watch that they preferred not to include this information, as doing so may subject them to discrimination based on their disabilities. However, this choice has not always been respected. Our research documented several cases in which RENIEC employees included information about a person's disability without the person's authorization, and even in some cases against the explicit wishes of the person or their family members.

RENIEC's civil registry includes information about disability, regardless of whether it appears on the identity card, as well





Maria Alessandra (left), a 21-year old woman with mild intellectual disability, and her mother Lourdes. Maria Alessandra was one of over 23,000 people with disabilities in Peru who were excluded from the voter registry for the 2010-2011 municipal and presidential elections under a former government policy.





Irma Quispe Meseco, founder, Association of People with Disabilities, Chinchero District, Cusco said that in rural areas like hers, some people with disabilities could not vote because they had no identity documents, notwithstanding government efforts to address lack of documentation for people with disabilities.



Juan Manuel, pictured here, lived in an institution for 17 years, but now lives in the community, with support from an organization called HANOPREM. While in an institution he was unable to exercise his right to vote.

as information related to voting (restrictions on voting and compliance with voting obligations). There are legitimate reasons to collect information about disability, but of concern is the fact that RENIEC's civil registry is available to private institutions and government, and they use it as a basis to decide a person's competence to make legal and financial decisions, such as opening a bank account or getting married.

People with intellectual or psychosocial disabilities interviewed by Human Rights Watch told us that they could not cash checks or make basic decisions such as distributing property to their children because of the designation on their card that they had not voted or could not vote. They also said that the phrase "mental disability" on their identity card made them a target of ridicule by friends and people in the community.

Until October 2011 the Peruvian authorities systematically excluded over 23,000 persons with intellectual or psychosocial disabilities from the voter registry. Based on a RENIEC policy in force between 2001 and October 2011, people with intellectual or psychosocial disabilities were either unable to obtain a national identity card that is required for voting, or were issued with identity cards that labeled

them as persons who were not entitled to vote or take other legal, financial, and even personal decisions.

For example, in 2009, Maria Ramos, president of ASUMEN (an organization of users of mental health services), went to RENIEC in Lima to renew her identity card. As a person with a disability, Ramos was entitled by law to a free identity card (normally there is a fee of 20 soles, about US\$8), and therefore presented a certificate stating that she was schizophrenic-paranoid. When her ID card was ready, a RENIEC employee informed her that she was not considered competent to collect the card and, under the law, only a guardian or someone else could pick up the card. "I've never had a tutor or guardian. I've been independent all of my life," she told Human Rights Watch.

One year later Ramos discovered an additional cost of disclosing her disability to RENIEC. During the 2010 municipal election, her name was no longer on the voter registry. At the polling station, "they told me that schizophrenics don't have the right to vote." After the election, she went to the RENIEC office to be put back on the electoral registry, but was told that her name was excluded because of her disability. "[The RENIEC employee] told me, 'Your type cannot vote.'"





FEDDIP, an NGO that works with marginalized people with disabilities in Puno region, aims to strengthen awareness and implementation of the Disability Rights Convention.

In November 2010, after years of pressure from disability organizations and interventions by the Ombudsman's office, RENIEC acknowledged that the policy of excluding people with certain disabilities from the voter registry was wrong and hastily invited people with disabilities to re-register. However, due to insufficient time to register and poor communication, fewer than 60 people with disabilities were added back to the registry before the 2011 presidential elections. As a result, thousands of persons with disabilities were unable to vote in the national elections in April and June 2011. In October 2011 RENIEC issued a resolution to nullify its policy and pledged to work with relevant government agencies to promptly address this situation.

While current RENIEC policies and initiatives go a long way in remedying the disenfranchisement of people with disabilities who have not been interdicted, a number of barriers to political participation still need to be addressed to ensure the right to political participation for people with all types of disabilities.

For example, Peru's election law requires that voting facilities be made accessible to facilitate voting for all people with disabilities. However, no specific measures have been developed for people with psychosocial or intellectual

disabilities. As a result, government officials, nongovernmental organizations (NGOs), and citizens who administer or monitor elections have little guidance about these voters' entitlement to accommodations or practical experience about how to provide them.

For persons with physical and sensory disabilities, physical inaccessibility of polling stations, limited availability of appropriate accommodations such as Braille ballots, and lack of accessible materials on the election process continue to be problems.

In the April 2011 elections, 13 people with disabilities, including three women, and from seven (of thirteen) political parties, stood for election to Congress. Five of them won, all of them men with physical disabilities, and three of these five men were re-elected. But people with disabilities still face obstacles in joining political parties and participating on an equal basis with others in these organizations. Access to mass media—television, radio, print—and physical access to events are critical to campaigning for office. According to local disability advocates, many structures for community use are not accessible; and candidates with disabilities for example did not necessarily enjoy equal access to the media at public events during the 2010 and 2011 campaign seasons.

Peru's disability law requires local and regional governments to promote the political participation of people with disabilities, including by creating regional and municipal agencies designated to mainstream disability issues and promote and facilitate participation of people with disabilities



in the conduct of public affairs. However, many municipalities and regions have not established such offices, or have not devoted financial or other resources to them.

While international NGOs, donors and United Nations (UN) agencies are active in the area of good governance, civic engagement and democracy building in Peru, they have yet to include people with disabilities as part of their analysis or as a focus of their work.

In 2011 Peru launched a series of law reform projects to align its domestic laws and policies with the CRPD, including its obligations to ensure that people with disabilities can participate in political life on an equal basis with other citizens.

But how to ensure that people with disabilities are able to fully enjoy their rights to political participation without discrimination remains a challenge. The government, together with disabled persons' organizations (DPOs), needs to develop and implement a system of supported decision-making. More broadly, relevant ministries and government agencies should systematically engage disabled persons' organizations and persons with disabilities in decision-making and legal reform processes.

An unknown number of persons with disabilities remain without identity cards, and are effectively invisible as citizens. This is particularly true for those living in psychiatric hospitals, like the women in this ward in Hospital Hermilio Valdizan, who in a number of cases were simply identified with the initials "N.N." (no name) until hospital staff decided to name them.

The Peruvian parliament should amend the Civil Code to reflect the international legal standard that all people with disabilities should have equal legal capacity as other citizens, in order to meet its obligations under the CRPD and to comply with the OAS directive and recommendations from the CRPD Committee.

The government of Peru also needs to ensure that voting infrastructure and processes are accessible for people with diverse disabilities and that all those involved in running and managing elections have adequate training to facilitate their right to political participation on an equal basis as others. Failure to do so effectively denies people with disabilities their rights and citizenship. As one young woman with Down Syndrome whose name was excluded from the voter registry told Human Rights Watch, "I want to be a citizen just like any other."

# KEY RECOMMENDATIONS

## TO THE GOVERNMENT OF PERU

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- **Comprehensively review all domestic legislation and make amendments to fully comply with the CRPD, including by:**
  - **revising the definition of disability in the General Law on Persons with Disabilities, Law No. 27050.**
  - **fundamentally reforming the law on legal capacity to create a system in which all people with disabilities are supported in making decisions rather than deprived of the ability to exercise their rights, including by amending articles 43 and 44 of the Civil Code so that judicial interdiction resulting in deprivation of legal capacity for persons with disabilities cannot take place on the basis of a disability.**
- **Take urgent measures to ensure that the legal system does not permit approval of new cases of interdiction based on disability.**
- **Take measures to ensure all buildings open to the public and used as voting stations or public meeting spaces are universally accessible.**
- **Ensure that training for election officials, election administrators, police, judges, lawyers and political party leaders includes information and education about the rights and needs of persons with disabilities.**
- **Actively involve people with disabilities in training election officials, election administrators, police, and political party leaders on the political participation rights of people with disabilities.**
- **Disseminate accessible information regarding elections, political party platforms, and participation in political life (including in Braille, sign language, and easy-to-read formats).**
- **Implement public awareness campaigns about the rights of persons with disabilities and ensure that people with disabilities and their family members know their rights including the right to an unencumbered national identity card.**
- **Consult with disabled persons' organizations, persons with disabilities, and families of persons with disabilities to better understand and support their needs with respect to their right to political participation.**

## **Easy to Read Version of Summary and Recommendations**

### **How people with disabilities take part in politics**

#### **A report from Peru**



# 1. Introduction

This is a report about people with disabilities who live in a country called Peru.

The report says how people with disabilities in Peru take part in politics.

This report was done by 'Human Rights Watch.'

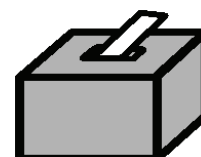
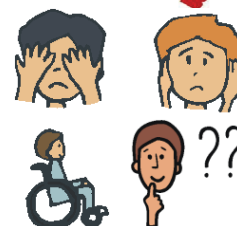
'Human Rights Watch' is a group of people who check if people in different countries can use their rights.

It is important for people with disabilities to take part in politics.

When people with disabilities take part in politics, they can have a say in the way their country is run.

People take part in politics in different ways:

- They can vote in elections.  
This means they can choose who they want to run their country, region or city.
- They can stand for election.  
This means they become a candidate in elections.
- They can give their opinion on decisions that are important for their country, region or city.





## 2. Rights of people with disabilities in Peru

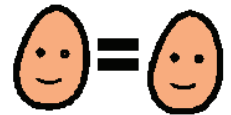
United Nations is a group of countries that work together to make the world a better place.



Almost all countries in the world are part of the United Nations.



The Convention of the United Nations on the rights of persons with disabilities is an agreement between countries.



In this Convention, countries agreed to make sure that people with disabilities have the same rights as anyone else, for example by making fair laws and decisions.

Peru was one of the first countries that agreed to the Convention.

This means Peru agreed to make sure that people with disabilities have the same rights as others.



Peru already made some laws and decisions to make things better for people with disabilities.



For example:

- There is a national council for persons with disabilities. The Council advises government on how to make things better for people with disabilities.
- There is a person that helps people with disabilities to get their rights. This person is called 'ombudsman.'



However, there are still many laws in Peru that stop people with disabilities from having all of their rights.

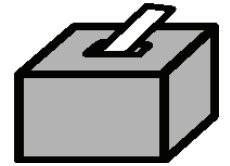


This is particularly true for people with intellectual disabilities and mental health problems.

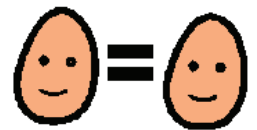


### 3. The right to vote

When people vote in elections, they can choose who will run your country, region or city.



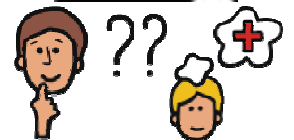
The Convention says that people with disabilities have the same right to vote as anyone else.



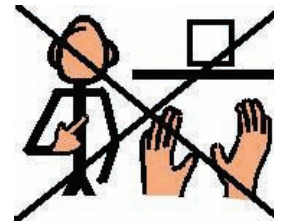
In Peru, many people with disabilities do not vote. There are different reasons why people with disabilities do not vote.



**Many people with intellectual disabilities or mental health problems cannot vote.**

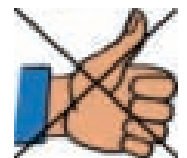


This is because they are not allowed to make important decisions by themselves. Another person called a 'guardian' makes decisions for them.



People who have a guardian lose many rights. For example, they cannot

- get married,
- work,
- rent a house, or
- vote.



This is against the Convention!  
Everyone must be able to make his or her own decisions.  
Everyone must have the right to vote.

## **Some people with disabilities do not have identity cards.**

Many people with disabilities who live in institutions or in the countryside still do not have an identity card. Without the identity card, they cannot vote.



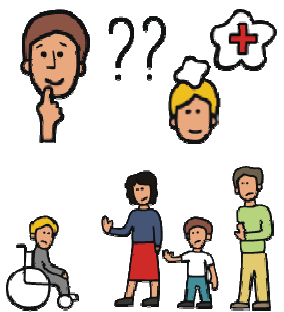
## **Some people with disabilities are not in the voter registry.**

Voter registry is a list all the people who can vote.

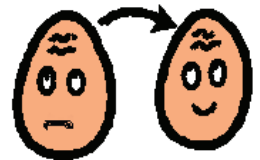
In Peru, people with intellectual disabilities and mental health problems were erased from the voter registry.

This is because:

- They do not have an identity card.
- They have an identity card which says they cannot vote.



People who organize the voter registry now admit that erasing people with disabilities from the voter register is wrong.

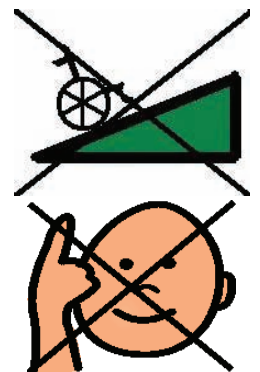


People with intellectual disabilities and mental health problems are allowed to vote and should be on the voter registry.

People who organize the voter registry in Peru promised to get things right.

## **People with disabilities may have problems when they want to take part in elections.**

People with disabilities often find it hard to take part in elections.



For example:

- The polling stations are hard to find and enter.
- Information about elections and voting is difficult to read and understand.
- It is difficult to fill in the ballot paper.



The law in Peru says that voting must be accessible for people with disabilities.



But people who organize elections know little about helping a person with disability to vote.

There is also no help for people with intellectual disabilities and mental health problems who want to vote.



#### **4. The right to be a candidate in elections**

People with disabilities in Peru have the right to stand for election.

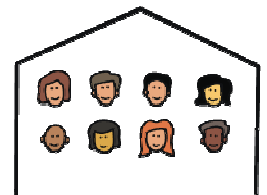
This means they can be candidates in elections.



But it is often hard for people with disabilities to be a candidate.

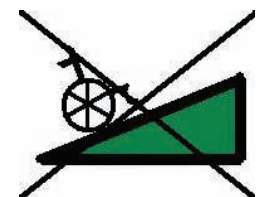
For example:

- People with disabilities find it difficult to join a political party.

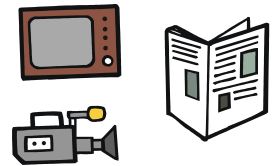


A political party is a group of people who share the same ideas about how the country should be run. Most candidates in elections are part of a political party.

- Places where meetings take place are hard to find and enter.



For example, if there is no lift or ramp and a person in the wheelchair cannot get to the meeting room.



- It is often difficult for people with disabilities to work with media such as television, radio or newspapers.

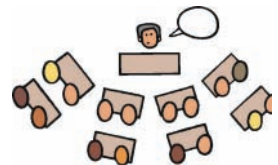
People with disabilities often find it hard to find out what is being said about elections in the media.



The last elections in Peru were in 2011.  
In these elections, only 13 candidates had disabilities.



5 candidates with disabilities won.  
This means that 5 candidates with disabilities got enough votes and became members of Congress.



Congress is the parliament of Peru.  
The Congress agrees the laws of Peru.



Peru made some laws to have more people with disabilities taking part in politics.

But much more needs to be done.

According to the law, city councils and regional governments must have special offices called agencies.

The role of these agencies is to make sure that more people with disabilities take part in the way their city or region is run.



In reality, only few cities and regions have such agencies.



Many countries and organizations help Peru to improve the way the country is run.



These countries and organizations should also help to make sure that people with disabilities can take part in politics as anyone else.

## 5. What needs to be done

‘Human Rights Watch’ has some ideas on how to make sure people with disabilities can use their right to take part in politics just as anyone else.



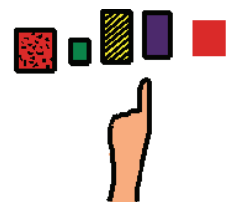
‘Human Rights Watch’ says that the government of Peru should do the following:



- Change the laws as agreed in the Convention of the United Nations on the rights of persons with disabilities.
- Make sure that people with disabilities can make their own decisions.



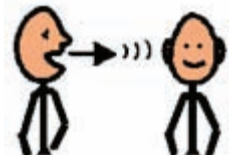
First, Peru should change the law so that all people with disabilities can make their own decisions.



The government should make sure that people with disabilities can get help if they need it to make their own decisions.



The government should talk to people with disabilities and their organizations to find the best way of how to do this.



- Keep track of how many people with disabilities live in Peru and what their needs are.

This will help to protect their rights.

- Make sure that public places and buildings are easy to find and enter for all.
- Make sure that people who organize elections, policeman, judges, and politicians know about the rights and needs of people with disabilities.

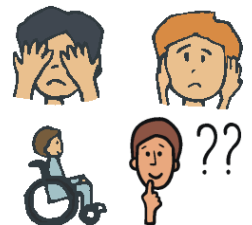
Give training to people organizing elections on how to help people with disabilities during elections.

Involve people with disabilities in this training.

- Make information about elections easy to read and understand for all, including the blind, the deaf and people with intellectual disabilities.
- Make sure everyone knows about the rights of people with disabilities.

Make sure that people with disabilities and their families know about their rights.

- Talk to people with disabilities, their families and organizations about the help they need to take part in politics.



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## Methodology

In January 2008 Peru was one of the first 10 countries in the world to adopt the Convention on the Rights of Persons with Disabilities, thus demonstrating its commitment to ensure the rights of persons with disabilities. Yet two years after adopting the CRPD, over 23,000 people with intellectual and psychosocial disabilities<sup>2</sup> were denied the right to vote in local and national elections because they were considered legally incompetent to do so.

Human Rights Watch chose Peru as the subject of this report because of the policy in place until October 2011 that disenfranchised people with intellectual or psychosocial disabilities, and because its current efforts to reform domestic legislation and policy to conform with the CRPD help illustrate challenges of guaranteeing equal rights to political participation and legal capacity for persons with disabilities. Disabled persons' organizations and disability experts in Peru also identified this issue as an opportunity for domestic change and for Peru to serve as a model of good practice on addressing these same challenges faced by other countries in the region and globally.

This report focuses on the legal, physical, communication and attitudinal barriers experienced by people with different disabilities in exercising their right to political participation just like others in society. It documents how restrictions on legal capacity limit the ability of people with intellectual and psychosocial disabilities in particular to enjoy a range of rights, including the right to own or inherit property, be employed or legally represent their children. It is based on research conducted between April 2011 and January 2012, including two field visits by Human Rights Watch researchers to Peru in July 2011 and October-November 2011. Field research was conducted primarily in Lima and in Cusco and Puno regions. We chose these locations because of their geographic and demographic diversity (including people from rural and indigenous communities) and because there are active organizations working with persons with disabilities that offered to facilitate interviews with people with disabilities.

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<sup>2</sup> In this report, mental health problems such as depression, bipolar disorder, and schizophrenia are referred to as “psychosocial disabilities”, a term that reflects the interaction between psychological differences and social/cultural limits for behavior as well as the stigma that the society attaches to persons with mental impairments. World Network of Users and Survivors of Psychiatry, Manual on Implementation of the Convention on the Rights of Persons with Disabilities, p. 9 <http://www.chrusp.org/home/resources> (accessed April 29, 2012).



During four weeks in Peru, two Human Rights Watch researchers conducted more than 100 in-person and telephone interviews with a wide variety of stakeholders, including 65 persons with disabilities or their relatives, representatives of disabled persons' organizations, legal experts, parliamentarians, and government officials.

All interviews were facilitated by local disabled persons' organizations, nongovernmental organizations or disability advocates. In all cases, Human Rights Watch conducted interviews with the individual with a disability and sought their first-hand experiences on the right to political participation. Twenty-nine people with disabilities were interviewed together with parents or family members. In these cases, the individuals had disabilities that impeded their ability to participate comfortably in an interview or had difficulties communicating or remembering details of their experiences.

The range of disabilities among individuals we interviewed included physical, sensory (blind, deaf, deafblind), intellectual and psychosocial disabilities. Some individuals had multiple disabilities.

In addition, Human Rights Watch interviewed nine local and national government officials, including the then Minister for Women and Social Development,<sup>3</sup> and key officials in the National Council for the Integration of People with Disabilities (CONADIS), National Office of Election Processes (ONPE), National Registry for Identification and Civil Status, and the Public Ombudsman's office, and three members of parliament. Thirty-one representatives of disabled persons' organizations, local and international NGOs, donors and United Nations agencies were also interviewed.

Interviews were semi-structured and covered a range of topics related to political participation. Before each interview we informed interviewees of its purpose, the kinds of issues that would be covered, and asked whether they wanted to participate. We informed them that they could discontinue the interview at any time or decline to answer any specific questions without consequences. No incentives were offered or provided to persons interviewed. Individuals were asked if they would like their identity to be kept confidential, but all interviewees quoted in this report chose to have their real names used rather than pseudonyms.

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<sup>3</sup> The Ministry is now called the Ministry of Women and Vulnerable Groups.

Persons with disabilities and their families in the report, with very few exceptions, are identified only by their first names, and in cases where two or more persons share the same first name, an initial is placed after the first name.

Interviews were conducted by Human Rights Watch researchers in English, Spanish, and Quechua with translation as needed.

One challenge during the research was developing a sense of trust with people with intellectual or psychosocial disabilities to get their full testimonies. This was particularly difficult in cases where individuals had difficulty communicating or had limited understanding of their environment and daily life events. To address this, Human Rights Watch worked closely with local disabled persons' organizations to build trust with people we interviewed. We also consulted with local and international disability experts on good practices for interviewing people with intellectual or psychosocial disabilities.

Another limitation of the research was the lack of available data on people with disabilities, a problem that the government of Peru acknowledged in its report to the CRPD Committee in July 2010 and which the government said it is working to address.

Human Rights Watch also consulted more broadly with international disability rights experts at various stages of the research and writing. We also reviewed a number of official documents from the Peruvian government, and relevant reports from multilateral and bilateral donors, UN agencies and NGOs.

## **Acronyms**

<b>CONADIS</b>	National Council for the Integration of Persons with Disabilities
<b>CONFENADIP</b>	National Confederation of Disabled People of Peru
<b>DNI</b>	National Identity Document
<b>FEDEPRODDIS</b>	Federation for the Development of Persons with Disabilities (Cusco)
<b>FEDDIP</b>	Federation of Persons with Disabilities Puno
<b>JNE</b>	National Jury of Elections
<b>OAS</b>	Organization of American States
<b>ONPE</b>	National Office of Electoral Processes
<b>RENIEC</b>	National Registry of Identity and Civil Status
<b>UN</b>	United Nations

# I. Background

## Disability in Peru

There are limited data on people with disabilities in Peru, including the actual number of men, women, and children living with disabilities, the type of disability, and their economic situation. The available statistics are diverse and wide-ranging, from 1.3 percent of the population<sup>4</sup> to 8.4 percent<sup>5</sup> to 31.3 percent<sup>6</sup>. The most recent national census from 2007 found that 10.9 percent of the population, representing about three million people, has a disability.<sup>7</sup>

The government itself has acknowledged that the lack of detailed and reliable statistics has impaired its capacity to set priorities for plans to carry out its obligations under national and international law.<sup>8</sup>

As in many countries, there is a close correlation between poverty and disability in Peru.<sup>9</sup> Poverty itself can lead to and aggravate conditions that lead to disability. And, as the government of Peru has recognized, the association of disability with sickness, punishment, and incapacity contributes to discrimination and marginalization of persons with disabilities, limiting their access to employment, education, health services, and

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<sup>4</sup> Instituto Nacional de Estadística y Informática (INEI), "IX Censo Nacional de Población y Vivienda," 1993.

<sup>5</sup> INEI, "Resultas de la Encuesta Nacional Continua," 2006.

<sup>6</sup> Instituto Nacional de Rehabilitación, Instituto Nacional de Estadística y Informática and PanAmerican Health Organization, "Prevalencia de las Deficiencias, Discapacidades y Minusvalías en el Perú," 1993 (31.28 percent of the population has some type of disability, based on 630 households nationwide and clinical evaluation of 2,791 persons).

<sup>7</sup> INEI, "El Censo Nacional de Población y Vivienda," 2007. These data are not comparable, given the diverse methodologies and definitions used among them. This information is not useful for planning purposes, as it focused on number of households, not individuals, and failed to ask specific questions. A 2010 report by the Institute for Democracy and Human Rights at Pontificia Universidad Católica del Perú provides a breakdown of the disability population by disability. See Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP), "Estudio, implementación, y seguimiento del artículo 12 sobre capacidad jurídica de la Convención sobre los Derechos de las Personas con Discapacidad a nivel local," October 15, 2010. A more recent study in 2011, by the World Health Organization and World Bank, suggests that 15 percent of the global population lives with a disability. World Health Organization, "World Report on Disability," 2011, [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf) (accessed January 13, 2011).

<sup>8</sup> See Government of Peru, Implementation of the Convention the Rights of Persons with Disabilities, Initial Reports Submitted by States parties under Article 35 of the Convention, Peru, CRPD/C/PER/1, July 8, 2010, para. 23; Congress of Peru, Report of the Congress of the Republic of Peru: Compliance with the Convention on the Rights of Persons with Disabilities (Informe del Congreso de la República del Perú: Cumplimiento de la Convención Sobre los Derechos de La Persona Discapacidad), undated, pp. 41-42.

<sup>9</sup> According to the World Bank, in 2010, 31.3 percent of the population lived below the national poverty line in 2010. World Bank, World Development Indicators: Peru, at: <http://data.worldbank.org/country/peru> (accessed March 15, 2012).



other basic social goods.<sup>10</sup> Despite constitutional and legal provisions protecting the right to work, persons with disabilities in Peru have disproportionately high rates of unemployment compared to the general population.<sup>11</sup>

During the two decades of internal armed conflict in Peru from 1980-2000, more than 69,000 people were killed or “disappeared,” and thousands acquired physical disabilities and experienced high levels of trauma and related psychosocial problems.<sup>12</sup> The Truth and Reconciliation Commission recommended in 2003 that the government establish free health programs for people who experienced physical or mental health problems as a result of the armed conflict.<sup>13</sup> The national government has also committed to providing comprehensive services to this population.<sup>14</sup>

While there is no internationally accepted legal definition of disability, the Convention on the Rights of Persons with Disabilities states: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>15</sup> Peruvian Law No. 27050 established a legal framework for the protection of persons with disabilities.<sup>16</sup> The law defines a person with a disability as having

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<sup>10</sup> See, e.g., Republic of Peru, Equal Opportunity Plan for Persons with Disabilities 2003-2007 (República del Perú, Plan de Igualdad de Oportunidades Para las Personas con Discapacidad 2003 – 2007), May 2003, p. 16.

<sup>11</sup> Employment statistics, though inconsistent, indicate the widespread exclusion of persons with disabilities from the labor market. Recent reports indicate that between 51.8 percent and 76 percent of persons with disabilities in Peru are unemployed, and people with disabilities are 70 percent more likely to be unemployed than the general population. Unemployment rates are highest among those with “mental” (including learning and comprehension), “communication,” and “speech” disabilities. National Confederation of Persons with Disabilities (CONFENADIP), “Report: Assessment of Peru’s Compliance with its CRPD Obligations” (Confederación Nacional de Personas con Discapacidad del Perú (CONFENADIP), “Informe: Balance del Cumplimiento de las obligaciones del estado peruano de cara a la CDPD,”), 2010, p. 81; Government of Peru, Implementation of the Convention the Rights of Persons with Disabilities, Initial Reports Submitted by States parties under Article 35 of the Convention Peru, CRPD/C/PER/1, July 8, 2010, para. 47.

<sup>12</sup> Ministry of Women and Social Development (Ministerio de la Mujer y Desarrollo Social. MIMDES), “Peace Census 2001-2003, Preliminary Account of Persons Disabled by the Internal Armed Conflict According to the Peace Census 1980-2000” (Censo por la Paz 2001-2003: Relación Preliminar de Personas Discapacitadas por el Conflicto Armado Interno de Acuerdo con el Censo por la Paz 1980-2000), 2005; Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación, CVR*), Final Report: General Conclusions, 2003, paras. 2, 39, 53, 159; *Ibid.*, Comprehensive Plan for Reparations, vol. 9, pp. 165-66.

<sup>13</sup> Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación, CVR*), Final Report: Comprehensive Plan for Reparations, 2003, vol. 9, p. 177.

<sup>14</sup> See Republic of Peru, Equal Opportunity Plan for Persons with Disabilities 2003-2007; Republic of Peru, Equal Opportunity Plan for Persons with Disabilities 2009-2018 (República del Perú, Plan de Igualdad de Oportunidades Para las Personas con Discapacidad 2009-2018), December 2008.

<sup>15</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted on December 13, 2006, G.A. Res 61/106, art. 1, <http://www.un.org/disabilities/convention/conventionfull.shtml>.

<sup>16</sup> General Law on Persons with Disabilities (Ley General de la Persona con Discapacidad), Law N° 27050, 1999, art. 1.

“one or more deficiencies demonstrated by the significant loss of one or more physical, mental or sensory functions, which entails a decrease or absence of the capacity to carry out an activity in a manner considered normal, limiting the person’s ability to carry out a role, function or exercise activities and opportunities to participate equally in society.”<sup>17</sup>

Thus, the national law frames disability as an individual characteristic, and does not acknowledge, as in the CRPD, that disability is an evolving concept that results from the interaction between people with visual, mental, intellectual or hearing impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.<sup>18</sup>

In Peru, as in many countries, people with disabilities experience that others sometimes assume that they are incapable of making decisions, representing themselves or speaking on their own behalf. For example, if a person in a wheelchair is accompanied by another individual, officials and people in the community may address questions concerning him or her to the person accompanying him or her, rather than to the individual with a disability. People with psychosocial or intellectual disabilities are more likely to have this experience, as parents or family members habitually speak or make decisions on their behalf. Respecting the dignity and right to equality of all people with disabilities, and ensuring that everyone with a disability enjoys equal rights to those without a disability requires states to actively challenge this paternalistic approach through awareness raising, and empowering persons with disabilities to represent themselves and make decisions based on free and informed consent. This is what is required of states parties to the Convention on the Rights of Persons with Disabilities.

## National Electoral Framework

The Peruvian electoral system is comprised of three independent entities, established in the Constitution, and charged with coordinating and conducting all elections.<sup>19</sup> The National Jury of Elections (Jurado Nacional de Elecciones, or JNE) monitors the legality of the exercise of suffrage and of electoral processes, ensures compliance with legal norms, and declares candidates elected. The National Office of Electoral Processes (Oficina

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<sup>17</sup> Ibid., art. 2.

<sup>18</sup> CONFENADIP, “Report: Assessment of Peru’s Compliance with its CRPD Obligations,” p. 11.

<sup>19</sup> Political Constitution of Peru, art. 177.

Nacional de Procesos Electorales, or ONPE) organizes elections, and is responsible, among other things, for designing ballots and setting up polling stations. The National Registry of Identification and Civil Status (Registro Nacional de Identificación y Estado Civil, or RENIEC) is responsible for preparing the voting registry, which, once approved by JNE, is provided to ONPE. There is some overlap in functions, particularly with respect to ONPE and JNE in the areas of public education during the electoral process, ensuring fair access to state-supported media by all parties, and monitoring of political parties' budgets.<sup>20</sup>

Peruvian citizens must have a National Identification Document (Documento Nacional de Identificación, or identity card), a unique personal identity card required for all civil, commercial, administrative, and judicial transactions.<sup>21</sup> According to government estimates 129,000 adults are undocumented (have no identity card).<sup>22</sup> Because having an identity card is very important for establishing an individual's legal existence and in turn accessing public and private services, the government in 2004 and 2010 adopted action plans aimed at ensuring that the undocumented are issued with identity cards. People with disabilities are recognized in the action plans as among the main groups who remain undocumented.<sup>23</sup>

Under the Peruvian Constitution, voting is compulsory for all citizens between age 18 and 70.<sup>24</sup> Peruvian citizens are also obliged to perform the duty of "election administrators," officials who are charged with checking identification and validating and counting ballots on election day.<sup>25</sup> Those exempted from serving as election administrators include people

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<sup>20</sup>Organization of American States, "Report of the OAS Electoral Observation Mission on Peru's general elections, First and Second Round, April 10 and June 5, 2011," (Informe de la Misión de Observación Electoral de la OEA Sobre las Elecciones Generales del Perú, Primera y Segunda Vuelta, 10 de abril y 5 de junio de 2011), OEA/Ser.G/CP/doc.4660/11, September 23, 2011, pp. 6-8, [http://www.oas.org/es/sap/docs/deco/informe\\_peru\\_s.pdf](http://www.oas.org/es/sap/docs/deco/informe_peru_s.pdf) (accessed April 10, 2012).

<sup>21</sup> Organic Law of the National Registry for Identification and Civil Status (Ley Orgánica del Registro Nacional de Identificación y Estado Civil), Law N° 26497, 1995, art. 29; Reglamento de Inscripciones del Registro Nacional de Identificación y Estado Civil, Decreto Supremo N° 015-98-PCM, article 84.

<sup>22</sup> RENIEC, National Plan to Address the Problem of Undocumentation, 2011-2015 (Plan Nacional de Atención de la Problemática de la Indocumentación, 2011- 2015), 2010, p. 17.

<sup>23</sup> Ibid., pp. 39-40; see also RENIEC, National Plan of Restitution of Identity, 2005-2009 (Plan Nacional de Restitución de la Identidad, 2005-2009), 2004, pp. 105-107. High rates of undocumented people are also found among communities of indigenous people, people living in conditions of poverty, people affected by political violence, women, children, older people, people deprived of their liberty, and transgender people.

<sup>24</sup> Political Constitution of Peru, art. 31; Organic Elections law (Ley Orgánica de Elecciones), Law No. 26859, 1997, art. 9.

<sup>25</sup> Organic Elections law, arts. 51, 58.

with “obvious or severe physical or mental impairment.”<sup>26</sup> Those seeking to be excused from this obligation must do so in writing.<sup>27</sup>

Citizens who, without excuse, do not fulfill their duty to vote or to administer elections are fined. In 2010 and 2011 fines ranged from 18 to 72 soles (US\$ 6-12) for failure to vote, and 180 soles (about US\$ 60) for failure to meet election administration obligations.<sup>28</sup> A number of people with disabilities and their families, as well as advocates who work closely with them, told Human Rights Watch that they are concerned that financial penalties would be applied if people with disabilities were included in the electoral registry but did not vote.<sup>29</sup> A working group of key stakeholders, including RENIEC, ONPE and JNE, is considering an administrative solution to address this issue.<sup>30</sup> JNE has proposed an amendment to the electoral code to permit all persons with disabilities who do not exercise the right to vote to seek exoneration from fines.<sup>31</sup>

## International and Peruvian Law and Policy Relevant to Political Participation of Persons with Disabilities

Peru ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on January 30, 2008, and the treaty came into force on May 3, 2008.<sup>32</sup> Under

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<sup>26</sup> Ibid., art. 58.

<sup>27</sup> Ibid.

<sup>28</sup> 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 No. 28859, 2006, art. 5.

<sup>29</sup> Human Rights Watch interview with Gregorio, a man with a psychosocial disability, Lima, July 21, 2011; Human Rights Watch interview with Maria R., woman with psychosocial disability, Lima, July 21, 2011; Human Rights Watch interview with Gildo Vila Nuñonca, staff member of SENSE International, Cusco, July 23, 2011; Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman’s office, Lima, July 26, 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 Maria Julia, mother of Marco, a 30-year old man with intellectual disability, Lima, October 22, 2011; Human Rights Watch interview with Susana, 20-year old woman with intellectual disability, with her mother Julia, Lima, October 22, 2011.

<sup>30</sup> Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director of electoral activities, RENIEC, Lima, October 25, 2011.

<sup>31</sup> Human Rights Watch telephone interview with Ana Cristina Neyra Zegarra, lawyer, National Jury of Elections (JNE), January 13, 2012; Proyecto de Código Electoral, November 25, 2011, art. 190; see also Resolución Jefatural 508-2011-JNAC/RENIEC, art. 5 (establishing working group comprised of RENIEC, JNE, ONPE, the Public Ombudsman’s office, the Congressional Commission for Social Inclusion and Persons with Disabilities, and the National Council for Integration of Persons with disabilities to develop administrative solutions to address problems arising from failure to vote).

<sup>32</sup> Peru was among the first 10 states that ratified the CRPD and its additional protocol. Peru signed both instruments on March 30, 2007 and ratified them on January 30, 2008. See [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en). Peru is also party to core regional and international human rights treaties that provide for the protection of basic civil and political rights and



Peruvian law, treaties ratified by the government and in effect internationally form a part of national law.<sup>33</sup> Constitutional rights must be interpreted in conformity with international human rights law, including decisions adopted by international tribunals to which Peru is party.<sup>34</sup>

### *Legal Capacity and Supported Decision-making*

Article 12 of the CRPD requires state parties to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”<sup>35</sup> Legal capacity is the right to make decisions and exercise rights on one’s own behalf. However, Peruvian law considers individuals with certain disabilities, including some sensory and intellectual or psychosocial disabilities as incapable of exercising some rights on their own, and in need of a guardian or caretaker to protect them. Through a process known as interdiction, courts can impose guardianship on individuals with such disabilities, thereby taking away their legal capacity.<sup>36</sup> However, article 12 of the CRPD inverts any presumption that persons with disabilities are unfit to exercise agency, and makes clear that not only can persons with disabilities act in their own best interests but also, when needed, they should be given support to do so.

The CRPD thus replaces the traditional model of substitute decision-making or guardianship with a model of supported decision-making.<sup>37</sup>

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specific guarantees relating to political participation of persons with disabilities. These include the International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 25, ratified by Peru on April 28, 1978; American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, art. 23, ratified by Peru on July 28, 1978; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Peru on September 4, 1990; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, entered into force September 3, 1981, ratified by Peru on September 13, 1982; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Peru on April 28, 1978; Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, ratified by Peru on January 20, 2008; and the Interamerican Convention for the Elimination of all forms of Discrimination against Persons with Disabilities (CEDPD), adopted June 7, 1999, AG/Res. 1608 (XXIX-O/99), A/65 (1999), entered into force September 14, 2001, art. 8, ratified by Peru on July 10, 2001.

<sup>33</sup> Political Constitution of Peru, art. 55.

<sup>34</sup> Constitutional Procedural Code of Peru (Código Procesal Constitucional de Perú), Law N° 28237, Título Preliminar. art V.

<sup>35</sup> CRPD, art. 12(2).

<sup>36</sup> Political Constitution of Peru, art. 33(1); Civil Code, arts. 43, 44, 45, 564-567.

<sup>37</sup> CRPD, art. 12(3).

Most people seek the advice and support of family members, friends or experts when making significant decisions about their lives. As noted by the Public Advocate's Office in Victoria, Australia:

In our society, relying on the advice of others is not seen as an indication that a person lacks the mental capacity to make his or her own decisions. It is therefore argued that the idea of the independent, autonomous decision-maker, at least as far as the process of decision-making is concerned, is a myth and that *interdependent* decision-making is the way in which most of us operate. The amount of support and assistance people seek and receive to make decisions varies, depending on the person's ability, personality and life circumstances and on the particular decision. Some people need more assistance and support than others do.<sup>38</sup>

Supported decision making enables a person with a disability to exercise his or her rights on an equal basis as others.<sup>39</sup> Supported decision-making can be compared to providing reasonable accommodations to a person with disabilities. As defined in article 2 of the CRPD, reasonable accommodation means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”<sup>40</sup> There is no universal standard for reasonable accommodation. While a person with a physical disability may require structural changes such as a ramp to enter a building, reasonable accommodation for a person with intellectual or psychosocial disability may include the help of a family member or friend in making an informed decision, by communicating with them in a mutually understandable way.

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<sup>38</sup> Office of the Public Advocate (Victoria, Australia), “Supported Decision-Making: Background and discussion paper,” November 2009, [http://www.publicadvocate.vic.gov.au/file/file/Research/Discussion/2009/0909\\_Supported\\_Decision\\_Making.pdf](http://www.publicadvocate.vic.gov.au/file/file/Research/Discussion/2009/0909_Supported_Decision_Making.pdf) (accessed February 19, 2012), pp. 3-4. This discussion paper was developed to explore questions and issues related to supported decision-making, to promote discussion of these complex issues, and to consider how supported decision-making should be addressed in a review of laws and policies in the state of Victoria, Australia, including the 1986 Guardian and Administrative Act.

<sup>39</sup> Ibid., pp. 8-10.

<sup>40</sup> CRPD, art. 2.

Supported decision-making may take several forms. According to the United Nations Handbook on the CRPD,

The individual is the decision maker; the support person(s) explain(s) the issues, when necessary, and interpret(s) the signs and preferences of the individual. Even when an individual with a disability requires total support, the support person(s) should enable the individual to exercise his/her legal capacity to the greatest extent possible, according to the wishes of the individual... Paragraph 4 of article 12 calls for safeguards to be put in place to protect against abuse of these support mechanisms.<sup>41</sup>

In the context of the right to political participation, a person with an intellectual disability may need to go over the ballot with someone in advance or become familiar with the election process through a simulation of the steps involved in voting, for example.<sup>42</sup> Regardless, support should be specific to the person and based on their needs.<sup>43</sup> Fundamental to supported decision-making is ensuring that an individual's rights, will, and preferences are respected.

Article 29 protects the rights of people with disabilities to participation in political and public life, including the right to vote and the right to hold public office.<sup>44</sup> The CRPD allows for no exceptions based on disability. According to the Committee on the Rights of People with Disabilities, the expert body that monitors CRPD implementation, disability-based discrimination should be prohibited in all laws, "particularly those governing elections" recommending "urgent adoption of legislative measures to ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and to participate in public life, on an equal basis with others."<sup>45</sup>

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<sup>41</sup> United Nations Department of Economic and Social Affairs, Office of the High Commissioner for Human Rights and Inter-Parliamentary Union, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities* (Geneva: United Nations, 2007) <http://www.ipu.org/PDF/publications/disabilities-e.pdf> (accessed April 8, 2012), pp. 89-90.

<sup>42</sup> Human Rights Watch interview with Liliana Mayo, director, Ann Sullivan Center of Peru, Lima, July 20, 2011; Human Rights Watch telephone interview with Anna MacQuarrie, human rights officer, Inclusion International, January 27, 2012.

<sup>43</sup> Human Rights Watch telephone interview with Anna MacQuarrie, January 27, 2012.

<sup>44</sup> CRPD, art. 29.

<sup>45</sup> UN Committee on the Rights of Persons with Disabilities, "Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Tunisia," CRPD/C/TUN/CO/1, May 13, 2011, paras. 13, 35. It also raised concerns about Spain's restrictions on the right to vote of persons with intellectual or psychosocial disabilities deprived of legal capacity or placed in an institution, and recommended

The CRPD explains that states must ensure that their “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.”<sup>46</sup> It also requires that states parties adopt “appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”<sup>47</sup>

### *Rights to Political Participation and Legal Capacity*

Under Peru’s Constitution, electoral participation is compulsory for all citizens between age 18 and age 70.<sup>48</sup> Article 7 of the Constitution recognizes the rights of persons with disabilities: “Any individual unable to take care of himself due to a physical or mental disability has the right to respect for his dignity and to a legal protection, care, rehabilitation and security system.”<sup>49</sup> The exercise of citizenship in Peru is intimately connected to political participation. Article 30 of the Constitution defines citizenship as a right of every Peruvian over the age of 18, and the exercise of citizenship requires Peruvians to register to vote.<sup>50</sup> Under article 31 of the Constitution, all citizens “have the right to be elected and to freely elect their representatives.”<sup>51</sup> The right to vote is guaranteed to every citizen “in enjoyment of his civil capacity,” and “any act that prohibits or abridges citizenship from the exercise of rights shall be null and punishable.”<sup>52</sup> The

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“that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others,” and requested that Spain amend the law which currently allows the denial of the right to vote based on individualized decisions taken by a judge, so as to ensure that all persons with disabilities have the right to vote. CRPD, “Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Spain,” October 19, 2011, paras. 47, 48. See also Human Rights Committee, General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 12 (to protect political participation rights under the ICCPR, “[p]ositive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”).

<sup>46</sup> CRPD, art. 29(a)(i).

<sup>47</sup> Ibid., art. 9(1).

<sup>48</sup> Political Constitution of Peru, art. 31; Organic Elections Law, art. 9.

<sup>49</sup> Political Constitution of Peru, art. 7.

<sup>50</sup> Ibid., art. 30.

<sup>51</sup> Ibid., art. 31.

<sup>52</sup> Ibid., art. 31.



Peruvian Constitution prohibits any suspension of the right to political participation without a judicial decision.<sup>53</sup>

Under Peru's General Law on People 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.<sup>54</sup> However, the Constitution permits the suspension of the right to political participation in cases of judicial interdiction.<sup>55</sup> Under Peru's Civil Code, people with certain disabilities may be subject to interdiction, and thus denied the right 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."<sup>56</sup> People with intellectual disabilities and "those who suffer mental deterioration that prevents them from expressing their free will" are considered "relatively incapable."<sup>57</sup> Under article 45 of the Civil Code, "legal representatives of the incapable exercise their civil rights."<sup>58</sup>

Two common objections to universal political participation of people with disabilities—in particular, people with psychosocial or intellectual disabilities—are that they lack the mental capacity necessary to vote and that they are vulnerable to manipulation or fraud.

There is not, and cannot be, a clear and objective measure of knowledge related to participating in an electoral process.<sup>59</sup> Already in any election, people vote for a range of reasons, including preference for a candidate's agenda, their image or based on class, religion, or ethnic loyalties. Some publicly state their intention to vote for candidates randomly or to write in fictional candidates. The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg stated in 2011: "[The CRPD] leaves no room for procedures in which judges or medical practitioners would assess the voting competence

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<sup>53</sup> Ibid., art. 33.

<sup>54</sup> General Law on Persons with Disabilities, (Ley General de la Persona con Discapacidad), Law N° 27050, 1999, article 3.

<sup>55</sup> Political Constitution of Peru, 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).

<sup>56</sup> 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."

<sup>57</sup> Ibid., art. 44.

<sup>58</sup> Ibid., art. 45.

<sup>59</sup> The UN Human Rights Committee has concluded that it is unreasonable to restrict the right to vote on the grounds of literacy or educational attainment. Human Rights Committee, General Comment No. 25, para. 10.

of a person and then give a green light - or not.”<sup>60</sup> He concluded that any competency test that does not apply to all citizens is clearly discriminatory.

The second objection, often raised regarding people with intellectual disabilities, is based on the belief that they are eager to please and thus highly susceptible to outside influence. However, the experiences in Austria, the Netherlands and Sweden—all of which have taken steps to protect the rights of persons with intellectual and psychosocial disabilities under their constitutions—have shown that any fears that this approach would cause any real problems were unfounded.<sup>61</sup> To address concerns of manipulation, the convention requires states to provide safeguards to prevent abuse and to ensure that measures to support the exercise of legal capacity respect the person’s rights, will, and preferences; are free of conflict of interest and undue influence; are proportional and tailored to the decision in question and apply for the shortest time possible; and are subject to regular review.<sup>62</sup>

There are many ways to support decision-making and in turn, make the electoral process more accessible for people with disabilities. These include making available information about the voting process and candidates in accessible formats (for example, using simple language, visual aids, or providing oral instructions), and training those in charge of supervising elections at the local level to provide such information during the voting process, to ensure that persons with disabilities can make informed decisions.<sup>63</sup> Anti-fraud measures should be introduced to prevent voter manipulation.

In Peru, as in many countries, self advocates play an important role in raising awareness among people with disabilities, election officials, political parties, and government

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<sup>60</sup> Statement by Thomas Hammarberg, “Persons with disabilities must not be denied the right to vote,” March 22, 2011, [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=127](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=127) (accessed February 20, 2012).

<sup>61</sup> European Union Agency for Fundamental Rights, “The Right to Political Participation for People with Mental Health Problems and Persons with Intellectual Disabilities,” October 2010, [http://fra.europa.eu/fraWebsite/attachments/Report-vote-disability\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/Report-vote-disability_EN.pdf) (accessed on February 20, 2012).

<sup>62</sup> CRPD, art. 12(4).

<sup>63</sup> The United Kingdom, Ireland, Canada, New Zealand, and Austria are examples of countries that have no restrictions on voting rights based on capacity. For examples of some measures taken to support political participation for people with intellectual and psychosocial disabilities, see European Union Agency for Fundamental Rights, “The right to political participation of persons with mental health problems and persons with intellectual disabilities”; Electoral Commission of New Zealand, “Who Can Vote,” <http://www.elections.org.nz/maori/ntkm-democracy/who-can-vote.html> (accessed April 8, 2012); Council of Europe, “Who Gets to Decide: Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities,” CommDH/IssuePaper (2012)2, February 20, 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1908555> (accessed April 8, 2012).

<sup>63</sup> Ibid.

representatives of the importance of political participation by people with disabilities, and of the types of accommodations that can facilitate their political participation.

RENIEC policies between 2001 and 2011 excluded people with intellectual and psychosocial disabilities from the voter registry.<sup>64</sup> 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 “must contain the legal restrictions and observations declared.”<sup>65</sup> 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.<sup>66</sup>

In December 2004 the Public Ombudsman advised RENIEC that its policy violated Peru’s Constitutional and legal protections against discrimination, because only a judge, not RENIEC, can limit the right to vote.<sup>67</sup> And in September 2010 the Ombudsman’s office opened investigations into the issue.

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,<sup>68</sup> but the Ombudsman’s office concluded that this exclusion was illegal and asked 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.<sup>69</sup>

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<sup>64</sup> The Public Ombudsman’s office had documented such cases at least since 1999, and advised RENIEC that denial of voting rights to people with 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. See Defensoría del Pueblo, Resolución Defensorial No. 28-2004-DP, December 9, 2004.

<sup>65</sup> RENIEC, Resolución Jefatural No. 035-2001-JEF/RENIEC, March 14, 2001.

<sup>66</sup> RENIEC, Informe No. 118-2004-GAJ/RENIEC, February 16, 2004.

<sup>67</sup> Defensoría del Pueblo, Resolución Defensorial No. 28-2004-DP, December 9, 2004.

<sup>68</sup> Human Rights Watch interview with Malena Pineda Ángeles, 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.

<sup>69</sup> Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman’s office, Lima, July 26, 2011; María 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 “not been considered” and should be put back on the registry. RENIEC, Resolución Jefatural 508-2011-JNAC/RENIEC, October 10, 2011.

On December 2, 2010, RENIEC notified the Public Ombudsman that it would permit people with disabilities to re-register.<sup>70</sup> But the voter registry closed on December 11,<sup>71</sup> and with limited time and poor communication about this decision, only fewer than 60 people with disabilities were added back to the registry before the election. As a result, thousands of persons with disabilities were unable to vote in the national elections in April and June 2011.

RENIEC issued a resolution on October 10, 2011, to nullify policies excluding people with certain psychosocial and intellectual disabilities from the electoral rolls. The resolution states that the inclusion of information on disability is voluntary and that RENIEC will 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 ensure prompt resolution of this situation.<sup>72</sup>

RENIEC no longer requires a declaration of assistance from adults with intellectual or psychosocial disabilities in obtaining an identity card.<sup>73</sup> Those in need of assistance, however, have the option of having a third party sign or help them make decisions.<sup>74</sup>

On October 14, 2011, Maria Alejandra Villanueva, a young woman with Down Syndrome who is an active member of the Peruvian Down Syndrome Society, was the first person with a disability to be given a new national identity card with the required voting group assignment. In December 2011 RENIEC launched a national campaign to re-issue identity cards with voting group assignments to all 23,272 people of legal age with psychosocial or intellectual disabilities who were excluded from the electoral registry.<sup>75</sup>

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<sup>70</sup> RENIEC, Oficio N° 4895-2010/GOR/RENIEC, December 2, 2010; Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman's office, Lima, July 26, 2011; see also RENIEC, Memorando Multiple N° 000567-2010/GOR/RENIEC, December 1, 2010.

<sup>71</sup> The voter registry closed on December 11, 2010, 120 days before the April 10, 2011 general elections.

<sup>72</sup> RENIEC, Resolución Jefatural No. 508-2011-JNAC/RENIEC, October 10, 2011.

<sup>73</sup> Human Rights Watch telephone interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2012.

<sup>74</sup> The revised declaration of assistance form includes questions about a person's disability and whether they would like this information to be included on the identity card or in the voter registry. The form, however, does not explicitly state the purpose for including one's personal disability information in the voter registry (ie. If this is for purpose of providing accommodations or some other reason). See RENIEC, Sworn Declaration of Disability and Assistance (Declaración Jurada de Discapacidad y Asistencia) (copy on file with Human Rights Watch).

<sup>75</sup> See "RENIEC gives identity cards to patients at Larco Herrera," (RENIEC entrega DNI a pacientes de Larco Herrera), RENIEC, November 30, 2011, at: <http://www.reniec.gob.pe/portal/detalleNota.htm?nota=527> (accessed April 8, 2012).

### *Identity Cards in Peruvian law*

Article 2 of the Constitution recognizes that every person has the right to his or her identity and to equality before the law.<sup>76</sup> The National Registry for Identification and Civil Status (RENIEC/Registro Nacional de Identificación y Estado Civil) 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.<sup>77</sup> 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.<sup>78</sup>

A person who fails to vote and does not have a valid dispensation may be fined and in addition may face “civil death:” not being allowed to engage in civil, commercial, administrative, and judicial transactions.<sup>79</sup> Public registrars, notaries, and others are subject to criminal sanctions, including fines and potential imprisonment, for failure to require presentation of an identity card with proof of having voted, or proof of dispensation from voting, as proof of identity when such proof is required by law.<sup>80</sup> Lack of an identity card restricts not only the right to vote, but also the ability to do other things like opening a bank account, accessing the healthcare system, getting married, traveling, owning or inheriting property, gaining employment, or signing official documents for one's children. It also affects access to social security benefits.<sup>81</sup>

In 2006 Congress passed legislation that effectively nullified the RENIEC regulation that required proof of having voted or exemption from voting on the identity card 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

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<sup>76</sup> Political Constitution of Peru, art. 2 (1, 2, 21)

<sup>77</sup> 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.

<sup>78</sup> Organic Law of RENIEC art. 29; Reglamento de Inscripciones del RENIEC, arts. 84 and 89.

<sup>79</sup> Organic Law of RENIEC, art. 29.

<sup>80</sup> Organic Elections Law, art. 390(c).

<sup>81</sup> 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.



scheme.<sup>82</sup> This legislation also reduced the fines for unexcused failure to vote.<sup>83</sup> 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.<sup>84</sup> 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.

### *Right to Accommodations*

Peruvian law requires that accommodations be made to facilitate the participation of people with disabilities in electoral processes, including that voting stations be located on the ground floor, that people with disabilities not wait in line to vote and be permitted to bring along a family member or friend to assist with voting, and that blind persons be provided with Braille ballots.<sup>85</sup> ONPE norms require that its personnel and election

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<sup>82</sup> 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).

<sup>83</sup> Ibid., arts. 4, 5.

<sup>84</sup> 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.

<sup>85</sup> Law establishing facilities for voting for persons with disabilities (Ley que establece facilidades para la emisión del voto de las personas con discapacidad), Law N° 29478, 2009; ONPE, Provisions on Preferential Attention to Citizens with Disabilities, Pregnant Women, and Older Adults during Electoral Processes (Disposiciones Sobre la Atención Preferente a Ciudadanos con Discapacidad, Mujeres Embarazadas y Adultos Mayores Durante Procesos Electorales), Resolución Jefatural No. 224-2006-J/ONPE, September 30, 2006; ONPE, Disposiciones sobre el voto rápido, Resolución Jefatural No. 080-2006-J/ONPE, March 31, 2006.

administrators be trained about accommodations, and that its election publicity include information about preferential attention for voters with disabilities.<sup>86</sup>

Peruvian law also specifies that polling stations be located so as to permit people with permanent disabilities who are on the electoral rolls to exercise their right to vote.<sup>87</sup>

By law, polling stations should be located in public buildings, in this order of preference: schools, municipal offices, judicial offices, and public buildings.<sup>88</sup> More generally, all infrastructure intended for community use, whether public or private, must be accessible to people with disabilities.<sup>89</sup> The failure to meet these requirements is punishable by penalties or fines.<sup>90</sup>

ONPE maintains a registry of persons with disabilities to facilitate provision of necessary accommodations. People with disabilities can submit this information on forms provided at ONPE's local offices, at voting stations, and via ONPE's website.<sup>91</sup> During the 2010-2011 elections, 22,000 people were registered, of whom reportedly 12,000 voted.<sup>92</sup>

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<sup>86</sup> ONPE, Disposiciones Sobre la Atención Preferente a Ciudadanos Con Discapacidad, Mujeres Embarazadas y Adultos Mayores Durante Procesos Electorales, September 30, 2006, arts. 5, 6.

<sup>87</sup> Ley que establece facilidades para la emisión del voto de las personas con discapacidad, Ley N° 29478, 2009.

<sup>88</sup> Ibid.

<sup>89</sup> Law that Modifies Article 44 of Law No. 27050, General Law on Persons with Disabilities (Ley que Modifica el Artículo 44 de a Ley No. 27050, Ley General de las Personas con Discapacidad), Ley No. 27639, 2002, art. 1.

<sup>90</sup> Law that Establishes infractions and sanctions for noncompliance with the General Law on Persons with Disabilities and its Regulation (Ley que establece infracciones y sanciones por incumplimiento de la Ley General de la Persona con Discapacidad y Su Reglamento), Law No. 29392, 2009 (authorizing imposition of penalties for violations of laws that protect labor, education and accessibility rights of persons with disabilities).

<sup>91</sup> Resolución Jefatural N° 224-2006-J/ONPE, art. 3.

<sup>92</sup> Peru.com, "Cerca de 12 mil electores con discapacidad emitirán su voto," June 5, 2011, <http://peru.com/actualidad/6482/noticia-cerca-12-mil-electores-discapacidad-emitiran-su-voto> (accessed April 8, 2012); Correo, "Discapacitados, adultos mayores y gestantes votaron sin problemas," June 5, 2011, (accessed April 8, 2012); Noticias Candidatos Peru, "Personas con discapacidad visual utilizarán plantillas Braille para facilitar su voto," April 4, 2011, (accessed April 8, 2012); El Comercio, "Discapacitados contarán con rampas de acceso y cédulas Braille para votar en las próximas elecciones," March 3, 2010, (accessed April 8, 2012); Human Rights Watch telephone interview with Erick Antonio Acuña Pereda, researcher, Instituto de Democracia y Derechos Humanos, Pontificia Universidad Católica del Perú, June 16, 2011.

## II. Findings

While Peru has taken some progressive measures to address the right to political participation for persons with disabilities, the government has not yet reversed some discriminatory laws, policies and practices, and has not committed the necessary resources to implement these guarantees. Based on interviews with more than 100 relevant stakeholders in three regions, including 65 people with disabilities or their family members, this report examines how restrictions on legal capacity impacts the ability of people with intellectual and psychosocial disabilities in particular to enjoy a range of rights, including the right to own or inherit property, be employed or legally represent their children. Human Rights Watch found that hundreds, if not thousands of citizens with disabilities still cannot exercise their right to vote because they are considered legally incompetent to make decisions (through a judicial interdiction process), because of paternalistic attitudes or because they lack the required identity cards.<sup>93</sup>

The report also details the barriers faced by people with different disabilities in other aspects of political participation. Human Rights Watch found that people with disabilities experience certain obstacles that effectively prevent them from standing for election on an equal basis with others. People with disabilities, particularly those with intellectual or psychosocial disabilities, are also not able to engage in other political processes such as election monitoring or providing input into government decision-making mechanisms.

### Deprivation of Legal capacity: Judicial Interdiction

When people are interdicted, they cannot vote.

I have the right to vote.

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<sup>93</sup> 1,113 people who have been interdicted and declared “absolutely incompetent” are registered in RENIEC’s system, but it is unclear from these data how many of these cases are people 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. The government of Peru has acknowledged that data on people with disabilities who have been interdicted is incomplete and that CONADIS considers updating this information a matter of urgency. Government of Peru, List of Questions Complementary to the Oral Report of Peru Regarding the Implementation of the Convention on the Rights of Persons with Disabilities (submitted to the UN Committee on the Rights of Persons with Disabilities in advance of its April 2012 review), undated, pp. 9-10. According to the 2011-2015 national plan to address the problem of undocumented status, 129,000 adults do not have identity documents (documento nacional de identidad, or DNI). People with disabilities are identified as among those having high rates of undocumented status, but the numbers of undocumented persons are not broken down based on disability (or other) status. RENIEC, Plan Nacional de Atención de la Problemática de la Indocumentación, 2011- 2015, pp. 17, 34-44.

I have the right to elect my candidate.  
I have the right to inherit.  
I have the right to study, to health, and to work.  
I am not incompetent, but [interdiction] would declare me to be.  
—Maria Alejandra Villanueva, a young woman with Down Syndrome, Lima,  
January 26, 2012

As discussed earlier, judicial interdiction is the 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 do so in his or her stead. Interdiction deprives a person of legal capacity to exercise his or her civil rights.

The Peruvian legal system provides that the only way to protect the legal rights of people who need assistance with decision-making is to install a representative to act on their behalf.<sup>94</sup> There are no legal mechanisms for supported decision making. Family members of people with disabilities may seek interdiction to protect their adult children or siblings' rights to property or assist them with managing business affairs because there are no alternative legal mechanisms to do so.

Maria Alejandra Villanueva, a leader with the Peruvian Association of People with Down Syndrome, described it as follows: "Interdiction is an abuse of people because you can't vote or make decisions."<sup>95</sup>

Family members of people with disabilities expressed concern that interdiction would limit their adult child's or sibling's rights, but explained that interdiction was their main option to ensure a means of support for their family member, such as an adult child's right to a pension<sup>96</sup> (because the child would be disqualified from eligibility for pension benefits if

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<sup>94</sup> See Civil Code arts. 43, 44, 45, 576.

<sup>95</sup> Human Rights Watch telephone interview with Maria Alejandra Villanueva, January 26, 2012.

<sup>96</sup> Individuals over 18 years of age with physical or mental disabilities 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

older than 18 and not interdicted) or to appoint a guardian to handle property and business matters.<sup>97</sup>

Claudia, a 24-year old woman with Down Syndrome, voted in the 2010 and 2011 municipal and presidential elections. She attends school, and hopes to get a job. Gina, her mother, told Human Rights Watch that she wants Claudia to have access to her pension and to a support person but has not yet decided whether to proceed with the interdiction, because “she will lose her right to have an opinion, to be able to sign [a document]. My lawyer and the judge told me that when the interdiction is complete, it simply invalidates everything.”<sup>98</sup>

The challenge is that RENIEC, the government agency in charge of issuing identity cards required for voting, cannot act against the law and issue voting group assignments to people who are interdicted. As a senior RENIEC official explained:

Our interdiction system is very antiquated. It is black or white: if you are interdicted, you lose your civil rights and have no judicial capacity. You are basically a minor. You are not the subject of rights.<sup>99</sup>

Article 1.2(b) of the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities (Inter-American Convention), to which Peru is a party, states, “If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.”<sup>100</sup>

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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.

<sup>97</sup> Human Rights Watch interview with Gina, Lima, October 23, 2011; Human Rights Watch interview with Vanya, a young woman with Down Syndrome, Lima, October 23, 2011. Congressman Javier Diez Conesco said that families sought to interdict adult children to protect right to orphan's pension and to ensure that there is someone to deal with property and business matters. Once an interdiction process is complete and a person has been assigned a guardian, this decision can be reversed through a judicial process but it is very difficult for the person with disability to initiate this without support. The guardian has to initiate this process. Human Rights Watch interview with Ricardo Zevallos, director, SENSE International, Lima, July 22, 2011.

<sup>98</sup> Human Rights Watch interview with Gina, mother of Claudia, 24-year old woman with Down Syndrome, Lima, October, 23, 2011.

<sup>99</sup> Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director of electoral activities, RENIEC, Lima, October 25, 2011.

<sup>100</sup> Inter-American Convention, art. 1.2(b).



The Organization of American States Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities has found that this clause is not compatible with article 12 of the CRPD. It has therefore directed the OAS General Secretary to take immediate measures to amend article 1.2(b) so that it comports with article 12. The OAS Committee also called on states parties to take urgent action to ensure the recognition of legal capacity of all persons, including all persons with disabilities, for example, by taking immediate measures to replace interdiction and related practices with supported decision-making, and to ensure that no new cases of interdiction are approved.<sup>101</sup>

The CRPD Committee, in its concluding observations on Peru in April 2012, echoed the OAS directive. It also recommended that the government “abolish the practice of judicial interdiction,” and “restore voting rights to all people with disabilities ... including people with disabilities subject to judicial interdiction.”<sup>102</sup>

In order to meet its obligations under the CRPD and to comply with the OAS directive and CRPD Committee recommendations, the Peruvian parliament should prioritize amendment of the Civil Code to reflect the international legal standard that all people with disabilities should be able to vote without discrimination. Civil society and government have been working on a law project to amend relevant laws to comply with domestic and international obligations, including the right to legal capacity under the CRPD.<sup>103</sup>

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<sup>101</sup> 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).

<sup>102</sup> UN Committee on the Rights of Persons with Disabilities, “Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Peru,” CRPD/C/PER/CO/1, April 20, 2012, paras. 25, 45.

<sup>103</sup> General Law on Persons with Disabilities and Implementation of the Convention on Persons with Disabilities (Ley General de las Personas con Discapacidad y de Implementación de la Convención Sobre los Derechos de las Personas con Discapacidad), Law Project No. 04707, March 2011. This law project, introduced as a legislative initiative by disability rights advocates, aims to harmonize current legislation with the CRPD, and recognizes, inter alia, the right to legal capacity and the right to political participation on an equal basis with others.

## “Invisible Citizens” Denial of the Right to Identity and the Right to a Name

Some of my friends with disabilities could not vote. Some of them had no identity document. Some had no birth certificate either.

—Irma Quispe Meseco, founder, Association of People with Disabilities, Chinchero District, Cusco, October 29, 2011<sup>104</sup>

States parties to the CRPD are obliged to ensure that people with disabilities are not deprived of their ability to obtain or use national identity documents.<sup>105</sup> Governments are also obliged to ensure that children with disabilities are registered immediately after birth and given a name and nationality.<sup>106</sup> The Peruvian Constitution likewise recognizes the right of all persons to nationality and identity,<sup>107</sup> and provides full citizenship to Peruvians at age 18.<sup>108</sup>

Human Rights Watch spoke with seven female residents at Hospital Hermilio Valdizán who had been identified as “N.N” (“no name”) and given names by staff.

Dr. Miriam Osorio Martinez, a psychiatrist at Hospital Hermilio Valdizán, a private psychiatric facility in Lima, described a young man with an intellectual disability who was abandoned at a children’s hospital as a baby and then transferred to the facility at age 16, without a name. Hospital Hermilio Valdizán tried to find out his name through RENIEC, but he had no history of being registered with RENIEC.<sup>109</sup> Ultimately, the hospital gave him a name, using a formula that they have used for dozens of patients: he was given a randomly selected first name, followed by the last name of the current director and then the name of the hospital (Valdizán).<sup>110</sup> Dr. Rafael Navarro Cueva, the hospital’s current director, told Human Rights Watch that he has given his name to at least eight residents, following the

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<sup>104</sup> Human Rights Watch interview with Irma Quispe Meseco, founder, Asociación de Personas con Discapacidad del Distrito de Chinchero, Cusco, October 29, 2011. Quispe Meseco was commenting on the fact that in rural areas like hers, some people with disabilities had no identity documents at all, as compared to identity documents that lacked a voting group, notwithstanding government efforts to address lack of documentation for people with disabilities

<sup>105</sup> CRPD, art. 18(1)(b).

<sup>106</sup> Ibid., art. 18(2); ICCPR, art. 24; CRC, art. 7.

<sup>107</sup> Political Constitution of Peru, arts. 2(1), (21).

<sup>108</sup> Ibid., art. 30.

<sup>109</sup> Human Rights Watch interview with Miriam Osorio Martinez, psychiatrist, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>110</sup> Human Rights Watch interview with Rafael Navarro Cueva, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011.

practice of previous directors.<sup>111</sup> Staff at Hospital Larco Herrera also said that they had named many of their patients.<sup>112</sup>

In a 2005 report, the Public Ombudsman identified a significant number of residents in psychiatric institutions—41 residents in Hospital Larco Herrera alone—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.<sup>113</sup> In 2011, six years after publication of the Public Ombudsman’s report, the Ministry of Health and RENIEC issued identity cards to more than 100 people with disabilities institutionalized in Lima.<sup>114</sup> However, according to RENIEC, many people in institutions across Peru remain undocumented.<sup>115</sup>

Since 2004 RENIEC and the Public Ombudsman’s office have undertaken national campaigns to try to ensure that people with disabilities (among other marginalized populations) do actually enjoy their right to an identity card and ensuing citizenship rights,<sup>116</sup> including by providing identity cards free of charge.<sup>117</sup>

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<sup>111</sup> Ibid.

<sup>112</sup> Human Rights Watch interview with staff at Hospital Larco Herrera, Lima, October 26, 2011.

<sup>113</sup> 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’s 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 they remained unregistered and therefore undocumented. People live in institutions for various reasons: taken there by family, friends, police or emergency medical services, ordered to be taken there by a court, went there on their own accord for treatment, or 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.

<sup>114</sup> 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).

<sup>115</sup> RENIEC has acknowledged that many people in psychiatric institutions are undocumented and is working with psychiatric institutions and government agencies such as CONADIS and the National Institute of Statistics and Informatics (Instituto Nacional de Estadística y 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.

<sup>116</sup> See RENIEC, Plan Nacional de Restitución de la Identidad, 2005-2009, 2004; RENIEC, Plan Nacional de Atención de la Problemática de la Indocumentación, 2011- 2015, 2010.

<sup>117</sup> RENIEC, Resolución Jefatural No. 599-2004-JEF-RENIEC, October 2, 2004; RENIEC, Resolución Jefatural No. 183-2006-JEF-RENIEC, March 29, 2006; RENIEC, Resolución Jefatural No. 0269-2009-JEF-RENIEC. See also “RENIEC and the Public Ombudsman join Forces for Social Inclusion,” (Reniec y Defensoría del Pueblo suman esfuerzos por la inclusión social), *RPP*, August 10, 2011, [http://www.rpp.com.pe/2011-08-10-reniec-y-defensoria-del-pueblo-suman-esfuerzos-por-la-inclusion-social-noticia\\_393123.html](http://www.rpp.com.pe/2011-08-10-reniec-y-defensoria-del-pueblo-suman-esfuerzos-por-la-inclusion-social-noticia_393123.html) (accessed April 8, 2012).

Irma Quispe Meseco, founder of the Association of People with Disabilities, in Chinchero District in Cusco region, said RENIEC had visited her community in 2009, a year before the 2010 elections to help people with disabilities obtain identity cards and birth certificates. But not all people with disabilities were able to meet with RENIEC, or to obtain their cards. Quispe Meseco told Human Rights Watch: “Maybe 15, 20, even more people in my association don’t have an identity document. Some of us don’t know about national identity documents, especially older people.”<sup>118</sup>

Even with schemes to provide an identity card free of charge to people with disabilities, there are still barriers to overcome. For example to avail of the free card provision, people with disabilities must prove their “disabled” status. They can do so by showing a certificate of disability, or a certified copy of enrollment with the National Council for the Integration of People with Disabilities (CONADIS), or a certificate issued by a school of special education, or a medical certificate of disability.<sup>119</sup> People with disabilities and their families told Human Rights Watch that limited resources (money, transport) or mobility make it challenging to get these necessary documents.<sup>120</sup> Streamlining the documentation process—for example, by coordinating RENIEC efforts and certification processes and subsidizing transport and certificate fees—would help address some of these problems. RENIEC policy now recognizes that people with disabilities have the legal capacity to seek identity documents on their own, and that they can seek assistance from a third party if necessary.<sup>121</sup>

The CRPD Committee, in its April 2012 concluding observations, has called on the government of Peru 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

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<sup>118</sup> Human Rights Watch interview with Irma Quispe Meseco, founder, Asociación de Personas con Discapacidad del Distrito de Chinchero, Cusco, October 29, 2011.

<sup>119</sup> RENIEC, Free Procedures for People with Disabilities, <http://www.reniec.gob.pe/wai/GuiaTramiteWAI.jsp?accion=2&coTramite=01&coSubtipo=08> (accessed February 19, 2012).

<sup>120</sup> Human Rights Watch interview with Sonia, mother of two young people with intellectual disabilities, Lima, October 21, 2011; Human Rights Watch interview with Delores, mother of Freddie, a 16-year old boy with an intellectual disability, Cusco, October 28, 2011.

<sup>121</sup> Human Rights Watch interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2012. See RENIEC, Sworn Declaration of Disability and Assistance (Declaración Jurada de Discapacidad y Asistencia) (copy on file with Human Rights Watch).

disabilities in institutions who are currently undocumented and/or do not enjoy their right to a name.”<sup>122</sup>

## Stigmatization and Other Consequences of Registering Disabilities and Denying the Right to Vote

I don't tell my daughter that she has a disability. It's like people with eyeglasses—you don't say all the time, “you have eyeglasses.”

—Carmen, mother of Vanya, 21-year-old with Down Syndrome, Lima, October 23, 2011

Peru's law permits the inclusion on the identity card, on a voluntary basis, of information that a person has a permanent disability.<sup>123</sup> Many people with disabilities choose not to include this information, 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 documented at least five cases in which information about a person's disability was included on their identity cards without their authorization, in some cases despite explicit requests from parents that this information should not be displayed on the face of the identity card.<sup>124</sup>

Sonia, the mother of Mario, a 24-year old man with intellectual disability, told Human Rights Watch: “I thought if it said [‘mental disability’] on the document itself, people would discriminate against him. I didn't want to see my son being discriminated [against].”<sup>125</sup> Despite their request to exclude this information, Mario's identity card states his disability.

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<sup>122</sup> UN Committee on the Rights of Persons with Disabilities, “Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Peru,” CRPD/C/PER/CO/1, April 20, 2012, para 23.

<sup>123</sup> Organic Law of RENIEC, art. 32(I), as amended by Law No. 29478, 2009; Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director, Electoral Activities, RENIEC, Lima, October 25, 2011.

<sup>124</sup> 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, Ann Sullivan Center of Peru, Lima, July 20, 2011. In the case of Juan Roberto, the term “impedido” (or “prevented”) was listed under observations.

<sup>125</sup> Human Rights Watch interview with Sonia, mother of two young people with intellectual disabilities, Lima, October 21, 2011.



As one disability advocate explained, members of the disability community and families are concerned about the stigma generated from including their disability on their identity card. For example, the identity card of some people with hearing impairments lists the term “deaf” under the observations without their consent. People within the deaf community questioned: “Why should my identity card have this? Why should it have a tag with my disability there?”<sup>126</sup> The advocate also explained how in her experience she has met several people with intellectual or psychosocial disabilities and their families who reported limitations to the exercise of other rights such as the right to own property or open a bank account.<sup>127</sup>

Roberto, a 37-year old man with mild intellectual disability, was not asked if his identity card should include an observation about his intellectual disability. His father told us: “They don’t need to mark them or wear a sign on their chest.” Roberto recounted his son’s reaction when he saw that the identity card included “mental disability” as an observation.

As soon as Roberto saw it, he threw the card.... When he showed his friends in the inclusive school that he attends, they started to laugh at him.<sup>128</sup>

When an identity card reveals that a person has a disability, then it may also be used to exclude individuals from exercising basic entitlements. For example, if an identity card does not have a hologram sticker, it indicates the carrier did not vote; if the card does not specify a voting group assignment it suggests that the person has been deemed incapable of doing so.<sup>129</sup> Institutions may use this information as a basis to make decisions about that individual’s competence to make financial and legal decisions, such as opening a bank account or getting married.<sup>130</sup>

Maria S., the mother of a 22-year old man with a mild intellectual disability, told us about her son’s experience at the bank, when they asked him for his identity card. “They check for the voting number and the sticker. When there is no sticker, it’s like they ignore them,

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<sup>126</sup> Human Rights Watch interview with Susana Stiglich, disability advocate and national technical coordinator, Social and Labor Inclusion for People with Disabilities-Peru, Foundation for the Americas, Organization of American States, Lima, October 24, 2011.

<sup>127</sup> Ibid.

<sup>128</sup> Human Rights Watch interview with Marcelino, father of three young men with intellectual disabilities, Lima, October 22, 2011.

<sup>129</sup> Human Rights Watch telephone interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2011.

<sup>130</sup> Human Rights Watch telephone interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2011.

their capacity as an adult, as a person.”<sup>131</sup> Human Rights Watch found similar such cases in Lima and Puno.<sup>132</sup>

Felipe Flores, president of the Federation of People Disabilities for Puno region, said that in one case, for example, a woman who had a speech impediment was identified as having an intellectual disability. “She had land, property that she wanted to give to her children. But since she had not voted, she could not notarize a contract, she did not exist,” adding, “When we do not vote, we cannot make contracts. We cannot do anything. That’s what the law says.”<sup>133</sup>

## Current Efforts to Address Disenfranchisement

### *Deliberate Exclusion from the Voter Registry*

It’s easy for the government to now say that we can vote. But the state has committed a serious error when denying us the right to the vote. . . . To vote is a celebration. It is to feel like part of the society.

—Pedro Cachitari Arocutipo, member of the Federation of Disabled People in Puno (FEDDIP), Puno, October 31, 2011

Prior to a change in policy in October 2011, Peruvian authorities systematically excluded over 20,000 persons with intellectual or psychosocial disabilities from the voter registry. Human Rights Watch interviewed 17 people with intellectual or psychosocial disabilities who were unable to vote in either the 2010 municipal or the 2011 presidential elections or both because their names had been excluded from the voter registry. This exclusion occurred either because they were unable to obtain a national identity card required for voting or because of a RENIEC policy in force between 2001 and October 2011, whereby people with intellectual or psychosocial disabilities were issued with identity cards without the required voting group assignments.

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<sup>131</sup> Human Rights Watch interview with Maria, mother of Javier, a 22-year old man with mild intellectual disability, Lima, October 22, 2011.

<sup>132</sup> Human Rights Watch interview with Felipe Flores, president, Federation of Persons with Disabilities Puno (FEDDIP), Puno, October 31, 2011; Human Rights Watch interview with Marcelino, father of three young men with intellectual disabilities, Lima, October 22, 2011.

<sup>133</sup> Ibid.

Before the 2011 presidential elections, Maria Alessandra, a 21-year old young woman with a mild intellectual disability,<sup>134</sup> was not listed in the electoral registry. She said, “When I checked online, my name wasn’t there so I thought I was not allowed to vote.”<sup>135</sup>

Maria Alessandra’s identity card includes the observation “mental disability” and unknown to her, this had led to her automatic removal from the voter registry and therefore deprived her of the right to vote.<sup>136</sup> Maria Alessandra’s mother explained that she had agreed to include the observation on the card “because I was thinking of her protection. But it was my prejudice.... I didn’t think it would have the effect of denying her [the right] to vote.”<sup>137</sup> In September 2011 after approaching three different staff at the RENIEC office, Maria Alessandra was able to replace her identity card, with one that did not identify her disability. However RENIEC requested a medical certificate of disability stating that she had the “capacity to decide.” The new card does not include any observation about disability, and does have a voting group assignment. About getting her new identity card, Maria Alessandra said, “I felt good. Because now I can vote. Why couldn’t I vote [before]? I don’t know.”<sup>138</sup>

In another case, “mental disability” was listed on the new identity card of Rubby, a young woman with an intellectual disability, although there was no such observation on previous cards. She had in fact voted in the past. Her mother told Human Rights Watch:

I checked on the internet for the polling station where her father was registered to vote.... But in her case, there was nothing to say... I was very confused. But I just had to accept it. I realized it was discrimination, but I couldn't do too much. Things just happen like that. Everyone else was

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<sup>134</sup> The severity of the intellectual disability is determined by the discrepancy between the individual's capabilities in learning and the expectations of the social environment. People labeled as having mild intellectual disabilities demonstrate delays in cognitive, social, and adaptive behavior skills in the context of academic settings. In social, employment or other settings, these same individuals often function quite capably. Project IDEAL, <http://www.projectidealonline.org/intellectualDisabilities.php> (accessed March 28, 2012).

<sup>135</sup> Human Rights Watch interview with Maria Alessandra, 21-year old woman with a mild intellectual disability, Lima, October 21, 2011.

<sup>136</sup> Human Rights Watch interview with Maria Alessandra, 21-year old woman with a mild intellectual disability, and her mother Lourdes, Lima, October 21, 2011.

<sup>137</sup> Human Rights Watch interview with Lourdes, mother of Maria Alessandra, 21-year old woman with a mild intellectual disability, Lima, October 21, 2011.

<sup>138</sup> Human Rights Watch interview with Maria Alessandra, 21-year old woman with a mild intellectual disability, Lima, October 21, 2011.

voting. [Rubby] was frustrated because she wasn't able to do the things that others are able to do. I thought it was discrimination. They took away my daughter's rights. I couldn't do anything.<sup>139</sup>

The Public Ombudsman advised RENIEC in 2004 that it was unconstitutional to exclude individuals who completed these forms from the voting rolls and to cease this practice.<sup>140</sup>

Malena Pineda, the head of the disability rights section at the Ombudsman's office said that RENIEC did not change its policy in response to this advisory, however, but continued to make its own determinations regarding legal capacity. She told Human Rights Watch: "The registrar looks at the person and makes this determination himself. He presumes the incapacity of these people."<sup>141</sup> The Ombudsman's office sought to resolve this situation through an exchange of letters and the adoption of revised RENIEC policies, instead of presenting a formal legal complaint, because they felt RENIEC was willing to address these issues constructively.<sup>142</sup>

In October 2011 RENIEC issued a resolution to nullify its policy of excluding people with intellectual and psychosocial disabilities from the voter registry and pledged to work with relevant government agencies to promptly address this situation. In implementing this resolution, RENIEC plans to deliver new identity cards to all of those excluded by the end of 2012, including those living in institutions.<sup>143</sup>

### *De Facto Exclusion of Persons in Institutions*

In the two institutions Human Rights Watch visited in Lima, we found that directors or staff did not permit residents to leave the institution to vote because they were considered incapable of voting. Until October 2011, these residents were also subject to RENIEC's policy of excluding them from the voter registry.

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<sup>139</sup> Human Rights Watch interview with Rubby S., mother of Rubby B., 25-year old woman with an intellectual disability, Lima, October 21, 2011.

<sup>140</sup> Defensoría del Pueblo, Resolución Defensorial No. 28-2004-DP, December 9, 2004.

<sup>141</sup> Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman's office, Lima, July 26, 2011.

<sup>142</sup> Ibid.

<sup>143</sup> Human Rights Watch email correspondence with José Manuel Osorio Barrera, in charge of Coordination Area, RENIEC, March 26, 2012.

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.<sup>144</sup> One staff member, who had worked at the hospital for more than 20 years, told Human Rights Watch: "As far as I know, no one voted. There was not an option. They were exempted. Maybe for the next election."<sup>145</sup> Besides, Human Rights Watch found that not all residents have an identity card, and as such they were unable to vote.<sup>146</sup>

Dr. Rafael Navarro Cueva, the deputy 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.<sup>147</sup> Another staff member at the hospital confirmed that the 40 permanent residents in the facility (who were abandoned there or did not have any known family ties) had identity cards with the observation "mental disability" and no voting group number.<sup>148</sup>

One of the key challenges in implementing the CRPD is the perspective among mental health professionals and lawyers that the right to political participation should be qualified for people with disabilities on the basis of competency.<sup>149</sup> For example, Navarro told Human Rights Watch:

When a patient can decide between two or more choices, they should be able to vote. But this is a very minimal number of people here because most are in a very poor condition.<sup>150</sup>

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<sup>144</sup> 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.

<sup>145</sup> Human Rights Watch interview with Oscar Salazar, nurse and dental surgeon, Hospital Victor Larco Herrera, Lima, October 26, 2011.

<sup>146</sup> 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.

<sup>147</sup> Human Rights Watch interview with Rafael Navarro Cueva, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>148</sup> Human Rights Watch interview with Miriam Osorio Martinez, psychiatrist, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>149</sup> Human Rights Watch interview with Rafael Navarro Cueva, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>150</sup> Human Rights Watch interview with Rafael Navarro Cueva, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011.

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.<sup>151</sup> By law, people are assigned polling stations according to the address indicated on their identity cards and must vote at these locations.<sup>152</sup>

According to Magdalena Chu, the Chief of ONPE, in order to vote, a person living in an institution would have to go to the voting station that they had been assigned.<sup>153</sup> Voting stations are not set up in facilities such as institutions or hospitals. Instead, if a person is in a hospital for any reason and cannot go to their assigned voting station, they do not exercise their right to vote and are exonerated from the fine.<sup>154</sup>

Staff at Hospital Hermillo Valdizán and Hospital Victor Larco Herrera explained that most residents are not permitted to leave the premises to visit the polling site.<sup>155</sup> Some residents cannot physically vote without significant support. At this writing, ONPE had not developed any program targeted at people with psychosocial or intellectual disabilities to facilitate their exercise of the right to vote “because this group has not been included in the electoral registry.”<sup>156</sup> ONPE also do not conduct any 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.<sup>157</sup>

To comply with its October 2011 resolution, RENIEC has begun to issue identity cards to people living in institutions and will establish sites at mental health centers to register people for identity cards.<sup>158</sup> Other barriers that will need to be addressed include the assignment of appropriate polling stations, which are normally tied to the address entered

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<sup>151</sup> Human Rights Watch interview with Carlo Magno Salcedo Cuadros, deputy director of electoral activities, Lima, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>152</sup> See Organic Elections Law, arts. 52, 53, 54.

<sup>153</sup> Human Rights Watch interview with Magdalena Chu, chief, ONPE, Lima, October 26, 2011.

<sup>154</sup> Human Rights Watch interview with Magdalena Chu, chief, ONPE, Lima, October 26, 2011.

<sup>155</sup> Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011; Human Rights Watch interview with staff at Hospital Victor Larco Herrera, Lima, October 26, 2011.

<sup>156</sup> Human Rights Watch interview with Magdalena Chu, chief, ONPE, Lima, October 26, 2011.

<sup>157</sup> Human Rights Watch interview with Rafael Navarro Cueva, deputy director and administrative director, Hospital Hermilio Valdizán, Lima, October 25, 2011; Human Rights Watch interview with staff nurse, Hospital Hermilio Valdizán, Lima, October 25, 2011.

<sup>158</sup> Human Rights Watch interview with Carlo Magno Salcedo, deputy director of electoral activities, RENIEC, Lima, October 25, 2011; Human Rights Watch interview with Vanessa Thorsen, former legal advisor, RENIEC, Lima, October 25, 2011.



on the identity card. Residents will also have to be assured that they will be physically permitted to go to their assigned voting station and will have the support required to do so. Alternatively, ONPE could organize polling stations at institutions themselves or consider a system of mail-in voting.

RENIEC's October 2011 resolution commits to establishing a government working group to address the barriers to enfranchisement of people with psychosocial and intellectual disabilities.<sup>159</sup> This working group is comprised of representatives of ONPE, the National Jury on Elections (Jurado Nacional de Elecciones, JNE), the Congressional Commission on Social Inclusion and People with Disability, and CONADIS.

In November 2011 RENIEC issued identity cards that include a voting group assignment to 39 residents at Hospital Larco Herrera, which now qualifies them to vote in the next election.<sup>160</sup> All of them had the choice of including their disability on their identity cards. RENIEC has identified 2,000 people living in institutions who were excluded from the voter registry and pledged to issue identity cards with voting eligibility to the remaining residents in the institution by the end of 2012.<sup>161</sup>

## Failure to Provide Accommodations

Media reports on the 2011 presidential election laud ONPE's efforts to make voting facilities accessible to people with disabilities, indicating that 12,000 citizens with disabilities were expected to exercise their right to vote.<sup>162</sup>

Prior to the 2010 and 2011 municipal and presidential elections, ONPE had set up an online registry, a channel through which persons with disabilities could request accommodations in voting. However, Human Rights Watch found that many people were unaware of the

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<sup>159</sup> Resolución Jefatural No. 508-2011-JNAC/RENIEC, art. 5.

<sup>160</sup> "RENIEC gives identity cards to patients at Larco Herrera," (RENIEC entrega DNI a pacientes de Larco Herrera), RENIEC, November 30, 2011, <http://www.reniec.gob.pe/portal/detalleNota.htm?nota=527> (accessed April 8, 2012); Human Rights Watch telephone interview with Vanessa Thorsen, former Legal Advisor, RENIEC, Lima, January 6, 2012.

<sup>161</sup> Human Rights Watch telephone interview with Vanessa Thorsen, former legal advisor, RENIEC, January 6, 2012.

<sup>162</sup> See, e.g., Peru.com, "Cerca de 12 mil electores con discapacidad emitirán su voto," June 5, 2011, <http://peru.com/actualidad/6482/noticia-cerca-12-mil-electores-discapacidad-emitiran-su-voto> (accessed April 8, 2012); Correo, "Discapacitados, adultos mayores y gestantes votaron sin problemas," June 5, 2011, (accessed April 8, 2012); Noticias Candidatos Peru, "Personas con discapacidad visual utilizarán plantillas Braille para facilitar su voto," April 4, 2011, (accessed April 8, 2012); El Comercio, "Discapacitados contarán con rampas de acceso y cédulas Braille para votar en las próximas elecciones," March 3, 2010, (accessed April 8, 2012).

ONPE registry for several reasons: it was poorly publicized; the online system was not accessible for people with different types of disabilities, such as people with visual disabilities; or because people who had no internet access had to register in-person, which presented challenges for people with mobility, sensory or other impairments who had difficulty traveling to ONPE's office.<sup>163</sup>

Luis Egusquiza, from Transparencia, an NGO that monitors elections throughout Peru, told Human Rights Watch that they had received “an unusually high number” of complaints regarding problems with voting access during the October 2010 elections. These problems included lack of access to voting stations (e.g., no ramps to enter buildings where voting stations were located), complaints about bringing polling stations to the first floor and that those administering the voting could not locate Braille templates. He observed: “This reveals problems with the registry for people with disabilities. The electoral organization is ‘blind’ to these persons’ needs.”<sup>164</sup> Transparencia's report, however, did not reflect any problems encountered by people with intellectual or psychosocial disabilities in exercising their right to vote.<sup>165</sup>

Egusquiza acknowledged that ordinary citizens serving as election administrators may have doubts about whether a person with a disability such as Down Syndrome has the capacity or eligibility to vote.

“Our civil law says that some people may also have trouble in carrying out judicial processes—voting is also a judicial process. Thus for a common ordinary citizen, who is actually serving as an election administrator, the fact that a person with Down Syndrome comes to vote at least might generate some type of doubt—does he or does he not vote? Because they might consider them incapable because the civil code says ‘incapacity.’”<sup>166</sup>

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<sup>163</sup> Human Rights Watch telephone interview with Erick Antonio Acuña Pereda, researcher, Institute on Democracy and Human Rights, Pontifical Universidad Católica del Perú, June 16, 2011.

<sup>164</sup> Human Rights Watch interview with Luis Egusquiza, program coordinator, Transparencia, Lima, July 26, 2011.

<sup>165</sup> Transparencia, “Report of Election Day Irregularities: Municipal, Regional Elections and Referendum 2010” (“Informe de Irregularidades Jornada Electoral: Elecciones Municipales, Regionales y Referéndum 2010”), October 3, 2010, <http://www.transparencia.org.pe/www/noticia/informe-de-observacion-electoral-se-reportaron-107-irregularidades-nivel-nacional>.

<sup>166</sup> Human Rights Watch interview with Luis Egusquiza, program coordinator, Transparencia, Lima, July 26, 2011; see also Human Rights Watch interview with Malena Pineda Ángeles, July 26, 2011, Peru; see also Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman's office, Lima, July 26, 2011, Peru.

The representative of the Ombudsman's office also told Human Rights Watch that election administrators may decide, based on prejudice or lack of knowledge about the rights of people with disabilities, that a person with a disability cannot vote despite having an identity document and being on the voter registry. According to the representative, the Ombudsman's office has received such complaints in prior elections. <sup>167</sup>

Egusquiza explained that the ONPE training manual for election administrators does not have specific information “about who can vote and how they vote. It’s in general terms, not specifically about people with Down Syndrome.”<sup>168</sup> Transparencia staff and volunteers who monitor elections also have no training on disability issues or partnerships with disabled persons’ organizations.<sup>169</sup>

Ensuring the right to political participation includes identifying and removing physical and communication barriers that effectively deny this right.<sup>170</sup> It also requires that States parties adopt “appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”<sup>171</sup> With respect to the political process, this means that governments must provide accessible polling stations and should make sure that ballots and voter education materials are available in accessible formats such as Braille, easy-to-read, and sign-language.

### *Accommodations for People with Psychosocial and Intellectual Disabilities*

But if the person has a psychosocial disability—how can you see it?

—Luis Egusquiza, program coordinator, political reform program,  
Transparencia, Lima, July 26, 2011

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<sup>167</sup> Human Rights Watch interview with Malena Pineda Ángeles, chief, Program for the Defense and Promotion of the Rights of Persons with Disabilities, Public Ombudsman's office, Lima, July 26, 2011.; email correspondence with Malena Pineda Ángeles, April 30, 2011.

<sup>168</sup> Human Rights Watch interview with Luis Egusquiza, program coordinator, Transparencia, Lima, July 26, 2011.

<sup>169</sup> Human Rights Watch interview with Gabriel de la Cruz, coordinator for election observers in Lima, Transparencia, Lima, October 26, 2011.

<sup>170</sup> CRPD, art. 29.

<sup>171</sup> CRPD, art.9.

Peru's election law requires that voting facilities be made accessible to facilitate voting for all people with disabilities. No specific measures have been developed for people with psychosocial or intellectual disabilities, however. As a result, government officials, NGOs, and citizens who administer or monitor elections have little guidance about these voters' entitlement to accommodations or practical experience about how to provide them. For example, as per ONPE policies, people with disabilities should be accommodated at the front of the line for voting.<sup>172</sup>

Paulina, a member of Allin Kallpayoc, a disabled persons' organization in the village of Pomacanchi in Cusco region, has a psychosocial disability. She told Human Rights Watch:

At the second round of the presidential elections, there was a long line. I showed my card [from CONADIS] to the person from ONPE. I said that I was a person with a disability and I asked if I could go to the front of the line. The person from ONPE said "You, what disability do you have? I do not see anything."<sup>173</sup>

The chief of ONPE, Magdalena Chu, explained why ONPE has not trained election administrators and ONPE election staff on how to provide accommodations for people with intellectual or psychosocial disabilities. Chu told Human Rights Watch: "We cannot develop a national program on this specifically if the registry does not include [information about] mental or intellectual disability."<sup>174</sup>

RENIEC's policy of excluding people with intellectual or psychosocial from the voter registry therefore has a legacy which goes beyond having denied individuals with disabilities the ability to exercise their right and contributed to a situation in which those persons with intellectual and psychosocial disabilities who were able to vote did not benefit from accommodations. Given in particular that the policy was in violation of Peruvian and international law, measures to address the legacy of lack of training should be addressed promptly.

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<sup>172</sup> ONPE, Disposiciones sobre el voto rápido, Resolución Jefatural No. 080-2006-J/ONPE, March 31, 2006.

<sup>173</sup> Human Rights Watch interview with Paulina, woman with psychosocial disability and member of Allin Kallpayoc, Pomacanchi, October 28, 2011.

<sup>174</sup> Human Rights Watch interview with Magdalena Chu, chief, ONPE, Lima, October 26, 2011.

### *Accommodations for People with Physical or Sensory Disabilities*

There is supposed to be a polling station downstairs. But there never is.

—Isaías, a man with a physical disability, member of the Asociación de Limitados Físicos de Puno, Puno, October 31, 2011

ONPE policies permit a number of accommodations for people with physical and sensory disabilities including relocating polling stations to the first floor and equipping each polling station with at least one Braille ballot.<sup>175</sup>

The government has a mixed record of providing these accommodations. Julio, who uses a wheelchair, described improved accommodations in recent elections: “This year, it was possible to vote in an accessible location. In the first floor, there was an accessible room where I could vote. This is an advance. For example, 10 years ago, I had to have four soldiers take me upstairs and it was terrible. I was afraid of falling.”<sup>176</sup>

In preparation for the April 2011 general elections, ONPE printed 11,350 Braille ballots for distribution to each of the 4,574 polling stations throughout the country.<sup>177</sup> Election officials and election administrators were trained on its use.<sup>178</sup> For example, as part of their obligations, election administrators must advise voters with disabilities that they can use the template without prejudice to their right to enter the voting station with a family member or friend, and local election officials must ensure that those electors who need a Braille ballot get one.<sup>179</sup>

Despite progress in ensuring these accommodations, people with physical and sensory disabilities told Human Rights Watch of cases in which they were provided no accommodations, and in some cases were challenged about their entitlement to them.

Isaías, 48, has a physical disability that makes it difficult for him to walk. “It was hard for me to climb stairs to reach the polling station,” he said. “I complained to ONPE, and they

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<sup>175</sup> 19/10/2002.- R.J. Nº 341-2002-J/ONPE.- Aprueba Directiva Nº Do1.0-2002-GFCE/ONPE “Facilidades para la Emisión del Voto de los Ciudadanos y Ciudadanas con Discapacidad y su Empadronamiento”. (22/10/2002)

<sup>176</sup> Human Rights Watch interview with Julio, a man with a physical disability, Lima, July 20, 2011.

<sup>177</sup> “ONPE provided ballots for blind voters,” (ONPE presentó cédula de sufragio para electores ciegos), El Comercio, <http://elcomercio.pe/politica/457515/noticia-onpe-presento-cedula-sufragio-electores-ciegos>, April 6, 2011.

<sup>178</sup> Ibid.; Human Rights Watch interview with Magdalena Chu, Chief, ONPE, Lima, October 26, 2011.

<sup>179</sup> Ibid.

asked me, ‘what disability do you have? You look fine. There are people who suffer more than you.’” In addition to being disrespectful, this ignores ONPE’s responsibility. As Isaías noted, “They should make the polling stations accessible to all without differentiating by disability.”<sup>180</sup>

Silvia, a woman with a physical disability in Puno, has served as an election administrator several times, most recently in 2010. “The polling stations are not prepared for people with disabilities, or even people who had an accident a few days earlier,” she said. “They are on the second and third floor. They were not accessible for someone in a wheelchair.”<sup>181</sup>

Ana Cristina Neyra Zegarra, a lawyer with the JNE, was assigned to supervise elections in the northern city of Piura in 2010. She said that election administrators “were not open” to moving voting stations.<sup>182</sup> According to Neyra, election administrators did not know that ONPE law and policy permitted this accommodation, and some also were concerned that moving the polling stations would facilitate electoral fraud. Similarly, with respect to failure to locate Braille ballots, Egusquiza of Transparencia said, “This is linked to the lack of training received by the people administering the election, because they don’t actually have the Braille version—this must be requested.”<sup>183</sup>

Madezha Cepeda Bazan, a disability expert, did not receive the necessary accommodations in the 2011 presidential elections. She registered with ONPE to receive a Braille ballot and her identity card states that she is blind, but at her polling station, she was not given a special ballot.<sup>184</sup> She told Human Rights Watch: “I had a person of confidence with me when I came to vote. If I hadn’t, I would not have been able to vote. I could not enter with an election administrator because this would disqualify my vote.”<sup>185</sup>

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<sup>180</sup> Human Rights Watch interview with Isaías, man with physical disability, Puno, October 31, 2011.

<sup>181</sup> Human Rights Watch interview with Silvia, a woman with a physical disability and member of the Asociación de Limitados Físicos de Puno, Puno, October 31, 2011.

<sup>182</sup> Human Rights Watch telephone interviews with Ana Cristina Neyra Zegarra, attorney, Jurado Nacional de Elecciones, January 13 and February 22, 2012.

<sup>183</sup> Human Rights Watch interview with Luis Egusquiza, program coordinator, Transparencia, Lima, July 26, 2011. Transparencia also reported problems with accommodations during the April 2011 elections. Transparencia, “Informe de Irregularidades Jornada Electora: Elecciones Generales y de Representantes al Parlamento Andino, 2011,” April 10, 2011.

<sup>184</sup> Human Rights Watch interview with Madezha Cepeda Bazan, president, Musas Inspiradoras de Cambios, Lima, July 20, 2011.

<sup>185</sup> Ibid.



Cecilio, 40, lost his sight at age 25 in a mining accident. He first voted with a Braille ballot in December 2010, during the second round of regional elections. He told Human Rights Watch that until then, “Braille ballots never reached the community. The police and election administrators sent blind people home when we tried to vote. They told me I should be home in bed.”<sup>186</sup>

Jane Cosar, a blind attorney who ran for Congress in 2011, uses a guide dog to assist with mobility. She told Human Rights Watch: “[During the first round of national elections in April 2011], I was not allowed to enter the voting station with my guide dog. The policeman at the door said animals are not allowed. But then people behind me started to explain that it was a guide dog, and finally he let me in. I did not have any further problems.” Things improved for the June 2011 elections. “There were no more problems, because they already knew about me.”<sup>187</sup>

In December 2011 Congress approved a new law supporting the use of guide dogs in public spaces and private spaces open to the public, guaranteeing the right to use guide dogs in future elections.<sup>188</sup>

## Access to Information about the Election Process, Political Parties or Candidates

The CRPD requires that people with disabilities have access to information that allows them to “effectively and fully participate in political and public life,” which includes materials on the election process and candidates that are “appropriate, accessible and easy to understand and use.”<sup>189</sup>

ONPE and JNE have complementary (and sometimes overlapping) responsibilities to ensure access to information, with ONPE primarily responsible for providing information on voting and the voting process, and JNE for providing information about legality of elections and political party proposals.<sup>190</sup>

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<sup>186</sup> Human Rights Watch interview with Cecilio, a blind man, Puno, October 31, 2011.

<sup>187</sup> Human Rights Watch telephone interview with Jane Cosar, a blind attorney, August 3, 2011.

<sup>188</sup> Law that promotes and regulates the use of guide dogs for persons with visual disabilities (Ley que promueve y regula el uso de perros guía por personas con discapacidad visual), Law N° 29830, 2011. Jane Cosar drafted this legislation.

<sup>189</sup> CRPD, arts. 9 and 29.

<sup>190</sup> Organic Law of National Jury of Elections (Ley Orgánica del Jurado Nacional de Elecciones), Law No. 26486, arts. 1-5; Organic Law of National Office of Election Processes (Ley Orgánica de la Oficina Nacional de Procesos Electorales), Law N°

ONPE has worked with disability organizations to produce materials on the right to vote and on the election process in accessible formats, for example targeted at people with visual and auditory disabilities.

In 2001, for example, ONPE worked with disability organizations to produce television and radio spots about the right to vote for persons with disabilities and how to vote with the assistance of audiotape and Braille. Susana Stiglich, a disability rights advocate who was then president of the disability rights organization Aproddis (Asociación Pro Desarrollo de la Persona con Discapacidad), and worked on this initiative, told Human Rights Watch that ONPE used similar materials for the 2011 presidential elections.<sup>191</sup> “ONPE did television spots, starting about one month before the election,” Stiglich said. “One spot included a person with sign language providing information about how to vote.”<sup>192</sup> Stiglich added that ONPE worked with the deaf community to provide sign language translation for the ads, and that the Association of Deaf Persons in Peru, in turn, helped to spread information about the spots.

The Ann Sullivan Center of Peru invited ONPE to train its members with intellectual disabilities on the election process. ONPE brought materials to simulate a polling place and worked with people with disabilities to practice voting and being election administrators.<sup>193</sup> Elizabeth Peschiera Lozano, a center official, said that this training “is very, very useful because our students learn about the process to follow when they go to vote. ONPE brings materials, explains the process, and does a role play as it'll happen on election day.”<sup>194</sup>

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26487, arts. 1-5. ONPE also is responsible for guaranteeing all citizens' right to vote, and for implementing instructions and provisions needed to maintain order and protect liberty during elections. Ley Orgánica de la ONPE, arts. 5, 27. The proposed electoral law reform further clarifies that ONPE must dictate the rules and adopt “all necessary measures” to ensure that people with disabilities, be it mental, intellectual, physical, or sensory, can effectively exercise their right to vote, in terms of accessibility and equality. Electoral Code Project (Proyecto Código Electoral), JNE, November, 25, 2011, art. 206.2.

<sup>191</sup> Human Rights Watch interview with Susana Stiglich, disability advocate and national technical coordinator on disability, Organization of American States, Lima, October 24, 2011.

<sup>192</sup> Ibid.

<sup>193</sup> Human Rights Watch interview with Liliana Mayo, director, Ann Sullivan Center of Peru, July 20, 2011; Human Rights Watch email communication from Elizabeth Peschiera Lozano, Administrative Coordinator, Ann Sullivan Center of Peru, February 6, 2012.

<sup>194</sup> Human Rights Watch email communication from Elizabeth Peschiera Lozano, Administrative Coordinator, February 6, 2012.

However, a key accommodation would be the production and distribution of information about the election process and the candidates in an easy to understand format. This is a step that neither ONPE nor JNE has taken to date.

Liliana Peñaherrera, a leading disability advocate explained: “When we think about accessible information, we don’t think of making accessible materials for people with intellectual disabilities. We don’t have the practice of making easy-to-read materials,” adding, “... easy-to-read materials would help many people, including people who do not speak Spanish as their native language, the elderly, deaf people and people with intellectual disabilities.”<sup>195</sup>

## Exclusion from Election Monitoring Obligations

Peruvian citizens are charged with administering polling stations, checking identification and validating and counting ballots.<sup>196</sup> Election administrators are chosen by lottery, with preference given to those with the highest level of education or those that have not yet performed this task.<sup>197</sup> Participation as an election administrator is obligatory (*irrenunciable*), with limited exceptions, including “in cases of obvious or severe physical or mental impairment.”<sup>198</sup> Those seeking to be excused from this obligation must do so in writing.<sup>199</sup>

To comply with the CRPD, Peru should provide support for people with disabilities in exercising their capacity to carry out this civic responsibility, rather than having a default position in which they are not entitled to perform the task.

ONPE officials acknowledge that people who are illiterate can be election administrators, explaining that those who cannot read receive oral training, with ballots that include pictures and party symbols.<sup>200</sup>

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<sup>195</sup> Human Rights Watch telephone interview with Liliana Peñaherrera, president, Peruvian Down Syndrome Society, January 27, 2012.

<sup>196</sup> Organic Elections Law, art. 51.

<sup>197</sup> Ibid., art. 55.

<sup>198</sup> Ibid., art. 58. Cargo irrenunciable: Artículo 58o.

<sup>199</sup> Ibid.

<sup>200</sup> Human Rights Watch interview with Magdalena Chu, chief, ONPE, Lima, October 26, 2011.

Aida Garcia Naranjo Morales, former Minister for Women and Social Development, spoke to Human Rights Watch about her meeting with the President of RENIEC: “I told them that I am not in agreement that they [people with disabilities] should be excluded from the lottery. They should only be excluded when they voluntarily request to be exonerated from the lottery. If that is not the case, their right to political participation would effectively be violated.”

## Barriers to Standing for Office

I think the only way for people with disabilities to protect our rights and to create public policies according to our realities is to engage in politics.

—Wilfredo Chrono, Oficinas Municipales de Atención a las Personas con Discapacidad staff and FEDDIP member, Puno, November 2, 2011

Article 29 of the CRPD requires governments to ensure that people with disabilities “have the right and opportunity” to stand for election on an equal basis with others.<sup>201</sup> According to the UN Office of the High Commissioner on Human Rights, governments must adopt positive measures to address obstacles that de facto prevent persons with disabilities from standing for election on an equal basis with others, and therefore ensure that there exists a real opportunity to be elected to public office.<sup>202</sup>

The Peruvian law on people with disabilities also states that “people with disabilities have equal rights as the general population.”<sup>203</sup> Article 8 of the electoral code stipulates that all citizens have the right to be elected and to freely elect their representatives, in accordance with the law.<sup>204</sup> More specifically, Peruvian disability law requires that all structures for community use, public and private, built after the enactment of the disability law, shall provide access, environments, pathways, and facilities suitable for people with disabilities.<sup>205</sup> Notably, there is no legal provision that stipulates that having a disability is incompatible with voting freely or running for office. There are certain provisions that allow

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<sup>201</sup> CRPD, art. 29; see also Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, art. 3.

<sup>202</sup> OHCHR, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on Participation in Political and Public Life by Persons with Disabilities, December 21, 2011, paras. 15-19.

<sup>203</sup> General Law on Persons with Disabilities, art. 3.

<sup>204</sup> Organic Elections Law, art. 8.

<sup>205</sup> General Law on Persons with Disabilities, art. 44.

people to discontinue their political obligations due to disability, but no law mandating that they do so.

In April 2011, 13 people with disabilities, including 3 women, from 7 of 13 political parties, stood for election to Congress. Five were elected, all of them men with physical disabilities. A woman with physical disabilities was elected to the Andean Congress, a regional parliamentary body comprised of representatives from Peru, Colombia, Ecuador, and Bolivia.

Javier Diez Canseco, among those re-elected to the national Congress, commented on the number and political diversity of the elected members of Congress:

I feel that this is quite important because it shows that people with disabilities have grown in their political participation and can represent not only people with disabilities but social interests. And they come from different political parties, which I think is also quite important.<sup>206</sup>

However, people with disabilities still face obstacles in joining political parties and participating on an equal basis with others in these organizations. For example, to join a political party or run for most political offices, you must have the right to vote. As pointed out earlier in this report there is still some way to go to ensure that all persons with disabilities enjoy that right, in particular where persons are subject to interdiction.

In addition to countering this legal obstacle, the Peruvian government should address barriers that amount to de facto discrimination in standing for office such as lack of physical accessibility to public events, and lack of equal access to media coverage.<sup>207</sup>

For example, candidates with disabilities raised concerns about lack of accommodations at political party events during the 2011 campaign season.

Jane Cosar, a blind attorney, and Paul Pflucker, a person with a physical disability, both ran for Congress in 2011 on the same party ticket. Cosar told Human Rights Watch that there were no accommodations to ensure that she and Pflucker could join party members

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<sup>206</sup> Human Rights Watch interview with Javier Diez Canseco, parliamentarian, Lima, October 24, 2011.

<sup>207</sup> Ibid.

on stage in campaign events, which put them at a disadvantage. “A political campaign is difficult for people with disabilities. We could not go to the stage and stand alongside the presidential candidate, like other candidates.”<sup>208</sup>

According to Cosar, the failure to ensure accessibility for candidates with disabilities “was not from a lack of will, but from lack of training. In Peru, very few people know about the Convention [on the Rights of Persons with Disabilities].”<sup>209</sup>

Wilfredo Guzmán Jara, who is blind, ran for Congress in 2011. At the time, he was president of the National Confederation of People with Disabilities of Peru (CONFENADIP), with a wealth of experience in public life. Guzmán said, “I don’t think any party made the same efforts as mine [Gana Peru] to include people with disabilities. Our political platform was accessible, for example.”<sup>210</sup> Nonetheless overall his experience was that people with disabilities seeking to participate as a candidate in an election still faced obstacles to campaigning on an equal basis with other candidates. Sonia Malca Silva, current president of CONFENADIP, described some of the difficulties Guzmán faced in his campaign:

When Wilfredo was running for election, there was a public event at Plaza de Mayo when his party launched the campaign in Lima. President Ollanta [Humala] and a lot of other candidates were there. The candidates were moving around to catch the attention of the press. At some point, someone was standing in front of Wilfredo blocking him from view but they didn’t do anything to make sure that he was visible to the audience... The same thing happens to people in wheelchairs. Sometimes they don’t make it onto the podium. Even if they do, they’re still invisible because they are put in a place where you can’t see them. It’s an illusion that we’re on an even playing field.”<sup>211</sup>

Guzmán noted that in his case, the president did make sure that he got on stage, and his name and party number were announced. But “other parties didn’t make the same

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<sup>208</sup> Human Rights Watch telephone interview with Jane Cosar, a blind attorney, August 3, 2011.

<sup>209</sup> Ibid.

<sup>210</sup> Human Rights Watch telephone interview with Wilfredo Guzmán Jara, President, CONADIS, January 22, 2012.

<sup>211</sup> Human Rights Watch interview with Sonia Malca Silva, President, CONFENADIP, Lima, October 24, 2011; Human Rights Watch telephone interview with Sonia Malca Silva, January 22, 2011.



efforts,” noting that blind people and people in wheelchairs in particular have problems with access.<sup>212</sup>

Peruvian law is clear that political parties must observe and respect human rights.<sup>213</sup> In addition, as a party to the CRPD, Peru has an obligation to promote respect for human rights by third parties, which includes disseminating information about CRPD provisions. Political parties need to be aware of what kind of accommodations persons with disabilities may require and should be provided with to ensure that they do enjoy equal opportunity to participate as candidates and campaign on an even playing field as other candidates.

While people with physical and visual disabilities have won election to national office, those with auditory disabilities face even more difficult barriers to standing for office. Susana Stiglich, who is hearing impaired, has asked Congress and ONPE to make information accessible to people with disabilities, as “communication barriers limit deaf persons’ opportunities to stand for election.” She added:

Being able to speak in mass media [is essential]. It’s very difficult to be interviewed for radio, TV—we need interpreters. We need to make sure that interpreters really do translate what we say. I think few deaf people want to run for office because there are many limitations. Access to mass media to disseminate proposals, meetings, everything that’s related to communication.<sup>214</sup>

Diez Canseco agreed: “For those who are deaf, the problem of communication is a very strong one,” noting that “television channels have no obligation to have translation... We are trying to change this in the new disability law—to make it an obligation for all TV channels, all programs, either to have sign language or subtitles.”<sup>215</sup> This would build on

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<sup>212</sup> Human Rights Watch telephone interview with Wilfredo Guzmán Jara, President, CONADIS, January 26, 2012.

<sup>213</sup> Ley de Partidos Políticos, Ley No. 28094, art. 2.

<sup>214</sup> Human Rights Watch interview with Susana Stiglich, disability advocate and National Technical Coordinator on Disability, Organization of American States, Lima, October 24, 2011.

<sup>215</sup> Human Rights Watch interview with Javier Diez Canseco, parliamentarian, Lima, October 24, 2011.

prior legislation, enacted in May 2010 that requires all public and private entities that offer public services to provide interpreters to deafblind persons, free of charge.<sup>216</sup>

National and regional organizations of people with disabilities actively engaged with political parties during the 2010 and 2011 elections, suggesting candidates to include in party lists, and encouraging them to promote disability rights issues in their platforms.

Aquiles Delgado, president of FEDEPRODDIS, a federation of persons with disabilities in the Cusco region, described some of their efforts:

In the last election, we sought to have 50 people with disabilities elected. We made proposals to the parties that people with disabilities be included in the electoral lists. We organized meetings with political parties... We proposed to all the parties that participated in the regional election that they address architectural, economical and social barriers... so that people with disabilities are included in society. They all agreed in writing to include people with disabilities in their plans.<sup>217</sup>

Human Rights Watch also spoke with people with disabilities who had been elected to municipal government posts (*regidor*) in each of the three regions we visited. Several noted the importance of local government leadership in supporting their work, sometimes in the face of rejection by community members.

Cecilio, a blind man from Puno, told Human Rights Watch that during his term as *regidor* (alderman), members of the community questioned his competence for the job. “They told the mayor that I should not be a *regidor*. They said, ‘He can’t see. He’s crazy. You shouldn’t listen to what he says.’”<sup>218</sup> The mayor defended Cecilio’s performance. In response to these complaints, “the mayor pointed to the norms that said that people with disabilities *can* participate.”<sup>219</sup>

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<sup>216</sup> Law Recognizing Deafblindness as a Unique Disability and Establishes Dispositions for the Attention of Deafblind Persons (Ley Que Reconoce la Sordoceguera Como Discapacidad Única y Establece Disposiciones para la Atención de las Personas Sordociegas), Law No. 29524, art. 6.

<sup>217</sup> Human Rights Watch interview with Aquiles Delgado, President, FEDEPRODDIS, Cusco, July 25, 2011.

<sup>218</sup> Human Rights Watch interview with Cecilio, a blind man, Puno, October 31, 2011.

<sup>219</sup> Ibid. Italics added to reflect the person’s emphasis during the interview.

Peruvian law establishes quotas for gender representation in Congress, mandating that party lists for Congressional elections include at least 30 percent male or female candidates to ensure gender diversity.<sup>220</sup> Quotas for participation based on gender, youth, and indigenous status also exist for municipal and regional elections.<sup>221</sup> Disability is not a status for which a quota on the political party lists exists.

Wilfredo Guzmán Jara, president of CONADIS, told Human Rights Watch: “There shouldn’t have to be quotas. Everything should be equal. But they are necessary as part of political evolution... There are quotas for women, youth, indigenous people [*nativas y pueblos originarias*]. In this context, it would be make sense to have quotas for people with disabilities.”<sup>222</sup>

## Barriers to Participation in Local Decision-Making

The General Law on Persons with Disabilities, Law No. 27050, requires local and regional governments to take measures to promote participation of people with disabilities in political life, including by creating Regional Offices for Attention of Persons with Disabilities (Oficinas Regionales de Atención a las Personas con Discapacidad, OREDIS) and Municipal Offices for Attention of Persons with Disabilities (Oficinas Municipales de Atención a las Personas con Discapacidad, OMAPED).<sup>223</sup> The creation of these offices corresponds with Peru’s broader commitment, especially since 2002, to promote civil society participation in political processes at all levels.<sup>224</sup> However, the Government of

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<sup>220</sup> With respect to quotas based on gender, see Political Constitution of Peru, 1993, art. 191, as amended by Law No. 28607, 2005, art. 1; Organic Elections Law, art. 116, as amended by Law No. 27387, 2000, art.1 (candidate lists for Congress in each electoral district must include no less than 30 percent men or women); see also Political Parties Law (Ley de Partidos Políticos), Law No. 28094, 2003, art. 26 (number of women or men on candidate lists for party leadership positions and party candidates for popular election can be no less than 30 percent).

<sup>221</sup> Regional Elections Law (Ley de Elecciones Regionales), Law No. 27683, 2002, art. 12, as amended by Law No. 29470, 2009, art. 2; Municipal Elections Law (Ley de Elecciones Municipales), Law No. 26864, 1997, art. 10, as amended by Law No. 27734, 2002, art. 1.

<sup>222</sup> Human Rights Watch telephone interview with Wilfredo Guzmán Jara, President, CONADIS, January 26, 2012.

<sup>223</sup> General Law on Persons with Disabilities, art. 10.

<sup>224</sup> In 2002, the national government initiated a number of reforms to decentralize government and to increase the right to access public information and transparency, including requiring government at all levels to publish information on budgets on a regular basis. The General Decentralization Law (Ley de Bases de la Descentralización) introduced the principle of participatory budgeting; the Participatory Budget Law (Ley Marco del Presupuesto Participativo) institutionalized participatory budgeting at the national level. For further information about these reforms, see Stephanie L. McNulty, Voice and Vote: Decentralization and Participation in Post-Fujimori Peru (Stanford, CA: Stanford University Press, 2011), chapter 2.

Peru acknowledged in its submission to the CRPD Committee that implementation of the provision is “weak,” and only 30 percent of these offices have been established.<sup>225</sup>

OMAPED offices, often staffed by persons with disabilities themselves, play an important role in promoting public policies that address the needs and rights of people with disabilities in Peru, including by working to mainstream disability issues. OMAPED activities include providing training related to the CRPD, Peruvian disability law and voting accommodations for people with disabilities, and providing assistance with obtaining identity documents.<sup>226</sup>

Lawyers with the Public Ombudsman’s office, disability advocates, and OMAPED staff described challenges that impeded OREDIS and OMAPED offices from operating effectively, including lack of budget and independence, and lack of information about OMAPEDs.<sup>227</sup> This, in turn, contributed to the failure to integrate OMAPEDs, and thus disability issues, in local and regional government decision-making.<sup>228</sup>

As Felipe Flores, president of FEDDIP, the regional disabled peoples’ federation in Puno, explained, “OMAPED and OREDIS offices exist, but without a legal document. In many cases, there is no ordinance creating it, assigning its functions, laying out what has to be done. They have no budget. Government officials think it is just a place for people with disabilities to meet,” adding, “We have to do a lot of advocacy to make sure that people with disabilities are included in decision-making.”<sup>229</sup>

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<sup>225</sup> Government of Peru, List of Questions Complementary to the Oral Report of Peru Regarding the Implementation of the Convention on the Rights of Persons with Disabilities (submitted to the UN Committee on the Rights of Persons with Disabilities in advance of its April 2012 review), undated, p. 2. According to media reports, as of October 2011, only 350 of 1,834 municipalities and 8 of 25 regions had opened OMAPED or OREDIS offices. “Only 350 Municipalities have Offices for the Attention of Persons with Disabilities”, (Solo 350 municipios del Perú tienen Oficina de Atención a Discapacitados), El Comercio, October 22, 2011,

<http://elcomercio.pe/peru/1321736/noticia-solo-350-municipios-peru-tienen-oficina-atencion-discapacitados> (accessed April 8, 2012).

<sup>226</sup> Human Rights Watch interview with Elmer Rozal Pimental, deputy director, OMAPED, Cusco, October 27, 2011; Human Rights Watch interview with Wilfredo Chrono, deputy director, OMAPED, Puno, November 2, 2011; Human Rights Watch interview with Chembilla Yupanqui, OMAPED-Mañazo, Puno, social worker, October 31, 2011.

<sup>227</sup> Human Rights Watch interview with Silvio Campana Zegarra, representative of the public ombudsman, Cusco, October 27, 2011; Human Rights Watch interview with Luz Herquinio, director, and Trinidad Carlos, attorney, Public Ombudsman’s office, Puno, November 2, 2011; Human Rights Watch interview with Felipe Flores, president, FEDDIP, Puno, October 31, 2011.

<sup>228</sup> Ibid.

<sup>229</sup> Human Rights Watch interview with Felipe Flores, president, FEDDIP, Puno, November 2, 2011.

Elmer Rozal Pimental, deputy director of OMAPED in Cusco, acknowledged the importance of his mayor's support for the creation of OMAPED as an official government institution and for budget allocations for accommodations (such as ramps). He noted, however, that the lack of information about OMAPEDs' existence remained a barrier to participation.

"Unfortunately, until 2009, very few knew about the existence of OMAPEDs, even though the creation of OMAPEDs was in the 1999 disability law. When more people in government agencies know about OMAPEDs, we will have greater participation."<sup>230</sup>

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<sup>230</sup> Human Rights Watch interview with Elmer Rozal Pimental, deputy director of OMAPED, Cusco, October 27, 2011.

### III. Efforts of International Actors and National Civil Society

#### International Actors

International donors and NGOs have been quite active in supporting democracy and governance issues in Peru and have a unique opportunity to ensure that these programs are inclusive of people with disabilities. However, development agencies and international NGOs with programs focused on promoting an informed and engaged citizenry, especially during the 2010-2011 elections, could have done more to include this marginalized group in their initiatives.

For example, the report of the European Union (EU) mission that monitored the June 2011 second round of presidential elections said very little about disability. The mission conducted a comprehensive analysis of the electoral process, including the legal framework, election administration, role of state institutions, campaign activities, voting, and the complaints and appeals processes.<sup>231</sup> The mission's expert told Human Rights Watch that EU observers get training with "special attention to the political participation of vulnerable groups, such as persons with special needs and with disabilities."<sup>232</sup> Despite the legal, communication and accessibility barriers faced by people with disabilities leading up to and during the recent election, the mission's 29-page report noted that Peru is a party to the CRPD but included just one cursory reference to disability, mentioning the work of the Ombudsman's office on political participation of vulnerable groups including people with disabilities.<sup>233</sup> The technical recommendations in the report call on the government to consider establishing polling stations closer to voters to avoid that voters walk or travel long distances. The report also urges the media to "increase its efforts to provide voters with complete and detailed information on political parties' programs."<sup>234</sup> The recommendations, however, do not explicitly address the particular barriers experienced by people with intellectual or psychosocial disabilities such as the exclusion

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<sup>231</sup> European Union, "Election Observation Mission - Peru. Final Report: Second Round of the Presidential Election, June 2011," September 7, 2011, [http://www.eueom.eu/files/pressreleases/english/EUEOM\\_Peru\\_2011\\_Final\\_Report.pdf](http://www.eueom.eu/files/pressreleases/english/EUEOM_Peru_2011_Final_Report.pdf) (accessed January 15, 2012).

<sup>232</sup> Memo from Mrs. Tania Marques, expert on the EU Election Observation Mission (EOM) to Peru, to Human Rights Watch (responding to March 6 letter from Human Rights Watch), received March 26, 2012.

<sup>233</sup> "Election Observation Mission - Peru. Final Report: Second Round of the Presidential Election, June 2011," p. 19.

<sup>234</sup> *Ibid.*, p. 29.



from the voter registry, lack of information in accessible formats, and the lack of training for election monitors and administrators on ensuring the right to vote of people with disabilities.<sup>235</sup> The EU Observer Mission's expert explained that election observers had reached out to several human rights organizations, Transparencia and the Ombudsman's office, none of which brought any violations to their attention.<sup>236</sup> No outreach was done to disabled persons' organizations. As a party to the CRPD, however, the EU has an obligation to promote the principles and rights enshrined in the treaty, such as non-discrimination and ensuring consultation with people with disabilities and their representative organizations, including through its technical assistance programs.<sup>237</sup>

Disability-inclusive development is the policy of a growing number of aid agencies. However, Human Rights Watch found that few development programs supporting good governance and democracy specifically address the needs of people with disabilities. For example, the disability policy of the United States Agency for International Development (USAID) emphasizes the non-discrimination and inclusion of people with disabilities in the "design and implementation of USAID programming" as well as "advocacy for and outreach to people with disabilities."<sup>238</sup> USAID supports a number of projects in Peru in the area of democracy and governance; none of them have a specific disability focus.<sup>239</sup> One such project, run by the National Democratic Institute<sup>240</sup> in partnership with local Peruvian civic organizations and the JNE, focused on supporting "national political parties and regional and local movements be more representative and responsive of citizen needs."<sup>241</sup> This work included the development of media tools to increase outreach to voters, hosting debates and conducting mobile electoral fairs where citizens could get information about candidates and campaign platforms.<sup>242</sup> In all of these efforts, the particular needs of people with disabilities were virtually absent.

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<sup>235</sup> Ibid., pp. 28-29.

<sup>236</sup> Memo from Mrs. Tania Marques, received March 26, 2012.

<sup>237</sup> CRPD, art. 32.

<sup>238</sup> U.S. Agency for International Development (USAID), "USAID Disability Policy Paper," September 12, 1997, [http://pdf.usaid.gov/pdf\\_docs/PDABQ631.pdf](http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf) (accessed April 8, 2012), p. 2.

<sup>239</sup> Human Rights Watch telephone interview with Michael Karbeling, Peru and Paraguay desk officer, USAID, January 18, 2012; Letter from Richard Goughnour, USAID Peru mission director, to Human Rights Watch, March 20, 2012.

<sup>240</sup> The National Democratic Institute is a nonprofit, nonpartisan organization working to support and strengthen democratic institutions worldwide through citizen participation, openness and accountability in government. See <http://www.ndi.org/> (accessed April 8, 2012).

<sup>241</sup> National Democratic Institute, Peru, <http://www.ndi.org/peru#PoliticalPartyStrengthening> (accessed April 8, 2012).

<sup>242</sup> Ibid.

## Good Practices among Civil Society

I want to be a citizen just like any other.

—Maria Alejandra Villanueva, a young woman with Down Syndrome,  
September 7, 2011

Disabled persons' organizations in Peru are quite active in promoting the rights of people with disability, especially the right to political participation, and serve as models for the disability community across the (South American) region on how civil society can promote the rights of people with disabilities. For example, several groups, notably the Peruvian Down Syndrome Society and the Ann Sullivan Center of Peru, were engaged with the Ombudsman's office in the efforts to reverse the RENIEC policy excluding people with psychosocial and intellectual disabilities from the electoral registry. The Peruvian Down Syndrome Society took a very active role in training and supporting self-advocates, people with Down Syndrome who speak up on their own behalf for the rights enshrined in the CRPD, and were critical in influencing the RENIEC decision to reverse its policy on the electoral registry. One young woman, Maria Alejandra Villanueva, shared her experience about being barred from the voting list at the UN Conference of States Parties to the CRPD in September 2011, and was subsequently featured in a number of media articles in Peru.<sup>243</sup>

The Ann Sullivan Center of Peru developed a program to support people with intellectual disabilities in the electoral process. This program included a voting simulation to assist people with intellectual disabilities in becoming more familiar with the election procedures, including using mock ballots, voting chambers and ballot boxes. Some students served as election administrators, verifying the names and signatures of those participating in the mock election. Representatives of ONPE visited the center to provide information about the election process. Despite this preparation, many of them were excluded from the electoral registry and were thus unable to vote. More than 80 people with intellectual disabilities who are part of the Ann Sullivan Center, however, did participate in the municipal or presidential elections or both.

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<sup>243</sup> UN webcast, Roundtable 2, Fourth session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, September 8, 2011,

<http://www.unmultimedia.org/tv/webcast/2011/09/fourth-session-of-the-conference-of-states-parties-to-the-convention-on-the-rights-of-persons-with-disabilities-english-3.html> (accessed January 19, 2012); TV Peru,

<http://www.tvperu.gob.pe/noticias/locales/otros/27715-buscan-dar-derecho-a-voto-a-personas-con-habilidades-especiales.html> (accessed October 19, 2011).

SENSE International Peru, which works primarily with people with both visual and hearing impairments, recently launched an advocacy campaign to promote their rights. In October 2011 a group of deafblind people prepared banners and signs demanding their rights and marched to the municipal government office in San Borja to meet with the head of OMAPED. As Tonio, a 37-year old man with a hearing impairment and limited vision, explained, “We are going to ask that they help people who are deafblind in different areas. We are going to ask for helping in realizing our rights.”<sup>244</sup> This was the first time that members of the deafblind community had been engaged in political advocacy.

The umbrella disability organization, the National Confederation of Persons with Disabilities in Peru has also been actively involved in promoting the political participation of the disability community. For example, prior to the 2011 presidential elections, CONFENADIP influenced the political party Gana Peru to address disability rights as part of its platform, the only party to do so.<sup>245</sup> CONFENADIP also organized the first congress of women with disabilities in 2010, bringing together disabled women leaders to build capacity and strengthen their network.

In the 2001 elections, the International Federation of Electoral Systems partnered with Transparencia, a major election monitoring organization, and Aproddis (Association Pro Desarrollo de la Persona con Discapacidad), an NGO promoting the economic and social development of Peruvians with disabilities, to train more than 300 citizens with disabilities as election observers.<sup>246</sup> This effort not only helped to integrate disability issues into the election monitoring process, but also promoted greater awareness of the contributions and capabilities of people with disabilities.

Wilfredo Chrono, deputy director of the OMAPED in Puno, said OMAPED, engaged election officials to ensure accessibility in the 2011 elections. OMAPED, together with disability advocates, pushed for voting accommodations in accordance with disability laws, throughout the election cycle. When the required accommodations did not materialize, OMAPED organized a meeting with ONPE to discuss the issue prior to the June 2011

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<sup>244</sup> Human Rights Watch interview with Tonio, 37-year old deafblind man, Lima, October 24, 2011.

<sup>245</sup> Human Rights Watch interview with Sonia Malca Silva, President of CONFENADIP, Lima, October 24, 2011.

<sup>246</sup> *Electoral Participation by People with Disabilities: Peru Case Study*, Political Access for People with Disabilities Briefing Paper Series, Volume 2, Paper 3, July 2001, [http://www.electionaccess.org/TextOnlyVersion/publications/briefings/o1\\_07\\_Peru\\_Text.htm](http://www.electionaccess.org/TextOnlyVersion/publications/briefings/o1_07_Peru_Text.htm) (accessed January 9, 2012).

national elections. Chrono told Human Rights Watch, “We made sure they knew our needs. I said to them, ‘You always tell us that there will be Braille templates. But there never are.’ I think this is my right to ask for this.”<sup>247</sup> OMAPED’s advocacy was successful: Wilfredo was among those who voted with a Braille ballot in the June 2011 election.

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<sup>247</sup> Human Rights Watch interview with Wilfredo Chrono, deputy director, OMAPED, Puno, November 2, 2011.

### *Participatory Budgeting*<sup>248</sup>

Disabled persons' organizations in Peru have used participatory budgeting processes, required by law,<sup>249</sup> to seek financial support for economic development, and to promote organization-building among DPOs on a regional basis. For example, FEDEPRODDIS, the regional federation of persons with disabilities in Cusco, has over the years successfully sought funds from the regional government through participatory budgeting processes. Aquiles Delgado, FEDEPRODDIS' president, explained:

In 2007, we presented a proposal to the regional government for a project on political participation. They rejected our first proposal. The second year, they gave us a small budget. We started to coordinate with other civil society members, and then the third year we received 4,974,000 soles [about 1.8 million USD] to construct a center.... This is a big advance for us. It's the first national organization that achieved this work through its own advocacy.<sup>250</sup>

FEDEPRODDIS also has a model project template that it distributes to local DPOs throughout the region to support their engagement in participatory budgeting processes.<sup>251</sup>

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<sup>248</sup> Participatory budgeting is part of Peru's policies to decentralize the state and strengthen the relationship between government and civil society. It is meant to promote "equitable, rational efficient, effective and transparent allocation of public resources," by including civil society in budget design and monitoring budget implementation. Through participatory budgeting, citizens do not simply receive ideas, they participate in generating them, and as a result the government can better identify the needs of Peruvians, utilize economic resources, and protect rights. These processes take place at the local and regional level to jointly identify areas of investment, and provide a forum to "promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs," in compliance with CRPD art. 29(b). See Framework Law on Participatory Budgeting (Ley Marco del Presupuesto Participativo), Ley No. 28056, 2003, arts. 1, 3, 5.

<sup>249</sup> Peruvian law requires all local and regional governments to institutionalize an annual participatory budgeting process, intended to strengthen and promote civil society participation in the design of public budgets and oversight of their implementation. These processes require that a portion of the budget be subject to a civil society consultation process in order to jointly identify targets for investment. Civil society actors can provide input in meeting workshops, as members of coordinating councils, oversight committees and technical teams that review proposals and approve the budget. See Framework Law on Participatory Budgeting.

<sup>250</sup> Human Rights Watch interview with Aquiles Delgado, President, FEDEPRODDIS, Cusco, July 25, 2011.

<sup>251</sup> Human Rights Watch interview with Aquiles Delgado, October 28, 2011.

In conclusion, much remains to be done in Peru to ensure that people with disabilities have equal access to the political processes and to enable their voices to be heard. The Peruvian parliament should amend the Civil Code to reflect the international legal standard that all people with disabilities should have equal legal capacity as other citizens, in order to meet its obligations under the CRPD and to comply with the OAS directive. The government, together with disabled persons' organizations, needs to develop and implement a system of supported decision-making. More broadly, relevant ministries and government agencies should systematically engage disabled persons' organizations and persons with disabilities in decision-making and legal reform processes.

The government of Peru also needs to ensure that voting infrastructure and processes are accessible for people with diverse disabilities and that all those involved in running and managing elections have adequate training to facilitate their right to political participation on an equal basis as others. Failure to do so effectively denies people with disabilities their rights, citizenship and dignity.

## IV. Recommendations

### To the Government of Peru

#### Law Reform

- The Congressional Commission on Social Inclusion and Persons with Disabilities should work with Congress to comprehensively review all domestic legislation and make amendments to fully comply with the Convention on the Rights of Persons with Disabilities, including revision of the definition of disability in the General Law on Persons with Disabilities, Law 27050.
- Fundamentally reform the law on legal capacity to create a system in which all people with disabilities can have access to supported decision-making rather than being deprived of the ability to exercise their rights, including by amending articles 43 and 44 of the Civil Code so that judicial interdiction resulting in deprivation of legal capacity cannot be used in a discriminatory manner simply on the grounds of disability.
- Amend laws linking proof of voting or dispensation from voting to capacity to engage in civil, commercial, administrative, and judicial transactions, including article 29 of the Organic Law of the National Registry of Identity and Civil Status, Law No. 26497, and article 390(c) of the Organic Election Law.
- Ensure that the draft electoral codes being prepared by the National Jury of Elections are consistent with Peru's international obligations to ensure political participation rights of people with disabilities.
- Take urgent measures to ensure that the legal system does not permit approval of new cases of interdiction on the grounds of disability.
- Issue guidelines making clear that interdiction does not permit restrictions on voting rights for people with disabilities and facilitating amendment of interdiction orders to restore their voting rights.
- Pending implementation of such reform, undertake the following improvements to the current system to ensure the right to political participation of people with disabilities and that deprivation of the right to vote does not impair capacity to engage in civil, commercial, administrative, and judicial transactions:

- The Supreme Court of Justice should issue guidelines on relative interdiction removing all voting restrictions based on legal capacity.
- RENIEC should issue a legal opinion clarifying that unexcused failure to vote does not affect capacity to engage in civil, commercial, administrative, and judicial transactions.
- The National Jury of Elections should issue guidelines waiving fines for people with disabilities for failure to vote or participate as an election administrator.
- All relevant entities should involve people with disabilities, particularly those affected by deprivations of legal capacity, in the process of developing legal capacity reforms.

### **Statistics and Records**

- Ensure that comprehensive information about people with disabilities is included along with published census figures and updated on a regular basis.
- Create a statistical database to coordinate information about people with disabilities collected by government agencies for planning purposes, including RENIEC, ONPE, and CONADIS.

### **Accessibility**

- Take measures to ensure all buildings open to the public and used as voting stations or public meeting spaces are universally accessible.
- Take measures to anticipate the needs of people with disabilities to ensure that they can access polling stations, and have the necessary support (including Braille ballots) to register their vote.
- Support the right of people in institutions to choose an official residence outside the institution and to vote in that location.
- Ensure that accessible transportation is available to polling stations.
- Permit alternative options to ensure accessibility, taking into account the needs of people with disabilities in rural or remote areas, including mobile voting stations, postal voting, advance voting, or electronic voting.



### **Information, Education, Training**

- Ensure that training for election officials, election administrators, police, and political party leaders includes information and education about the rights and needs of persons with disabilities.
- Ensure information, education and training of people living in institutions by an independent authority to facilitate their right to vote freely and without undue influence.
- Train judges and lawyers about the rights enumerated in the CRPD so that they can correctly apply the law.
- Involve people with disabilities in training election officials, election administrators, police, and political party leaders on the political participation rights of people with disabilities.
- Disseminate accessible information regarding elections, political party platforms, and participation in political life (including in Braille, sign language, and easy-to-read formats).
- Implement public awareness campaigns about the rights of persons with disabilities and ensure that people with disabilities and their family members know their rights including the right to an unencumbered national identity card.
- Build the capacity of persons with disabilities and disabled persons' organizations through training and education on substantive topics and political skills like public speaking and negotiations.
- Consult with persons with disabilities, DPOs, and families of persons with disabilities to better understand and support their needs with respect to their rights to political participation.

### **Standing for Office**

- Take effective measures to promote the inclusion of people with disabilities in politics, including by working with and urging political parties to integrate people with disabilities and DPOs into their training, education, and outreach programs, and to ensure accessibility for candidates with disabilities.

### **Participation in Decision-making**

- Create OMAPED and OREDIS in all municipalities and regions.

### **To Multilateral and Bilateral Donors, UN agencies and International NGOs**

- Integrate a disability-inclusive approach into existing and future cooperation agreements involving programs or policies on political participation.

### **To the UN Human Rights Committee**

- Update General Comment No. 25 to conform with CRPD requirements on political participation, including by making clear that “established mental incapacity” is not a reasonable basis on which to deny the right to vote or stand for election.
- Incorporate questions about political participation of persons with disabilities in review of states’ party compliance with their obligations under the ICCPR.
- Consult with disabled persons’ organizations and the CRPD Committee regarding the above.

### **To the UN Committee on the Rights of Persons with Disabilities**

- Articulate clearly the relationship between legal capacity under article 12 and political participation under article 29 in the forthcoming General Comment on legal capacity.
- Work with Peru and other member states to ensure that persons with disabilities have the right to political participation on an equal basis with other citizens and take appropriate measures to ensure this right.

## Acknowledgments

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Peru was one of the first states to become a party to the Convention on the Rights of Persons with Disabilities and has enshrined protection for many disability rights in its laws. This should help to ensure equal rights for all persons with disabilities, including the right to vote, stand for office, and participate in decisions about public affairs. However, gaps in Peruvian laws and policies mean that many people with disabilities can still not fully exercise some of their fundamental rights as citizens.

In *"I Want to be a Citizen Just like Any Other,"* Human Rights Watch examines the legal and practical barriers that people with diverse disabilities in Peru face in exercising their right to political participation. It also examines how restrictions on legal capacity impact the ability of people with intellectual and psychosocial disabilities in particular to enjoy a range of rights, including the right to own or inherit property, be employed or legally represent their children.

Human Rights Watch calls on the government of Peru to reform discriminatory laws and practices, and to actively involve people with disabilities in planning and decision-making processes, thereby honoring its obligations to protect the right of all people with disabilities to participate in public affairs.

(above) Participants at a workshop on disability rights organized by FEDDIP, a regional umbrella organization that works with marginalized persons with disabilities in the Puno region, particularly members of indigenous, rural communities in the Peruvian highlands.

(front cover) Using sign language, Monica, a deafblind woman, expresses her opinion on her right to political participation. She is a member of SENSE International Peru, an NGO working with deafblind people and their families.

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