

**Report on IDA’s Follow-up Mission to Peru**

[I. INTRODUCTION](#Introduction)

1. [Follow up activities](#Followupactivities)
2. [First follow-up mission to the CRPD Committee’s Concluding Observations](#Firstfollowup)
3. [Choice of Peru](#ChoicePeru)
4. [Scope of follow up](#Scope)
5. [Methodology](#Methodology)

[II. FINDINGS](#Findings)

1. [Legislative framework: New General Law on Persons with Disabilities](#Legislativeframework)
2. [Legal capacity](#LegalCapacity)
3. [Participation and consultation](#ParticipationConsultation)
4. [Inclusive education](#InclusiveEducation)
5. [Short term follow up recommendations](#Shortterm)
	1. [Identity documents](#ID)
	2. [Prohibition of disability based deprivation of liberty](#Prohibitionliberty)
	3. [Forced sterilisation](#Forcedsterilisation)

[III. LESSONS LEARNED](#LessonsLearned)

IV. ANNEXES

[Annex I: Summary of formal follow up procedures of UN treaty bodies](#AnnexI)

[Annex II: Agenda of follow-up mission in Lima](#AnnexII)

[Annex III: Overview of implementation of recommendations concerning the rights of persons with disabilities](#AnnexIII)

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**The International Disability Alliance**

The International Disability Alliance (IDA) is a network of eight global and six regional organisations of persons with disabilities and their families (DPOs), representing the estimated one billion persons with disabilities worldwide.  Founded in 1999, as a network of international organisations of persons with disabilities, IDA has a unique composition that allows it to act as an authoritative and representative voice of persons with disabilities in the United Nations (UN) system in New York, Geneva and worldwide.

IDA’s advocacy seeks to advance human rights utilising the Convention on the Rights of Persons with Disabilities (hereinafter “the Convention") and other human rights treaties, harnessing the strengthened united voice of its members, forging working relationships with partners to achieve common goals inclusive of persons with disabilities worldwide.

The cornerstone of IDA’s work is the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). IDA promotes the effective and full implementation of the UN CRPD, and compliance by governments and the UN System, through the active and coordinated involvement of representative organisations of persons with disabilities at the national, regional and international levels. The 2030 Agenda and its Sustainable Development Goals are also integral to IDA's work to promote inclusive, sustainable development in line with the UN CRPD and the rights of persons with disabilities.

1. **INTRODUCTION**

Peru was the third State Party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) to be reviewed by the Committee on the Rights of Persons with Disabilities (*hereinafter* “CRPD Committee”) in April 2012. Following the interactive dialogue between the Committee and the Peruvian delegation, the Committee issued its recommendations directed to the State Party to reinforce CRPD implementation in the country.

In October 2015, the International Disability Alliance (IDA) in cooperation with the CRPD Committee carried out a first follow-up mission to Peru to track implementation of the Committee’s Concluding Observations. The present report sets out the findings of this mission.

1. **Follow up activities**

Follow-up activities aim at ensuring that recommendations and decisions by human rights mechanisms and bodies are implemented so as to improve respect, protection and fulfilment of all human rights for all. Follow up lies at the heart of the treaty body review process; the entire cycle rests upon the foundation that reporting, monitoring, dialogue and guidance through recommendations will mobilise implementation for the effective enjoyment and exercise of rights by individuals on the ground.

Without systematic monitoring of the implementation of CRPD Committee recommendations, opportunities are being lost which have an impact both at the national and global levels. At the national level, following up on Concluding Observations serves to reinvigorate momentum by government and organisations of persons with disabilities (*hereinafter* “DPOs”) for implementation. At the international level, it is essential to identify trends in implementation- both challenges as well as good practices- to assess and adapt the work of the CRPD Committee to more effectively meet the needs of States Parties for enhanced implementation at the national level.

Recognising the significance of follow up, many treaty bodies have adopted formal procedures to follow up on Concluding Observations, including the CRPD Committee. The CRPD Committee has appointed a follow-up rapporteur[[1]](#footnote-1) and some reports have been sent in by a few States Parties and civil society organisations in accordance with the CRPD Committee’s procedures. Besides this initial activity, the CRPD Committee has yet to fully launch and engage in its follow up procedure. More information about the CRPD Committee’s follow procedure and those in use by other treaty bodies can be found at Annex I.

1. **First follow-up mission to the CRPD Committee’s Concluding Observations**

Recognising the importance of the follow up phase in giving meaning to the review cycle, IDA carried out this first follow up mission to assess the concrete translation and application of recommendations from the global to the local context. While information was broadly collected to comment upon the status of implementation of all recommendations, the focus of the mission was on implementation of recommendations related to equal recognition before the law (Article 12), DPO participation and consultation (Article 4(3)) and the right to inclusive education (Article 24).

The report compiles information on developments in terms of reform of laws, policy, and practice, highlighting good practices and continued challenges, and concludes with some observations and lessons learned emerging from this first follow up experience. Following the criteria adopted by some treaty bodies,[[2]](#footnote-2) a graded evaluation assessing implementation of those treaty body recommendations related to the rights of persons with disabilities figures in Annex III.

1. **Choice of Peru**

Peru was chosen for the first IDA mission on follow up on the basis of several considerations:

* Peru was the third country reviewed by the CRPD Committee (following Tunisia and Spain) in 2012. Several years have passed since the review during which the State Party could reasonably be expected to have taken concrete steps to implement recommendations.[[3]](#footnote-3)
* it is a country from the global south which can be related to more easily by other low and middle income countries within the region and beyond;
* it is a country which has undergone reviews by almost all treaty bodies as well as the Universal Periodic Review (*hereinafter* “UPR”) within the last years;[[4]](#footnote-4)
* Peruvian organisations of persons with disabilities have been engaging actively in all the above mentioned reviews by treaty bodies and UPR and which resulted in recommendations concerning persons with disabilities before all those fora;
* it is a country where several concrete initiatives have been taken toward implementation following the initial review which could serve as models for other countries in the region and beyond;
* it is a country where several initiatives, such as legal capacity reform, are on-going which could benefit from attention and support by global human rights mechanisms;
* it is a country which has already been subject to some follow up by the CRPD Committee- the government having sent in a follow up report and DPOs having contributed a submission on follow up to CRPD Committee recommendations.
1. **Scope of follow-up**

In determining the scope of the follow-up mission and report, all recommendations emitted concerning Peru, not only by the CRPD Committee, but also from other treaty bodies and the UPR were explored and analysed in terms of their intersections with those of the CRPD Committee. This made for a very wide and rich array of recommendations which were composed of those specific to the rights of persons with disabilities (including women and children with disabilities), as well as those which did not reference persons with disabilities but nonetheless impacted upon the enjoyment and exercise of their rights (e.g. policies relating to discrimination generally or women, violence, education, data collection etc).

Given the limits which imposed with respect to the duration of the follow-up mission as well as IDA’s time and capacity, the present report is not exhaustive in addressing all areas included in the CRPD Committee’s Concluding Observations on Peru. Upon consultation with Peruvian DPOs and analysis of implementation developments and challenges, three areas of focus were selected: DPO participation, legal capacity and inclusive education.

Further, specific attention was made on following up to the CRPD Committee’s recommendations for short term follow up[[5]](#footnote-5) – namely on steps undertaken concerning:

* the provision of identity documents to persons with disabilities, including in rural areas and in long-term institutional settings, and data collection on people with disabilities in institutions who are currently undocumented (para 23 of the Concluding Observations);
* the repeal of Law 29737 which modifies Article 11 of the General Health Law in order to prohibit deprivation of liberty on the basis of disability, including psychosocial, intellectual or perceived disability (para 29); and
* the abolition of administrative directives on forced sterilisation of persons with disabilities (para 35).
1. **Methodology**

Meetings with government, the independent monitoring framework, civil society and the UN country team: Information was gathered through meetings with several authorities across the three branches of government- executive, legislative and judicial; the Office of the Ombudsperson (*Defensoría del Pueblo*) which is the National Human Rights Institution of Peru and has also been designated as the independent monitoring mechanism under Article 33(2) of the Convention; representative organisations of persons with disabilities and other civil society organisations, as well as the UN country team in Peru.

The meetings were attended by Vice Chair of the Committee, Silvia Quan-Chang, IDA representative Raquel Jelinek, and IDA secretariat staff. Some events were attended jointly with the UN Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas. A full list of meetings and composition of the mission team can be found in Annex II.

Follow up questionnaire: In order to track the successes and challenges identified in implementing recommendations, a follow up questionnaire directed at Peruvian DPOs and NGOs was drafted. The questionnaire attempted to gather information on the substantive changes which have occurred since the review by the Committee.

1. **FINDINGS**
2. **Legislative framework: New General Law on Persons with Disabilities**

*CRPD Committee Concluding Observations on Peru, 2012:*

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

*(a) Law 27050 on Persons with Disability provides a definition of disability based on a medical, rather than a social perspective and does not include references to the core principles contained in articles 2 and 3 of the Convention;*

*(b) Absence of reference to denial of reasonable accommodation and discrimination by association as forms of disability-based discrimination;*

*(c) Existence of discriminatory requirements to acquire Peruvian nationality that prohibits persons with intellectual and psychosocial disabilities to do so.*

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

***(a) Amend Law 27050 to include a comprehensive definition of a person with disability;***

***(b) Define denial of reasonable accommodation and discrimination by association as forms of disability-based discrimination;***

***(c) Amend the Act for Foreigners in order to eliminate the requirements that discriminate against persons with intellectual or psychosocial disabilities.***

At the time of reporting to the Committee, the 1998 General Law on Persons with Disabilities, Law no 27050, was still in force and faced criticism by the Committee for espousing a medical model definition of disability.[[6]](#footnote-6)

In 2012, Law no 29973 on Persons with Disabilities[[7]](#footnote-7) was adopted and introduced a veritable shift in approach to the rights of persons with disabilities based on equality and non-discrimination. Article 3(2) of the law sets out that the rights of the persons with disabilities are interpreted in accordance with the principles and rights contained in the Universal Declaration of Human Rights, the CRPD and other international human rights instruments ratified by Peru.

The 2012 law has been touted by civil society as creating a new disability policy framework based on respect of human rights and social inclusion in line with the CRPD. Some DPOs consider that the new disability law marked the “beginning of harmonisation” of local legislation with the CRPD, and there is consensus on the part of civil society that the law is CRPD-compliant.

Major advances include:

* a definition of persons with disabilities which is in line with the approach of the Convention;
* for the first time, reasonable accommodation is referred to and its denial is recognised as constituting discrimination on the basis of disability;[[8]](#footnote-8)
* the provision of reasonable accommodation is foreseen with respect to employment[[9]](#footnote-9) (including the refusal to provide reasonable accommodation as grounds for unlawful dismissal and the denial of reasonable accommodation as harassment) and education;[[10]](#footnote-10)
* equal recognition before the law of persons with disabilities is upheld in accordance with Article 12 of the Convention, across all aspects of life, including with respect to the right to property, inheritance, contracts and access, on an equal basis with others, to insurance, bank loans, mortgages and other forms of financial credit, as well as the right to marry and decide freely on the exercise of sexuality and fertility;[[11]](#footnote-11)
* the provision of reasonable accommodation is also foreseen with respect to decision-making and legal capacity;[[12]](#footnote-12)
* the creation of a Special Commission on Civil Code Reform (CEDIS) specifically concerning legal capacity which mandates the participation of representative organisations of persons with disabilities, among others;[[13]](#footnote-13)
* amendment of the General Law on Education to ensure “inclusive education”;[[14]](#footnote-14)
* amendment of the General Law on Health to remove the outdated rehabilitation approach and replaces it with a right to access to health benefits and services on an equal basis with others;[[15]](#footnote-15)
* amendment of the Law on Radio & Television to establish that sign language or captioning must be used for informational, educational and cultural programs broadcast on TV to ensure access to information to deaf and hard of hearing persons;[[16]](#footnote-16)
* amendments to social protection schemes, including the introduction of:
1. a non-contributory pension scheme for persons with disabilities in poverty, although limited to persons with “severe” disabilities;[[17]](#footnote-17) and
2. a waiver of the prohibition of double entitlements for persons with disabilities receiving an “orphan's pension under a pension regime” (*pensión de orfandad bajo un régimen previsional*) when their income is not higher than two minimum wages from their usual workplace, in order to promote inclusion in employment;[[18]](#footnote-18)
* amendment of the Law on Income Tax, by including additional deductions for employers over the remuneration paid to employees with disabilities, as an incentive to hire persons with disabilities;[[19]](#footnote-19)
* amendment of the Law on General Customs (Legislative Decree 1053) by expanding its scope and amending terminology. Now it waives customs duties on importation of accessible vehicles, assistive technologies and devices, and compensatory aids for the exclusive use of persons with disabilities;[[20]](#footnote-20)
* amendment of the Law on Transparency and Access to Information (Law 27806),[[21]](#footnote-21) including the duty of public administration entities to produce information on the percentage of persons with disabilities employed by each, as a way to monitor compliance with the quota system;
* amendment of the Law on the Promotion of Access to Internet for Persons with Disabilities and of Adaptation of Physical Space of Public Internet Booths (Law no 28530),[[22]](#footnote-22) including the duty of public entities, universities and private entities providing information and services to consumers to ensure accessibility of their websites for all persons with disabilities, and not limited to persons with visual impairments as in its previous version;
* amendment of the Law on Judicial Career (Law no 29277) stating that physical, sensory, mental and intellectual disability do not preclude access to a judicial career, unless the individual is not able to comply with their duties. The previous version required that the individual did not have “mental, physical or sensorial impairments duly certified that precluded her from complying her duties”;[[23]](#footnote-23)
* designation of the Office of the Ombudsperson (*Defensoría del Pueblo*) as the independent framework to monitor the implementation of the Convention in accordance with Articles 33(2) & (3) of the CRPD;[[24]](#footnote-24) and
* in terms of accessibility of the General Law, printed versions of the law were issued by the Congress[[25]](#footnote-25) (including a sign language guide) and CONADIS -both in full[[26]](#footnote-26) and abridged versions.[[27]](#footnote-27) A printed version of the law’s regulations (Supreme Decree no 002-2014-MIMP) was issued by CONADIS.[[28]](#footnote-28)

The general law entered into force on 25 December 2012 and the regulations for implementation of the law should have been adopted within 120 days.[[29]](#footnote-29) The regulations were eventually adopted in April 2014, i.e. over a year later meaning that concrete implementation was hindered and delayed. It was largely thanks to the efforts of civil society that the process was accelerated as they filed a petition for fulfilment (*acción de cumplimiento*)[[30]](#footnote-30) to compel the authorities to adopt the regulations.

Some areas within the law which may pose as challenges going forward in implementation include the following:

* Within the regulations, the definition of reasonable accommodation is in line with the Convention,[[31]](#footnote-31) however, there are yet no guidelines on how to ensure the provision of reasonable accommodation. In the context of employment, the regulations set out that there will be a new directive of the Ministry of Labour on reasonable accommodation which will explain how to request it and how to assess it, including establishing the criteria for determining whether reasonable accommodation constitutes an “undue economic burden”.[[32]](#footnote-32) In June 2016, the Ministry of Labour and Promotion of Employment adopted the Ministerial Resolution no 127-2016-TR on the Approved Technical Norm for the design, implementation and execution of reasonable accommodation measures for the employment of persons with disabilities in the private sector, and on requesting reasonable accommodation.[[33]](#footnote-33) This technical norm sets out types of reasonable accommodation which could be provided in the employment context, including in recruitment processes, induction and at the workplace, as well as the procedure for requesting reasonable accommodation and seeking appeal of decisions against denial of reasonable accommodation. Among others, it also sets forth a service on advice and guidelines on reasonable accommodation for employers and persons with disabilities provided by regional directorates or management of labour and promotion of employment with technical assistance from the Directorate General of Promotion of Employment through the Directorate of Promotion of Employment of Persons with Disabilities.[[34]](#footnote-34) The technical norm concludes by confirming that its interpretation should be in accordance with principles including equal opportunity, non-discrimination, respect for dignity, as set out in the Peruvian Constitution, the General Law on Persons with Disabilities, the CRPD and other human rights treaties.[[35]](#footnote-35) The elaboration of this technical norm is a positive development and should provide valuable guidance to employers on providing reasonable accommodation for more inclusive workplaces. However, two preliminary concerns are noted: First, the definition of person with disabilities differs from that of Law no 29973 (which is aligned to the CRPD) and specifies that the individual should have a disability certificate issued in accordance with the law.[[36]](#footnote-36) This may restrict the scope of persons who may be considered eligible for reasonable accommodation with respect to employment. Second, there is an extra requirement that the denial of reasonable accommodations must be “unjustified” to be considered discriminatory, which departs from the Convention standard.[[37]](#footnote-37)
* While the law incorporates all of the Convention’s principles as set out in Article 3 of the CRPD as Guiding Principles of State policies and programs,[[38]](#footnote-38) it adds two more principles which do not appear in the Convention - “reasonableness” and “interculturalism”.[[39]](#footnote-39) These two additions could be interpreted in different ways.
	1. “Reasonableness” is defined within the regulations for the law’s implementation as: “Principle based on proportionality between the exercise of the powers conferred under the law and whose purpose is to protect.”[[40]](#footnote-40) The impact of this criteria leaves it open for policymakers to invoke reasonableness as a pretext for defining to what extent a certain right may be guaranteed. There may be a risk that this could water down the acquis of the Convention.
	2. “Interculturalism” is defined as: “acceptance and recognition of the particularities resulting from cultural diversity and historical, ancestral and generational influences, promoting social integration and coexistence.”[[41]](#footnote-41) While this does not figure in the Convention, the background for this has been explained by some members of civil society as an explicit recognition of the particularity of Peru’s population and past; that its inclusion seeks respect for the intersecting cultures intrinsic to the “multicultural, multi-ethnic and multi-lingual diversity of Peru”.[[42]](#footnote-42)

Overall, the General Law on Persons with Disabilities is an exemplary demonstration of implementation of the Committee’s recommendations. These advances are particularly significant in light of the sparse examples of CRPD compliant laws on the rights of persons with disabilities currently in force worldwide. The General Law in Peru can thus serve as a model for other countries which are drafting or seeking to draft a law on the rights of persons with disabilities as it progressively embraces the human rights based approach and is aligned with the Convention.

With respect to the Committee’s specific recommendation to amend the Act for Foreigners to eliminate the requirements that discriminate against persons with intellectual or psychosocial disabilities (see para 7(c) of the Concluding Observations),[[43]](#footnote-43) Legislative Decree no 1236 was adopted in September 2015, replacing the Act for Foreigners, and which provides specific protections to foreigners in vulnerable situations, including persons with disabilities.[[44]](#footnote-44)

The Committee’s recommendations with respect to specific areas of the legislative framework as set out in the Concluding Observations (paras 7(a), (b), (c)) have thus been fulfilled.

**Participation of civil society in the process of the adoption of the General Law on Persons with Disabilities**

The success of the General Law on Persons with Disabilities, in terms of its CRPD compliant substance and the process leading to its adoption, belongs to a great extent to Peruvian civil society. DPOs partnering with civil society organisations specialised in the human rights of persons with disabilities carried out a long term strategy for the adoption of the General Law and which was linked from the outset to the Civil Code reform currently pending before the Congress. The example of Peru illustrates the central role that DPOs and civil society play in bringing about reform, and how international instruments and processes, including the CRPD review, can serve as effective tools and triggers toward concrete change.

While the General Law was adopted in 2012, Peruvian civil society started engaging in a long term strategy for CRPD implementation in 2008 upon ratification of the Convention. The objective to pass a CRPD compliant law on persons with disabilities to replace Law no 27050 of 1998 was approached not as an end in itself but as an opportunity to create a process which could mobilise the movement and wider civil society for greater impact and political leverage once the law was adopted. Hence, a citizen’s initiative to propose a bill to Congress was launched and DPOs and civil society worked for two years to collect signatures, engaging with grass roots organisations and the public to discuss the future law and proposals for content. This process served to raise awareness, consolidate the movement and build consensus and shared knowledge of the Convention. About 130,000 signatures were collected and delivered to the Congress, and the bill proposed by civil society was adopted in its original version.

The proposed law itself was strategically drafted by DPOs and civil society keeping in mind short term and long term goals for legal harmonisation and political expediency. As set out above, concerning the advances of the General Law, planted into the law itself were seeds to generate further reform, notably of the Civil Code with respect to legal capacity. Hence, the Special Commission on Civil Code Reform concerning Legal Capacity (CEDIS) was incorporated into the substance of the General Law with details about the composition of the Commission inclusive of representative organisations of persons with disabilities and other key stakeholders (representatives of the executive, legislative and judicial branches, the Office of the Ombudsperson, academia, etc.)

Consulted DPOs and civil society agree that the process that led to the adoption of the General Law was a meaningful one and pivotal for the movement. And one essential stage of the broader narrative of CRPD implementation in Peru.

1. **Legal Capacity**

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

***25. The Committee recommends the State party to abolish the practice of judicial interdiction and review the laws allowing for guardianship and trusteeship to ensure their full conformity with article 12 of the Convention and to take action to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will, and preferences.***

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

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

Those provisions of the Civil Code referred to by the Committee in its Concluding Observations continue to be in force permitting substituted decision-making which restricts the exercise of rights. From 1998 to 2014, 8,409 interdictions were registered, many of them had free legal aid from the Ministry of Justice, which shows that it is an accepted and common practice in the country.[[45]](#footnote-45) From consultations with civil society, it was uncovered that the figures are most likely even higher given that not all families may choose to register the sentence in the national registry to avoid its consequences, for example, the denial of voting rights. Besides the right to vote, denial of legal capacity triggers many other negative consequences, creating significant barriers in access to justice and pensions, concluding bank and employment contracts, as well as the denial of right to marry, exercise of parental rights, right to give and refuse informed consent, etc.

For many day-to-day procedures, guardianship is still required. For example, a DPO member reported that in order to issue a credit or debit card, a bank asked him to have a court-appointed guardian. Guardians are also required for deaf persons when asking for a pension or, in some municipalities, for getting married. It has also become common practice to require an interdiction both to persons with disabilities and older persons in order to become a beneficiary of social protection programs. For example, for civil servants guardianship is required for the orphan pension, even when the law does not require it and the new General Law on Persons with Disabilities expressly prohibits it.

**Civil Code reform**

Despite this current state of affairs, as mentioned above, one of the significant advances of the General Law on Persons with Disabilities is that it upholds equal recognition before the law of persons with disabilities and the enjoyment and exercise of legal capacity in accordance with Article 12 of the Convention. As referred to above, the General Law on Persons with Disabilities paved the way for reform of the Civil Code on this matter by explicitly mandating the establishment of a Special Commission to revise the Civil Code relating to the exercise of legal capacity of persons with disabilities (*Comisión Especial Revisora del Código Civil sobre la capacidad jurídica de las personas con discapacidad- CEDIS*), and foreseeing that within six months of the entry into force of the General Law, that there is a bill to reform the Civil Code that complies with the CRPD.[[46]](#footnote-46)

CEDIS was established in 2014 and was composed of members of Congress, representatives of the judicial and executive branches, the Office of the Ombudsperson, academic representatives and organisations of persons with disabilities including organisations of persons with intellectual disabilities, and persons with psychosocial disabilities, as well as other civil society organisations.[[47]](#footnote-47) A draft text was developed by CEDIS which was subsequently presented as a bill by a congressman and was being considered by two standing Commissions of the Congress; the Commission of Justice and Human Rights and the Commission of Social Inclusion and Persons with Disabilities. Both the Office of the Ombudsperson as well as the UN country office have been involved in the discussion of the bill and the latter also hosted a training for Congress personnel. Inputs on the text of the pending bill have also been transmitted from the Office of the High Commissioner for Human Rights in Geneva through its regional office and the UN country office in Peru. This engagement fed positively into supporting the proposals by civil society.

On 11 February 2015, CEDIS approved the draft reform of the Civil Code amending and repealing more than 80 items. On 14 April 2015, the draft text was forwarded to the Commission of Justice and Human Rights and placed as a priority on its agenda. However, the opinion adopted at the last moment did not reflect the work of CEDIS nor the contributions made by civil society.

During the mission in Lima, on 5 October 2015, an international conference entitled “Reform of the Civil Code in Peru relating to the legal capacity of persons with disabilities: a change in paradigm” (“*La reforma del Código Civil en el Perú en materia de Capacidad Jurídica de la Persona con Discapacidad: Un cambio de paradigma*”) to which Vice Chair of the CRPD Committee, Silvia Quan-Chang, and Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar, were invited, was organised in the Congress by the National Congress, SODIS and Congressman Jhon Reynaga Soto. The purpose of the conference was to present and discuss Bill no 4601/2014-CR and an associated awareness-raising campaign to promote the passage of the bill.[[48]](#footnote-48) The program included several experts and legislators and the audience was composed of DPOs and wider civil society, professional groups, such as representatives from the Association of Notaries, and the media.

On 6 October 2015, a joint meeting was held between the Commission on Justice and Human Rights and the Commission on Social Inclusion and People with Disabilities of the Congress. Among other topics, Bill 4601-2014-CR was discussed with guest interventions from Vice Chair of the Committee, Silvia Quan-Chang, Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar, and IDA director, Vladimir Cuk. The Congress members were responsive to the perspectives shared by the Vice Chair on Article 12 of the Convention and General Comment no 1 of the Committee. The joint meeting was an important point in the reform process; it permitted setting the bill as a priority.

Following delays due to the general elections held in April-June 2016, a Working Group on Civil Code reform has been formed under the newly composed Commission of Justice and Human Rights, headed by Congressman Alberto de Belaunde. Legal capacity of persons with disabilities within the Civil Code reform has been declared as a priority within the work plan of the Commission. In particular, the need for reform to uphold the exercise of legal capacity has been highlighted as a specific priority by the Working Group.

A new proposal has been compiled and will soon be submitted to the newly elected Congress. This current proposal is supported by the Mesa de Discapacidad de la Coordinadora Nacional de Derechos Humanos (regrouping 18 organisations working on the rights of persons with disabilities including those representing the rights of persons with psychosocial disabilities and persons with intellectual disabilities).

**Latest proposed text for Civil Code reform**

* The proposed text recognises the legal capacity of all persons with disabilities, without exceptions. Limitations and restrictions for the carrying out of legal acts by persons with disabilities are removed in accordance with Article 12 of the Convention and General Comment no 1.
* Guardianship (“*curatela*”) is replaced by 'support systems' designed to facilitate the manifestation of the will and the retention of legal acts by persons with disabilities. Supports are defined as forms of assistance provided to persons with disabilities to facilitate the exercise of their rights, including support in communication, understanding of legal acts and their consequences, and the expression of the will.
* Four types of support are foreseen:
	1. Measures of accessibility and reasonable accommodation required to facilitate the exercise of legal capacity of people with disabilities.
	2. The possibility to make advance directives concerning future assistance required for the exercise of legal capacity.
	3. The registration of support arrangements provided by one or more persons before a judge or a notary.
	4. Exceptional support determination by a judge when the person is unable to express their will, after having been provided accessibility measures and reasonable accommodation, necessary for the exercise and protection of their rights.
* In all cases, the will and preferences of the person must be respected and the individual can refuse support at any time. Concerning more complex cases, where all measures have been taken to obtain the individual’s will and preferences but it cannot be determined, the standard is the best interpretation of the will, preferences and interests of the individual concerning their life projects.
* The individual determines the shape, scope and duration of support. They may seek support of one or more individuals, public institutions or non-profit organisations, both specialised in the matter and duly registered.
* Some areas within the bill remain pending including proposals aimed at safeguarding the rights of persons with disabilities and to prevent abuse and conflicts of interest. These include a monitoring system of supports that provide individuals or organisations with time limits to ensure periodic review, advisory measures and free legal assistance. In addition, the amendment of other complementary laws as the law on notaries and the Civil Procedure Code. These proposals are still open to discussion within the Congress and civil society continues to make proposals to strengthen the text.

**Support by the Ministry of Justice and Human Rights**

In November 2016, for the first time ever in this process, the Ministry of Justice and Human Rights made public its support for legal capacity reform, calling for the repeal of the practice of judicial interdiction within the Civil Code as well as calling for amendment to other legal provisions which permit guardianship or curatorship in line with the recommendations of the CRPD Committee and the Convention.

The Ministry also highlighted the State’s obligation to ensure the provision of supports which persons with disabilities may require in the exercise of their legal capacity; this support must increase the capacity of individuals to exercise the rights and obligations by themselves and in some cases it would be necessary to build social networks around the person whereas in others, it would suffice to recognise the individual’s family or friend as a support. In addition, a system of safeguards to prevent abuse by individuals or organisations must be foreseen which includes time limits, periodic review as well as free advice or legal counselling.

During the follow-up mission, the team met with representatives of the Ministry, including the Vice Minister at the time. The Civil Code reform was addressed during the meeting as it related to legal capacity; at the time, there did not appear to be particular awareness or interest on the part of the Ministry on these issues. These latest developments are commendable and demonstrate a significant shift in the approach by the Ministry which is now proactively embracing legal capacity reform in line with the CRPD Committee’s recommendations and in accordance with Article 12 of the Convention.

**Participation of civil society in the process of Civil Code reform**

As elucidated above, DPOs and civil society targeted reform of the Civil Code within the General Law. While the establishment of CEDIS within the Congress was important to concretely engage in reform, equally significant was preparing the terrain in order to ensure the successful passage of the reform. This meant forming strategic alliances, creating solidarity and a veritable demand for reform. The following actions were taken:

* Since 2009, civil society has been working closely with the judiciary and shaping them into allies of the Civil Code reform. This group was targeted early on given that commonly the judiciary are resistant to such reform as judges are the ones who grant orders for guardianship. SODIS developed and conducted, together with the judicial academy, several training courses for judges on the rights of persons with disabilities since 2010, and in 2015, fifty judges participated and received diplomas. The latest course focused on legal capacity and an online version was also developed and executed. As a result, very positive outcomes have been achieved thanks to a judiciary which is CRPD-aware and thus more willing to apply it.
* Partnerships were made with academia, in particular with the legal clinic of the Pontifical Catholic University which offers diplomas and courses on the rights of persons with disabilities together with civil society organisations, as well as takes cases on behalf of persons with disabilities. Networks were fostered between civil society and professors of the university, the latter of whom played a key role in supporting and legitimising reform of the Civil Code and a shift to a new paradigm in the legal tradition.
* Data collection to reveal the concrete situation of guardianship. It was discovered that the actual number of registered guardianships was quite few, 8000, which begged the question of its purpose- that in most cases guardianship orders were obtained in order to meet administrative requirements, to access a pension for example, but families were not themselves seeking to register the arrangements for other purposes.
* Engaging with the media to mobilise public opinion against guardianship by focusing on the negative aspects and the futility of the system thereby creating a demand for reform. For example, by putting forward individual stories of persons with disabilities who were denied opportunities to be employed and to contribute to society on the basis of denial of legal capacity.

All these actions were taken keeping those groups most concerned at the forefront of this advocacy- i.e. persons with intellectual disabilities and persons with psychosocial disabilities. A working group on legal capacity was also set up within civil society to strategise and coordinate actions. The working group drafted a set of principles to guide law reform on legal capacity, adopting the approach of civil society in Ireland.[[49]](#footnote-49) These principles pre-empted the work within CEDIS.

During the mission, certain DPO representatives had expressed that there was no real consultation among organisations, and conflicts arose among those more directly involved in the Special Commission. Some DPO representatives had expressed scepticism that the bill will not be passed due to a lack of political will, while some others saw as barriers civil law jurists who “do not adhere to the concept of legal capacity”.

The latest proposed text for Civil Code reform, soon to be submitted to the Congress, was open to broad consultation and as a result has been supported by 18 organisations working on the rights of persons with disabilities, demonstrating increased unity and cooperation toward reform, compared to previous efforts.

**Setting positive precedents**

Although the Civil Code reform is not yet concluded and has been pending before Congress for a couple of years now, remarkable steps of judicial activism have been taken by courts in accordance with the proposed reform and the CRPD. In June 2015, a prolific judgment was handed down by a court in Cusco concerning requests to deprive two individuals with psychosocial disabilities of their legal capacity. [[50]](#footnote-50)

In this case, Judge Béjar Rojas identified that the primary objective for the requests to place the individuals under guardianship did not concern legal capacity per se, but was related to their eligibility to access pensions given the requirement that to be eligible for the latter, the administrative bodies deemed it necessary for the individual beneficiaries to have guardians. The judgment states that the right to a pension cannot be made conditional upon the denial of legal capacity, and that the Civil Code is therefore not aligned with the CRPD nor the Constitution of Peru.

In particular, the judgment asserts that the Civil Code and its underlying conception is contrary to the right to equal recognition of the legal capacity of persons with psychosocial and intellectual disabilities and cannot be interpreted in a manner consistent with fundamental rights, hence a partial deprivation of legal capacity or only for certain aspects of life impacts on the inherent rights of persons with disabilities and the spirit of Article 12 of the Convention by not taking into account the decision and autonomy of the individual.

Acknowledging that the Civil Code reform is pending, Judge Béjar Rojas refrained from perpetuating the old paradigm of substituted decision-making and upheld full recognition of the individuals’ legal capacity, pointing out the need to make support available. Upon consultation with the individuals about their needs and concerns, a temporary support system was put in place subject to automatic review in six months. In accordance with Article 12 of the Convention and the Committee’s General Comment no 1, the judgment clarifies that the support system must respect the individual’s decision and that there is no overriding of decisions. Finally, the judgment calls on the Congress to provide information about the law reform process given that it is important to have clear legislation to ensure legal certainty.

The judgment is exemplary for several reasons; first and foremost, it illustrates the significant role that the judiciary plays in ensuring respect for international human rights treaties through direct application and interpretation. Second, it is a rare example of judicial activism to date in accordance with the Convention with respect to Article 12 and General Comment no 1. Third, it acknowledges the inadequacy of the state of affairs in which the delay in Civil Code reform leaves a gap in rights protection, and calls on the legislative branch to address this. Finally, it is exemplary because it is first time that a judgment was also made available in plain language. It is encouraging that similar judgments have been handed down since this first case concerning access to social protection benefits, but also regarding the administration of property and inheritance.[[51]](#footnote-51)

It is noteworthy that Judge Béjar Rojas, had participated in trainings on the rights of persons with disabilities provided by civil society. He is also the first blind judge in Peru, and had himself resorted to taking a case before the courts to be granted entry into the judiciary. During the follow up mission, Judge Béjar Rojas joined in a meeting with Vice Chair of the CRPD Committee, Silvia Quan-Chang, via video link from the Supreme Court of Cusco with the Supreme Court of Peru in Lima and had an opportunity to share with her some of the innovative practices that his court is taking forward.

More recently, in July 2016, a Plenary of Family Courts in the Province of Santa adopted unanimously a decision requiring all judges to apply the CRPD (instead of the current Civil Code) and establish support systems in all legal capacity cases. Among others, the decision[[52]](#footnote-52) concluded:

* the inapplicability of Articles 43(2) and 44(2), (3) of the Civil Code on absolute and relative incapacity,[[53]](#footnote-53) as well as other provisions referring to interdiction and the appointment of a guardian given the incompatibility with Article 12 of the CRPD, as well as rights enshrined in the InterAmerican Convention on Human Rights and the Peruvian Constitution;
* recognition of the legal capacity of persons with intellectual or psychosocial disabilities respecting their will and preferences and ensuring a system for support and safeguards for exercise of legal capacity in accordance with their own needs;
* in court proceedings, the judge must provide the individual with conditions of accessibility and procedural accommodations to ensure direct participation in all processes, including adaptations, modifications and support as well as interdisciplinary intervention;
* in cases of high support needs, in which the individual cannot express their will even with the provision of accommodations and support, the judge must assess what are the needs and interests of the person and appointing a support for exercise of legal capacity which seeks to interpret in the best way possible the will and preferences of the individual, instead of substituting their will and wishes, taking into account the individual’s life trajectory, and opinions of their close circle such as family and friends;
* the support system must be reviewed and may be subject to modification whenever necessary or requested, until the State implements specific public policies on the matter and the judge can put in place periodic monitoring mechanisms of the support arrangement.

The adoption of this decision reinforces the movement of positive judicial activism growing in Peru and its express commitment to the Convention and international human rights law. It confirms the powerful role played by the judiciary in driving forward legal harmonisation, revealing, on their part, a palpable and imminent expectation for the government and legislators to align law and policy on legal capacity with the CRPD. This must be commended as a best practice in implementing the Committee’s recommendations, as well as more generally in the implementation of international human rights law in the national context.

1. **Participation and consultation**

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

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

The General Law on Persons with Disabilities provides for a right to consultation under Article 14 which stipulates that “the authorities of the different sectors and levels of government have an obligation to consult with organisations representing people with disabilities prior to the adoption of legislative and administrative regulations, policies and programs on disability issue. Consultation processes are developed on the basis of the principles of accessibility, good faith, timeliness and transparency.”[[54]](#footnote-54)

Despite this provision, which reflects clearly the obligation to consult enshrined in Article 4(3) of the Convention, in practice, consultation and participation by organisations of persons with disabilities has been one of the most notable weaknesses of CRPD implementation in Peru. This is all the more stark given the very large number and wide range of active organisations of persons with disabilities and wider civil society working on the rights of persons with disabilities in Peru. It must be recalled that it is thanks to the very pro-active Peruvian disability movement and civil society that pressure was exerted resulting in the adoption of the General Law on Persons with Disabilities, its regulations and array of amendments culminating in unprecedented advances toward legal harmonisation with the Convention.

A sustainable and permanent mechanism to exercise the right to consultation is missing.[[55]](#footnote-55) As expressed in meetings held during the mission, both bilateral and multilateral meetings with DPOs, NGOs as well as the working group on disability and human rights (*Mesa de Discapacidad y Derechos Humanos de la Coordinadora Nacional de Derechos Humanos*- which regroups both DPOs & NGOs),[[56]](#footnote-56) and in responses to the questionnaire on follow up- various DPOs expressed that “generally” there is no consultation or it is “minimal”. A DPO told the mission team that “everything that was achieved was in crumbs as a consequence of struggle to be involved and consulted”. It was also mentioned that a network of DPOs is missing which could serve to coordinate participation and promote effective consultation. Some organisations of the Mesa expressed that formalising consultation with the government takes a lot of time.

The lack of participation and consultation is an endemic challenge across all institutional mechanisms operating in Peru, including across all Ministries, the coordinating mechanism, the designated independent monitoring framework as well as the UN country team in Peru.

**Across Ministries**

In meetings with different Ministries (Ministry of Labour, Ministry of Foreign Affairs, Ministry of Education, Ministry of Justice), the issue of consultation was systematically addressed and on almost all occasions their responses referred to CONADIS as the government body mandated with consulting with DPOs. This signals a deflection of the obligation to consult by individual authorities which nonetheless should be engaging in direct consultation with DPOs regardless of the existence of a coordinating mechanism.

**CONADIS**

The functions and activities of CONADIS are quite broad and comprise coordinating, monitoring and enforcing all national policies on disability, for example, the Equal Opportunity Plan for Persons with Disabilities. It also supports programmes of social development and promotion of employment and training led by those respective sectors.[[57]](#footnote-57) Currently, CONADIS has 25 centres of regional coordination.[[58]](#footnote-58) The government has not officially appointed or designated CONADIS as either a focal point or as the coordination mechanism as set out in Article 33(1) of the Convention, yet, its functions align with these roles and could thus be understood as the body responsible for CRPD implementation under Article 33(1).

Under the regulations on the General Law on Persons with Disabilities, it is set out that prior to their adoption, legislative and administrative regulations, policies and programmes on issues relating to disability must be released in advance to permit DPOs to provide their input. [[59]](#footnote-59) In practice, meetings and consultations are very selective and do not include all DPOs.

With respect to CONADIS, DPOs were very vocal about the lack of transparency, consultation with and involvement of DPOs in its work as the coordinating mechanism. Since the resignation of Wilfredo Guzman Jara, former President of CONADIS from 2011-2014, a new President has not been designated. Since CONADIS approved a procedure to elect a new president in 2015, two processes were launched for elections, yet civil society boycotted this process due to the lack of transparency and absence consultation with DPOs on the process itself.[[60]](#footnote-60) DPOs mentioned that the election process “raised a lot of suspicion”. As long as a new president is not elected, the Vice-Minister of the Ministry Women and Vulnerable Populations, which is the Ministry within which CONADIS sits, will act as head of CONADIS. At the time of the mission, Fernando Bolaño Galdos was serving as head of CONADIS. Since then, two other persons have been appointed to this role, the latter and current Vice-Minister is Mario Gilberto Ríos Espinoza. Under his administration, CONADIS has been declared to be in a process of restructuring.[[61]](#footnote-61)

The General Law on Persons with Disabilities stipulates that CONADIS should set up a consultative advisory body with eight members with a cross disability membership.[[62]](#footnote-62) To date, this has not yet been established. There is consensus amongst DPOs that there is no participatory process in the creation of the advisory body. A DPO commented that CONADIS “does not comply with its duties and is in a deep crisis”. In the context of its duties to monitor accessibility, DPOs highlighted the “weakness” of CONADIS and that “it does not comply with the mechanisms of supervision and control” or “duties under its responsibility”. They added that there is no “coordination” and “much bureaucracy”. Another described CONADIS as “absent”.

Given that most consultation with persons with disabilities and their representative organisations across Ministries is being deferred to CONADIS, and that the widespread view is that the latter is failing in its responsibilities to put in place the mechanisms, procedures, transparency and good faith necessary for effective and meaningful consultation, participation as required under Article 4(3) of the Convention remains unfulfilled.

**Independent monitoring framework**

As stated above, the General Law on Persons with Disabilities officially designated the Office of the Ombudsperson (*Defensoría del Pueblo*) as the independent monitoring framework under Article 33(2). This body is also the National Human Rights Institution and has been accredited with “A” status by the International Coordinating Committee.

The Office of the Ombudsperson has been actively taking on its mandate to monitor CRPD implementation across all sectors, including legal capacity, education, the right to live in the community, accessibility, political participation, mental health, among others, as well as treats complaints on disability based discrimination. Their activities have been impressive considering the small size of their team and the limits expressed by them in terms of budget and human resources.

One of the central obligations of the independent monitoring framework is to ensure involvement and participation in its work of civil society, in particular persons with disabilities and their representative organisations, in accordance with Article 33(3) of the Convention. It was a common complaint across DPOs that the Office of the Ombudsperson does not reach out to them to engage in systematic consultation nor for coordination of activities and advocacy strategies. One DPO shared that the Office of the Ombudsperson cannot always support persons with disabilities to bring complaints against the State and advise persons with disabilities to find a lawyer. Another organisation considered that the work of the Office is not well known and that it does not represent civil society, or that it has turned its back on civil society.

The Office of the Ombudsperson itself admitted that they do engage with individual persons with disabilities and did not develop further how it is actively involving representative organisations of persons with disabilities in its monitoring activities. Certainly, the fact that they have not been allocated sufficient resources in terms of human and financial resources, has been a significantly restriction on their capacity to actively call meetings with and engage with organisations of persons with disabilities and wider civil society.

**UN country team**

There is a UN country team in Peru made up of different UN agencies including UNDP, UNICEF and WHO. A meeting with the UN country team representative provided information on the initiatives they are taking to notably engage in more systematised follow up to recommendations issued by UN human rights mechanisms, including UPR and treaty bodies such as the CRPD Committee’s recommendations. They are learning from examples from other countries in the region such as Argentina, Ecuador and Colombia. They are preparing a tracking system (matrix) on follow up, which has not yet been approved. The Office is cooperating with the *Coordinadora* and the Ministry of Justice.

The view of DPOs and civil society was that the UN Office did not reach out to them and some shared they had never had contact with them. When enquiring further about the UN Office’s outreach to DPOs in their work on follow up to treaty body and UPR recommendations, it became clear that the UN Office solely sought participation of DPOs when specifically concerning the CPRD Committee’s recommendations but not those related to other treaty bodies or UPR whose mandates also cover the rights of persons with disabilities.

1. **Inclusive education**

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

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

The General Law on Persons with Disabilities consolidates the right to inclusive education in accordance with Article 24 of the Convention, across all levels of education, with reference to accessibility of physical infrastructure, equipment and pedagogical materials; the use of accessible and alternative modes, means and formats of communication including Braille and sign language; as well as curricular adaptations, provision of reasonable accommodation, support services and support for the inclusion of students with disabilities, and training issues related to the rights of persons with disabilities.[[63]](#footnote-63) Further, it explicitly includes a non-rejection policy applicable to both public and private educational institutions to ensure that they cannot deny access to schooling of an individual on the grounds of disability.[[64]](#footnote-64) Finally, the regulations on the General Law also set out a definition of inclusive education as “the process of strengthening the capacity of the education system to reach all learners; therefore it is understood as a key strategy for achieving education for all.”[[65]](#footnote-65)

Despite these provisions in laws and policies, the mission uncovered that there have been very limited advances in practice. One of the most significant weaknesses concerning CRPD implementation as expressed by the Peruvian disability movement, wider civil society and the Office of the Ombudsperson is the lack of progress toward inclusive education. One DPO considered that, since 2012, “no progress whatsoever has been made”.

The figures on exclusion of children with disabilities in the education system remain high. A 2013 report of the National Council of Education of Peru (*Consejo Nacional de Educación del Perú*) put forward findings that only 1.5% of the population of children with disabilities of school age are included in regular schools with specialised support.[[66]](#footnote-66) The Ministry of Education acknowledged in 2012 that 85% of students with disabilities "do not receive educational attention."[[67]](#footnote-67) In Peru, literacy reaches 93.2% for the general population, whilst for persons with disabilities the figure is 70.9%. The disparity in school attendance between persons with disabilities and the general population is 20.6% in kindergarten, 19.6% in elementary school and 49.7% in high school.[[68]](#footnote-68)It has been documented that half of children with disabilities do not attend school at all- rendering the situation of children with disabilities the most alarming out of all groups of children, faring worse than indigenous children.[[69]](#footnote-69)

The non-rejection policy is neither upheld in practice, and some private schools require parents to fill in a “non-disability declaration” regarding their children. Further, training for teachers on inclusive education is not obligatory. A DPO remarked that there are no support teachers and that in some cases, private schools charge parents for letting them into the classroom. According to Ombudsperson Report no 155 of 2009, 52% of principals indicated that their schools were not prepared to receive students with disabilities. [[70]](#footnote-70) There is also a two-student quota for children with disabilities in schools and a 5% quota for universities and other higher education institutions (General Law on Persons with Disabilities, Law no 29973).[[71]](#footnote-71) This has been used by schools to deny enrolment of children with disabilities.

A wide sweeping reform is being undertaken on education generally in the country, however, very little attention has been given to ensuring quality inclusive education relating to children with disabilities. And while generally the Ministry of Education is increasing its budget for programmes specific for the inclusion of persons with disabilities, this budget remains divided in two: on special education and inclusive education with most activities and budget being directed to special schools. The underlying rationale for this, according to the Ministry of Education, is that special education needs to be developed in order to support inclusion in mainstream schools.

This division of responsibilities in which inclusive education remains the domain of the Directorate General of Specialised Educational Services (*Dirección General de Servicios Educativos Especializados*) and is not mandated to the mainstream system itself under the Directorate General of Basic Education (*Dirección General de Educación Básica Regular*) only serves to embed the barriers to implementing the right to inclusive education in accordance with Article 24 of the Convention. Simple calculation demonstrates that it will be impossible for the special education system to serve to facilitate inclusion into mainstream schools: today, there are around 450 special schools as opposed to 80,000 mainstream schools, it is not viable to invest in those special schools to be transformed into supports for inclusion of students into mainstream schools, and rather than continuing to direct resources into special schools, these should rather be made available to render mainstream schools accessible and inclusive.

In January 2016, the Committee on the Rights of the Child reviewed Peru and reiterated concerns expressed four years ago by the CRPD Committee signalling a stark lack of progress in this area. The CRC Committee raised the high number of children with disabilities who do not know how to read or write, and the limited access to inclusive education due to the lack of adequate infrastructure and resources and the limited support provided by the Assistance and Advice Services for Students with Special Educational Needs.

The CRC Committee thus called for the:

* adoption of a human rights-based approach to disability;
* strengthening efforts to implement an inclusive education system for all children at all levels, including by
	1. allocating the necessary human, technical and financial resources,
	2. providing accessible schools and educational materials,
	3. ensuring training of teachers,
	4. providing transportation and
	5. strengthening and expanding the support provided by its Assistance and Advices Services for Students with Special Education Needs in all areas of the State party.
* establishing a system to provide education to children with disabilities who have not attended school for many years and do not know how to read and write.[[72]](#footnote-72)

Clearly, with respect to inclusive education, the State Party has yet to implement this right in practice.

**Participation of civil society in advocating for inclusive education**

Whilst civil society has been exemplary in leading the processes toward CRPD implementation concerning the General Law and legal capacity reform, it has been comparatively weak concerning the right to inclusive education. Certainly, this could be a central factor in the corresponding weakness of implementation of this provision in Peru.

DPOs and civil society were heavily engaged and coordinated in efforts to adopt the General Law on Persons with Disabilities. Important actions of consensus-building consolidated efforts across the movement which led to the adoption of a CRPD compliant law. Yet when it comes to education specifically, there were fewer DPOs working on this issue and in a collaborative and unified manner. First, there was less consensus across the movement on inclusive education. Second, as suggested by some actors, it could be that there was less interest across the board on the right to education as it concerns mostly children and youth. Further, the issue has been taken up very strongly by the Office of the Ombudsperson which has been perceived by DPOs generally to not systematically reach out to them.

While this issue has not been high on the agenda across civil society, this is changing; the *Mesa* (made up of DPOs and NGOs) is currently seeking to promote a coordinated approach for advocacy, and a new coalition on inclusive education has also been created.

1. **Short term follow up recommendations**
	1. **Identity documents**

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

***23. The Committee urges the State party to promptly initiate programmes in order to provide identity documents to persons with disabilities, including in rural areas and in long-term institutional settings, and to collect complete and accurate data on people with disabilities in institutions who are currently undocumented and/or do not enjoy their right to a name.***

Advances have been noted to provide national ID cards to persons with disabilities. For example, from a total of 1865 procedures involving persons with disabilities before the National Registry of Identification and Civil Status (*Registro Nacional de Identificación y Estado Civil- RENIEC*), 649 were about providing them with an ID for the first time.

RENIEC has also been conducting public campaigns targeting persons with disabilities to obtain their ID cards with noted success: data collected in 2014 showed that 96% of persons with disabilities living in rural areas had their ID cards, whilst 98% of persons with disabilities in urban areas had obtained theirs.[[73]](#footnote-73)

However, what remains unclear is how many persons with disabilities who had previously received ID cards which labelled them as persons not entitled to vote or to conduct legal, administrative and finance-related decisions, have received new IDs. The labelled ID cards had been issued to 23,000 persons with intellectual and psychosocial disabilities through a RENIEC policy in force from 2001-2011.[[74]](#footnote-74) It is unknown how many of those 23,000 persons have obtained new IDs, thereby removing the barriers for their exercise of the right to vote and undertake legal, administrative and financial transactions.

* 1. **Prohibition of deprivation of liberty on the basis of disability**

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

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

In compliance with the Committee’s recommendation, Law no 29889[[75]](#footnote-75) specifically amended Article 11 of the General Health Law and removed the provision permitting involuntary commitment and treatment.

Moreover, Article 2.1 of this law also recognises the equality of rights of persons with "mental" disabilities and ensures the necessary support for their "capacity to act" and to defend their rights. Further, Article 2.1 recognises the right of persons with "mental" disabilities to live independently and be included in the community. It also obliges the State to provide support and assistance, including in the home, and other support services in the community, to avoid "isolation, institutionalisation and abandonment". The first final complementary provision, in its paragraph g, includes, as a priority, "deinstitutionalisation of persons with disabilities that live in health care facilities"

Despite these advances, there is still a possibility for involuntary internment in “situations of emergency”,[[76]](#footnote-76) and involuntary treatment is possible for “persons with drug addictions” upon a family’s request and with approval of a medical council.[[77]](#footnote-77)

* 1. **Forced sterilisation**

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

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

Following the Committee’s recommendation on short term follow up, Ministerial Resolution no 603/2012 was adopted on 21 July 2012 which suspended the effects of section VI of the Technical Norm for Family Planning no 032-MINSA/DGSP-V.01 was suspended (previously approved by Ministerial Resolution 536/2005-MINSA of 26 July 2005) which permitted persons with “mental incompetence” to be sterilised without their free and informed consent was suspended, but not derogated.[[78]](#footnote-78) Further, the General Law on Persons with Disabilities was adopted and supersedes the technical norm. Under Article 9 of the General Law on Persons with Disabilities, it ensures that persons with disabilities enjoy and exercise their legal capacity on an equal basis with others including with respect to the right to marry and to decide freely on the exercise of sexuality and reproduction.

Despite the legal framework which prohibits forced sterilisation of persons with disabilities, DPOs shared that in practice there are still instances of non-consensual sterilisation of women with psychosocial or intellectual disabilities, upon the request of their families or guardians.

Finally, on 31 August 2016, through the adoption of Ministerial Resolution no 652/2016 of the Ministry of Health, Technical Norm no 032-MINSA/DGSP-V.01, on Family Planning was repealed thereby removing fully from the law provision which permits sterilisation of persons deemed mentally incompetent.[[79]](#footnote-79)

With respect to cases of sterilisation of women and girls with disabilities against their will (some of them still living in psychiatric institutions) which took place before the change in regulations, and which have been documented,[[80]](#footnote-80) no measures have been taken to investigate and punish these acts nor to identify and provide redress to the victims. These represent continuing violations for the individuals concerned. Significantly, investigations on forced sterilisation carried out by the Office of the Public Prosecutor has not included persons with disabilities sterilised on the basis of “mental incompetence”.[[81]](#footnote-81)

1. **LESSONS LEARNED**

Acknowledging that this was a first experience in following up to the Committee’s recommendations at the national level, and recognising that there are innumerable variables which impact upon follow up action (nature of government, political, socio-economic, regional, cultural contexts, space provided for and the nature of civil society and the disability movement, access to support and resources from donors, including through international cooperation, etc), some lessons can be inferred:

* The work of the DPOs and civil society was essential for pushing through policy and legal reform. All changes were led by them and the CRPD was used as a road map. The Convention and the Committee’s Concluding Observations served as effective tools to continue to put pressure on and trigger the government for concrete change.
* Where the obligation to closely consult with and actively involve civil society was effectively fulfilled, this was a driver and enabler for CRPD-compliant reform, particularly given the very active and coordinated civil society in the country as attested by the work of the *Mesa*. In the same line, where there was limited permeability on the side of the State resulting in minimal participation by civil society, the result was correspondingly minimal, both in terms of change effected and compliance with the CRPD.
* While CONADIS’ role for CRPD implementation has been institutionalised in the General Law on Persons with Disabilities, akin to the government focal point or coordination mechanism under Article 33(1) of the Convention, this does not absolve other Ministries of their own responsibilities toward CRPD implementation and specifically of their obligations to closely consult with and actively involve persons with disabilities and their representative organisations in their work. Consultation with and participation by DPOs and wider civil society must be transversal across all portfolios and not concentrated and blocked at CONADIS.
* The Office of the Ombudsperson requires more resources and support in order to ensure it fulfils its role for effective outreach, consultation and collaboration with DPOs and civil society in monitoring implementation of the Convention.
* The innovative advances which have been made, in terms of substantive output such as the adoption of the General Law on Persons with Disabilities and imminent Civil Code reform are reinforced through complementary action taken by the judiciary towards CRPD implementation. Legislators, judges and courts can learn from and seek to emulate this model in the region and beyond.
* The judiciary has a significant role to play in interpreting and applying treaty body recommendations and aligning itself directly with international human rights law to drive forward efforts for legal harmonisation at the national level.
* The strategic and timely engagement by DPOs and civil society vis-à-vis the general public, disability movement, legislators, judiciary, academics and others is pivotal to galvanise and garner support as well as promote awareness-raising and training to foster a convergence of knowledge, understanding and support to optimise CRPD-compliant implementation. The Peruvian example could serve as models for civil society in other countries.
* One factor identified in the success demonstrated by Peruvian civil society is that it has benefitted from resources from international donors providing support to grassroots DPOs and organisations, as well as academic institutions which has facilitated coordinated and convergent strategies, as well as training for a good grasp of the CRPD and the Committee’s jurisprudence.
* Areas of weakness in implementation correspond to areas of weakness in civil society advocacy- e.g. civil society has not engaged in a concerted manner with respect to education reform and that could be identified as a factor in the limited advances made in carrying out an inclusive education system on paper and in practice.
* Legal reform and national harmonisation efforts are enriched by international mechanisms and actions to push the agenda. International human rights law is not just paper, but also people and living processes.
* The UN can play an important role in effecting concrete change; e.g. the directive on sterilisation was modified in line with the Committee’s recommendation (which was also designated as a recommendation for short term follow up); additionally, the OHCHR (through its global and regional offices) provided input to the Civil Code reform which reinforced initiatives by civil society.

Lessons learned concerning the activity of a follow up mission:

* The presence of a Committee member on the mission was invaluable for the success and legitimacy of the mission; all meetings were granted across all three branches of government and civil society engaged actively in sharing information, experiences, concerns and identifying challenges. There is a "hunger" and demand for this type of activity and direct engagement with the Committee.
* The nature of the mission is largely of a political nature- it serves as an important awareness-raising opportunity in particular with mainstream authorities- e.g. Supreme Court of Peru, Congress, Ministry of Justice, etc- to provide an event for which these institutions need to seek out information and account for action taken or not. Civil society also welcomed it as an opportunity to raise the issues on the political agenda for renewed engagement by the government.
* Criteria should be established for country selection (it has to be strategic, from different regions, not only because of invitation, etc).
* Missions should focus on specific aspects. Example: three important rights involved or the processes directly promoted by civil society. Otherwise, the level of information and data is unwieldy for the nature of these short missions.

Lessons learned concerning follow up generally for the Committee’s consideration:

* There is a palpable demand for the Committee to reactivate their follow up procedure and to engage to :
	+ continue to mobilise governments and civil society for continued attention and momentum toward implementation, in particular on the short term follow up issues;
	+ track areas of progress and challenges to:
		- identify commonly encountered challenges for more targeted recommendations and guidance.
		- highlight good practices which could be shared and which could serve as models and be invoked by the Committee. This could feed into the Committee’s mandate to provide technical assistance under Article 37 as well as feed into resources to which the Committee has previously made reference (such as the database on legal capacity practices linked to General Comment no 1).
* There is a space for the Committee and mechanisms at the global level to contribute to reinvigorating and sustaining momentum for implementation and to serve as mutual follow up mechanisms (for other treaty bodies for example).
* There is a demand on side of national actors - government, NHRI or independent monitoring framework, civil society, etc- to continue engagement and interaction.
* There is a direct benefit to the Committee and for all actors engaged in CRPD implementation to track challenges and proliferate good practices through their documentation, collection and active exchange.

**ANNEX I- Summary of formal follow up procedures of UN treaty bodies**

Follow up procedures aim at observing the impact of human rights mechanisms. Some UN treaty bodies have adopted formal follow up procedures to Concluding Observations, in order to assess compliance by States.  In their Concluding Observations, the CAT, CERD, CEDAW, CED, CRPD and the Human Rights Committee request short term follow up measures for States to report back within one year or two years[[82]](#footnote-82) on the measures taken in response to specific recommendations or “priority concerns,”[[83]](#footnote-83) as subjects of the follow up procedure. The Committees also include a mechanism to follow up to views on individual communications that are similarly structured.[[84]](#footnote-84)

The Committees usually appoint a Rapporteur on follow up of Concluding Observations. On occasions, members might visit States upon invitation to follow up on Concluding Observations, and NGOs working directly with the treaty bodies have been leading in organising follow up missions with the participation of Committee members. Information on follow up procedures is presented by the rapporteur to the Committee and included in the annual report of the Committee to the General Assembly. Furthermore, information, including from the State and rapporteur’s exchanges related documents and civil society organisations’ reports, are published on the Committee websites.[[85]](#footnote-85) Civil society organisations are very much welcomed to make follow up submissions, usually following the State’s replies.

Most Committees have adopted assessment criteria to evaluate the information and measures adopted by the State. The Human Rights Committee was the first in 2011,[[86]](#footnote-86) by which the replies of the State are evaluated according to the following criteria which is correlated with a grading system from A-E:

A: Reply/action satisfactory: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee; in this case, the Special Rapporteur for follow-up to Concluding Observations requests no additional information from the State party and the follow-up procedure on the issue is discontinued.

B1: Reply/action partially satisfactory: The State party took some steps towards the implementation of the recommendation but additional information remains necessary, or

B2: the State party needs to take further action and provide information to the Committee in that regard. In this case, the Special Rapporteur for follow-up to Concluding Observations requests additional information, within a specific time frame or in the next periodic report, on specific points of its previous reply that require clarification, or on additional steps taken by the State party to implement the recommendation.

C1: Reply/action not satisfactory: The State party has taken no action to implement the recommendation, or

C2: the action taken has not addressed the situation under consideration. In this case, the Special Rapporteur for follow-up to Concluding Observations renews the request for information on steps taken to implement the recommendation.

D1: No cooperation with the Committee: The State party has not replied within the deadline, or the State party has not provided information on the measures taken for the implementation of one of the follow-up recommendations, or

D2: the State party has not provided information despite the reminder(s) sent by the Special Rapporteur.

E: The measures taken are contrary to the recommendations of the Committee: The State party adopted measures that are contrary or have results contrary to the recommendation of the Committee.

The CAT Committee[[87]](#footnote-87) adopted the same criteria and grading system as the Human Rights Committee, and the CEDAW Committee has similar assessment criteria though without a grading system.[[88]](#footnote-88)

The CRPD Committee’s Working Methods and Guidelines for follow up to Concluding Observations set out the process by which the Committee engages in follow up.[[89]](#footnote-89) The CRPD Committee’s criteria for assessment of follow up measures does not make use of grades and are categorised as: (a) satisfactory; (b) partially satisfactory; and (c) unsatisfactory. Some differences in approach by the CRPD Committee is that it may offer measures of support to the State in carrying out their follow up obligations. For example, for partially satisfactory replies if the Committee considers that the State party could benefit from the technical advice of the Committee, it may offer support to the State party under its capacity-building mandate (art. 37, para. 2, of the Convention). In the case that the State party accepts to avail itself of the Committee’s advisory role under its capacity-building mandate, the follow-up procedure shall be discontinued and the situation shall continue to be addressed under the capacity-building mandate. For unsatisfactory replies, the Committee may invite the Permanent Mission of the State party concerned to a private meeting with the rapporteur on follow-up, to explore ways in which the country can move ahead with implementation. A second follow-up meeting can be arranged; if after this second meeting no progress has been made, the Committee may discontinue its follow-up procedure.

To date, only four States presented information on follow up of Concluding Observations (Argentina, Hungary, Paraguay and Peru). Civil society organisations presented information in all cases but one. However, the Committee has yet not published any decision, comment or assessment on the information presented by the States.

**ANNEX II - Agenda of follow-up mission in Lima**

Monday 5 October

Meetings with Ministries / DPOs

Tuesday 6 October

Morning- Meetings continued

Afternoon- Congress hearing

Wednesday 7 October

Morning- Meetings continued

Thursday 8 October

Public holiday- Bilateral meetings with DPOs

Friday 9 October

World Bank Civil Society Forum

Saturday 10 October

Bilateral meetings

**Press**

The mission received attention from the press[[90]](#footnote-90) and had presence in social media of local DPOS.[[91]](#footnote-91)

**List of meetings held:**

**Government**

**Executive Branch**

* Ministry of Women and Vulnerable Populations (*Ministerio de la Mujer y Poblaciones Vulnerables*): Fernando Bolaño Galdos, Viceministro de Poblaciones Vulnerables and acting head of CONADIS, 6 October 2015
* Ministry of Justice and Human Rights (*Ministerio de Justicia y Derechos Humanos*): Ernesto Lechuga Pino, Viceministro de Derechos Humanos y Acceso a la Justicia; Ambassador Juan Álvarez Vita, Director General de Derechos Humanos; and Hugo Rodríguez Bernardelo, Director de Políticas Públicas y Gestión en Derechos Humanos, 7 October 2015
* Ministry of Labour and Promotion of Employment (*Ministerio de Trabajo y Promoción del Empleo*): María del Rosario Villafuerte Bravo, Viceministra de Promoción del Empleo y Capacitación Laboral; Eco. Elizabeth Cornejo Maldonado, Directora General de Promoción del Empleo, 6 October 2015
* Ministry of Education (*Ministerio de Educación*): Marcia del Carmen Rivas Coello, Asesora de la Dirección General de Servicios Educativos Especializados, Isabel Sánchez and Consuelo Carrasco, 6 October 2015
* Ministry of Foreign Affairs (*Ministerio de Relaciones Exteriores*): César De las Casas, Minister, Director of Social Affairs of the General Directorate for Multilateral and Global Affairs (*Director para Asuntos Sociales de la Dirección General para Asuntos Multilaterales y Globales*); Yamilet Amanqui Villa, 6 October 2015

**Judicial Branch**

* Supreme Court of Justice: Carmen Julia Cabello Matamala, Supreme Judge of the Supreme Court of Peru, National Coordinator of the Justice in Your Community Programme of the Judiciary of Peru, with the participation of Judge Edwin Béjar Rojas via video link with Supreme Court of Cusco, 7 October 2015

**Legislative Branch**

* International Conference “*La reforma del Código Civil en el Perú en materia de Capacidad Jurídica de la Persona con Discapacidad: Un cambio de paradigma*”, organised by National Congress, SODIS and Congressman Jhon Reynaga Soto at the National Congress, 5 October 2015
* Congress joint meeting of Commission of Justice and the Commission of Social Inclusion: Legal Capacity Bill Debate, 6 October 2015

**National Human Rights Institution**

* Office of the Ombudsperson (*Defensoría del Pueblo*): Eduardo Vega Luna, Ombudsperson; Malena Pineda Ángeles, Head of Programme on Protection and Promotion of the Rights of Persons with Disabilities; María Isabel León, Commissioner, Programme on Protection and Promotion of the Rights of Persons with Disabilities; Gisella Rosa Vignolo Huamaní, Deputy Director of Human Rights and Persons with Disabilities, 6 October 2015

**International organisations**

* UN country team in Peru, UN Office, Lima

**Civil Society**

**Multilateral**

* IDA consultation, Municipality of Miraflores involving the participation of sixteen representatives of DPOs and wider civil society of Peru, 5 October
* Ad hoc Meeting of the *Mesa de Discapacidad y Derechos Humanos, Coordinadora Nacional de Derechos Humanos*, 7 October

**Bilateral consultations**

* Sociedad Peruana de Síndrome Down (SPSD), 8 October
* CONFENADIP, 8 October
* Clínica Jurídica en Discapacidad y Derechos Humanos de la Pontificia Universidad Católica del Perú, 10 October

**Disaggregated list of DPOS and human rights organisations:**

**Organisations of persons with disabilities (DPOs)**

* Confederación Nacional de Personas con Discapacidad del Perú (CONFENADIP)
* Sociedad Peruana de Síndrome Down (SPSD)
* Alamo Perú
* Unión Nacional de Ciegos del Perú
* Federación Nacional de Asociaciones Visuales en el Perú (FENAVIP)
* Asociación de Sordos del Perú
* Federación Nacional de Mujeres con Discapacidad del Perú (FENAMUDIP)
* Soy autista y qué
* Asociación de Personas Pequeñas del Perú (Aspepp)
* Federación Peruana de Enfermedades Poco Comunes

**Human Rights Organisations**

* Coordinadora Nacional de Derechos Humanos – Mesa Nacional sobre Discapacidad y Derechos
* Asociación Pro Derechos Humanos – APRODEH
* Sense International – Perú
* Paz y Esperanza
* Sociedad y Discapacidad – SODIS
* IDEHPUCP – Instituto de Democracia y Derechos Humanos
* Centro de Políticas Públicas y Derechos Humanos- Perú Equidad
* Fundación Personas Sordas Perú

**Academic institution**

* Clínica Jurídica en Discapacidad y Derechos Humanos de la Pontificia Universidad Católica del Perú

**Mission team**

The mission team was composed of:

* Silvia Quan Chang, Vice-Chair, CRPD Committee member
* Raquel Jelinek, representative of IDA board
* Vladimir Cuk, Victoria Lee, Tchaurea Fleury and Iñaki Regueiro De Giacomi, IDA Secretariat

The mission team also collaborated with the Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas and Alberto Vásquez, President of SODIS, Peru, with respect to meetings held before the Congress and in the panel discussion, and for consultations concerning meetings and contacts with Peruvian government and civil society.

IDA extends its gratitude to the Special Rapporteur, SODIS and other Peruvian civil society organisations, in particular organisations of persons with disabilities, as well as the Office of the Ombudsperson, Catholic University of Peru, UN country team, and Peruvian authorities for their cooperation and open spirit of dialogue. Finally, a special thanks to the Peruvian mission to the United Nations in Geneva for its support of the mission at the outset and throughout.

**ANNEX III: Overview of implementation of recommendations concerning the rights of persons with disabilities**

**Issue** Review of laws[[92]](#footnote-92)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CAT 2013](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPER%2fCO%2f5-6&Lang=en)

**Grade[[93]](#footnote-93)** B1

**Concluding Observations**

CRPD Committee:

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

CAT Committee:

The Committee recommends that the State party adopt the draft bill on the rights of persons with disabilities, submitted to the Congress in March 2011

**Strengths**

The General Law on Persons with Disabilities (from now on “Law no 29973”) was approved in 2012 (including the amendment of several laws and the Civil Code).

**Limitations**

The regulations for Law no 29973 were issued 2 years after the law was approved (even when the legal term was 120 days after publication) once a legal action was initiated by civil society.

Law no 29973 and its regulations coexist with non-CRPD-compliant norms.

Further, the regulations do not cover all aspects of the law which impedes its effective implementation.

**Conclusions and recommendations**

Consider adopting a comprehensive plan to harmonise all legislation in accordance with CRPD standards, including extending the regulations to cover all aspects of Law no 29973 for effective application and operation.

**Issue** Review of laws[[94]](#footnote-94)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** A

**Concluding Observations**

*Amend Law 27050 to include a comprehensive definition of a person with disability;*

**Strengths**

Law no 29973 adopted in December 2012 includes a definition of disability in line with CRPD.

**Limitations**

None

**Conclusions and recommendations**

None

**Issue** Review of laws[[95]](#footnote-95)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** B1

**Concluding Observations**

*Define denial of reasonable accommodation and discrimination by association as forms of disability-based discrimination;*

**Strengths**

Law no 29973 establishes that the denial of reasonable accommodations constitutes discrimination based in disability (Article 8), and its regulations set out the definition in line with the Convention (Article 3(2), Supreme Decree no 002-2014-MIMP)

Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment echoes the definition of reasonable accommodation and that the denial of it is discriminatory specific to the context of employment (Annex I, Article 3(c), (g)).

**Limitations**

No definition of “discrimination by association” is included in Law no 29973.

Ministerial Resolution no 127-2016-TR provides guidance on reasonable accommodation which is limited to the private sector.

The definition of person with disabilities within Ministerial Resolution no 127-2016-TR differs from that of Law no 29973 (which is aligned to the CRPD) and specifies that the person has a disability certificate issued in accordance with the law (Annex I, Article 3(b)). This may restrict the scope of persons who may be considered eligible for reasonable accommodation with respect to employment.

Further, Ministerial Resolution no 127-2016-TR includes an extra requirement that the denial of reasonable accommodations must be “unjustified” to be considered discriminatory, which departs from the Convention standard (Article 17, Annex I).

**Conclusions and recommendations**

Define and address within the law “discrimination by association”.

Extend and incorporate into law and policy, the obligation to provide reasonable accommodation to the public sector and across all rights (beyond employment).

Ensure that all persons with disabilities, whether officially certified or not, may have access to reasonable accommodation in the workplace.

Eliminate the “*unjustified*” requirement referred to in Articles 17 & 18 of Ministerial Resolution N° 127-2016-TR for the denial of reasonable accommodations.

**Issue** Review of laws[[96]](#footnote-96)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** A

**Concluding Observations**

*Amend the Act for Foreigners in order to eliminate the requirements that discriminate against persons with intellectual or psychosocial disabilities.*

**Strengths**

Legislative Decree no 1236 of September 2015 eliminated it.

**Limitations**

None

**Conclusions and recommendations**

None

**Issue** Participation[[97]](#footnote-97)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** B2

**Concluding Observations**

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

**Strengths**

The Regulations of Law no 29973 included a requirement that all new legislation should be published in advance for comments from organisations of people with disabilities (Article 14 and Article 12 of the Regulation, Supreme Decree no 002-2014-MIMP). This was accomplished, for example, regarding the technical norm of reasonable accommodation in work (Ministerial Resolution no 162-2014-TR of 2014) and regarding the regulations of Law no 29889.

Law no 29973 foresees the creation of an Advisory Council within CONADIS (Article 65).

The Regulations of Law no 29973 (Supreme Decree no 001-2015-MIMP) created a specific provision in order to promote participation of autistic people and the creation of their organisations (Article 31).

**Limitations**

Several reforms had not been published for consultation (e.g., pension for people with “severe” disabilities, election of head of CONADIS)

The consultation process tends to be selective (only by invitation).

CONADIS has no consultation process in place (e.g., the election process of the President of the organisation).

The CONADIS Advisory Council has never been established.

Supreme Decree no 001-2015-MIMP makes no difference between organisations of autistic people and service providers (Article 31).

**Conclusions and recommendations**

Adopt a new participation/consultation strategy which ensures wide ranging and meaningful consultation. Guidance can be found in the 2016 Report of the Special Rapporteur on the rights of persons with disabilities.[[98]](#footnote-98)

Ensure that all new legislation and regulations related to disability is subject to broad and open consultation from all organisations of people with disabilities (with a clear distinction between the involvement and priority of organisations of persons with disabilities over service providers).

Take initiatives to increase the resources available for organisations of persons with disabilities for strengthened capacity to meaningfully participate in consultations and monitoring of implementation of the Convention.

Put into place, through meaningful consultation with DPOs, the Advisory Council of CONADIS.

**Issue** Women with disabilities

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CEDAW 2014](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPER%2fCO%2f7-8&Lang=en)

**Grade** C1

**Concluding Observations**

*CRPD Committee:*

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

 *CEDAW Committee:*

*(a) Intensify awareness-raising programmes and education campaigns to support equality of women and men at all levels of society, modify stereotypical attitudes, eliminate discrimination against women on such grounds as poverty, indigenous origin or ethnicity, disability or sexual orientation or gender identity, thereby removing obstacles to the full exercise of the right to equality in accordance with the National Plan for Gender Equality, and adopt a policy of zero tolerance towards all forms of violence against women;*

**Strengths**

New Law on Femicide no 30068 was issued in 2013 which includes the disability of the victim as an aggravating factor.

**Limitations**

No specific measures (e.g. awareness-raising programmes and educational campaigns) have been taken on tackling specific discrimination against women and girls with disabilities and to provide special protection to them in order to prevent and redress violence.

Law on Femicide no 30068 includes pejorative terminology (a person “*suffering from a disability*”).

**Conclusions and recommendations**

Ensure the mainstreaming of women and girls with disabilities across all laws, public policies and programmes of protection, prevention and awareness-raising about violence, exploitation, abuse and neglect, including campaigns and the creation of specific protocols and/or offices of criminal investigation.

Provide accessible information and resources available for women and girls with disabilities, survivors of violence and discrimination (social protection measures, accessible services and assistance such as shelters, hotlines, support, access to justice, etc.)

Ensure training for interlocutors working with or encountering of victims/survivors of violence on communicating with and supporting persons with disabilities, including police, prosecutors, judges, health personnel, teachers, social workers, etc.

**Issue** Children with disabilities

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** C1

**Concluding Observations**

*CRPD Committee:*

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

*CRC Committee:*

*While noting the measures taken by the State party to address discrimination against children in marginalized or disadvantaged situations, such as the establishment of the National Commission against Discrimination and the platform against discrimination, the Committee is deeply concerned about: […]*

*(b) The prevalence of structural discrimination against certain groups of children, including indigenous children, Afro-Peruvian children, children living in rural and remote areas, children living in poverty, lesbian, gay, bisexual, transgender and intersex children and children with disabilities, in particular regarding their access to education and other basic services, such as health care;*

*The Committee notes the measures taken to guarantee the rights of persons with disabilities and establish an inclusive education system, such as the adoption in December 2012 of General Law No. 29973 on persons with disabilities. However, the Committee is concerned that legislative and policy measures are not implemented effectively in practice. In particular, it is concerned at:*

*(a) The fact that more than 90 per cent of children with disabilities do not possess a disability certificate, owing to, among other things, a lack of specialized medical personnel to issue such certificates, which impedes their access to services for persons with disabilities; […]*

 *(f) Continued widespread discrimination and violence against children with disabilities.*

*52. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights- based approach to disability, and:*

*(a) Increase its human, technical and financial resources to ensure that all children with disabilities receive a disability certificate; […]*

*(f)  Undertake awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children. […]*

**Strengths**

Law no 30403 on the Prohibition of Physical and Humiliating Punishment against Children and Adolescents was approved in 2015.

**Limitations**

No disability-specific action detected*.*

**Conclusions and recommendations**

Ensure the mainstreaming of the rights and needs of girls and boys with disabilities into all laws, policies and campaigns to combat and prevent violence, abuse exploitation, neglect and abandonment, including girls, indigenous and Afro-Peruvian children.

Take measures to render information, reporting and complaints mechanisms and support services accessible, and conduct education and awareness-raising campaigns and training for all interlocutors on working with and communicating with girls and boys with disabilities.

**Issue** Awareness-raising

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** C1

**Concluding Observations**

*CRPD Committee:*

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

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

*CRC Committee:*

*52(f) Undertake awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of such children.*

**Strengths**

Supreme Decree no 001-2015-MIMP includes the obligation of CONADIS and regional governments to make information campaigns on “social self-determination” and “potential development” of persons with autism (Article 27).

**Limitations**

The main campaign related to disability is private and charity-oriented (Telethon) which portrays persons with disabilities as objects of charity and welfare.

**Conclusions and recommendations**

Adopt public campaigns in consultation with DPOs which promote the positive image and contribution of persons with disabilities and the CRPD and eliminate and regulate campaigns which perpetuate negative stereotypes of children and adults with disabilities.

**Issue** Accessibility

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** C1

**Concluding Observations**

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

**Strengths**

Law no 29973 includes the obligation to Peruvian Sign Language interpretation or closed caption on all TV programmes. It also included a tax exemption for the import of vehicles, technologies and assistive devices. There are also web accessibility obligations and an obligation to create a national accessibility plan.

Peruvian sign language is officially recognised by Law no 29535 of 2010.

**Limitations**

Communicational accessibility in TV is still not respected.

No national accessibility plan was adopted.

No accessibility standards are established for public transport.

Even when Municipalities are in charge of monitoring physical accessibility in private constructions and CONADIS of doing so in public constructions, there is no enforcement.

There are not enough Peruvian Sign Language interpreters in the country (23 approx.) and Law no 29535 of 2010 has not been regulated on the accreditation system for interpreters, therefore Peruvian Sign Language Interpretation is yet an informal system.

**Conclusions and recommendations**

Take steps to organise a training and official accreditation system for Sign Language interpretation, including the regulation of Law no 29535, actively promoting the official certification and training of Peruvian sign language interpreters.

In close consultation with DPOs, take steps to establish a Commission to prepare a national plan on communicational accessibility in media; and physical accessibility in transport (with the monitoring of the Ministry of Transport).

Take measures to effectively monitor and enforce current accessibility standards on public and private facilities, including the ordering of sanctions in case of breach.

**Issue** Identity documents[[99]](#footnote-99)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** D1

**Concluding Observations**

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

**INCLUDED FOLLOW UP REQUEST TO SUBMIT REPORT WITH DUE DATE IN 2014**

**Strengths**

The National Registry of Identification and Civil Status (RENIEC) has conducted campaigns in order to provide free identity documents to people with disabilities, sometimes for the first time in their lives (for example, those institutionalised in the “Larco Herrera” hospital), including public advertisements.

**Limitations**

No submission to the CRPD Committee was made on follow up to this Concluding Observation.

Except for actions made in 2011 and 2012, no further identification campaigns were mentioned.

There is no complete and accurate data available on people with disabilities in institutions who are currently undocumented.

It is unclear how many of the 23,000 persons with disabilities who had previously been denied the right to vote and conduct legal, administrative and finance-related affairs have been issued new IDs.

**Conclusions and recommendations**

Submit up to date information as requested by the Committee, including concerning undocumented people with disabilities in institutions and rural areas, as well as concerning the re-issuance of IDs for the 23,000 persons who had previously received ID cards with the label denying their right to vote and to conduct legal, administrative and financial transactions.

**Issue** Legal capacity[[100]](#footnote-100)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** B2

**Concluding Observations**

*The Committee recommends that the State party abolish the practice of judicial interdiction and review the laws allowing for guardianship and trusteeship to ensure their full conformity with article 12 of the Convention and take action to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will, and preferences.*

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

**Strengths**

Law no 29973 created a Special Commission that included civil society and drafted a Civil Code reform that is CRPD-compliant (abolishes substituted decision-making and introduces supported decision-making). Following the 2016 elections, a new proposal by civil society (based on the former) has been submitted to the Congress and it has been placed as a priority by the Working group on Civil Code reform of the Commission of Justice and Human Rights.

Further, some courts have been active in implementing Article 12 of the CRPD, by refraining from ordering guardianship and opting for establishing supported decision-making arrangements. A Plenary of Family Courts in the Province of Santa issued a decision requiring all judges to apply the CRPD (instead of the current Civil Code) and establishing support systems in all legal capacity cases (September 2016).

**Limitations**

The current Civil Code (Articles 43.2, 44.2, 44.3) deprives persons with disabilities of their legal capacity, including the right to exercise parental rights (Articles 466.1, 466.3 and 580).

Families are still initiating judicial processes in order to deprive their relatives with disabilities from the right to legal capacity in order to access to pensions. They also usually appeal CRPD-complaint court decisions.

The Plenary of Family Courts in the Province of Santa allows for the interpretation of the will and preferences of the person when the supported decision systems “are not possible”. That terminology is vague. With this proviso, Plenaries such as the one from the Family Courts in the Province of Santa should be extended countrywide.

The Constitution suspends the exercise of one’s citizenship through judicial interdiction (Article 33(1)).

**Conclusions and recommendations**

It is recommended that the Congress proceed with the current bill for Civil Code reform as proposed by civil society (*Mesa*) and supported by the Ministry of Justice, in accordance with Article 12 of the CRPD and CRPD Committee´s General Comment no 1.

Ensure training and awareness raising for all interlocutors – judges, public authorities, social workers, health personnel, etc. concerning the abolition of substituted decision making and the introduction of supported decision making.

Take steps to repeal Article 33(1) of the Constitution which suspends the exercise of citizenship to persons placed under interdiction.

**Issue** Liberty and prevention of torture[[101]](#footnote-101)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CAT 2013](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPER%2fCO%2f5-6&Lang=en)

**Grade** D1

**Concluding Observations**

*CRPD Committee:*

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

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

**INCLUDED FOLLOW UP REQUEST TO SUBMIT REPORT WITH DUE DATE IN 2014**

*CAT Committee:*

*...ensure that all legal safeguards for people in institutions are respected, urges the State party to promptly, effectively and impartially investigate all instances of ill-treatment, and to prosecute those responsible.*

**Strengths**

Law no 29973 ordered a reform on mental health services.

Law no 29889 amended Article 11 of the General Health Law. It provides that every person has the right to the highest attainable standard of mental health, without discrimination. It also states that the mental health treatment is voluntary, that commitment should be exceptional, periodically reviewed and only in cases of therapeutically voluntary purposes. Both treatment and commitment require free and informed consent, except in emergency situations (in which the person “is not in capacity to make a decision” and a relative is allowed to make decisions substituting her).

The regulation passed in October 2015 included the creation of mental health services based in the community, small homes and residences.

The Office of the Ombudsperson is monitoring institutions and, in that context, an institution that presented several problems was closed down (CREMI in Iquitos) in 2015.

**Limitations**

No submission to the CRPD Committee was made on this follow up concluding observation.

Treatment for addictions are excluded from these provisions and no monitoring is being performed in these institutions.

The “emergency” criteria is vague and allows arbitrariness and involuntary commitment.

The housing conditions and institutional profile of the “Larco Herrera” mental health institution remain unmodified.

**Conclusions and recommendations**

Submit the follow up report requested by the Committee.

Consider eliminating the emergency criteria for involuntary commitment.

Include the commitment for addiction causes in the mental health due process provisions and monitor those institutions.

Continue in the process of deinstitutionalisation and develop and invest in community-based services which permit choice and control for persons with disabilities.

**Issue** Forced sterilisation[[102]](#footnote-102)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CAT 2013](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPER%2fCO%2f5-6&Lang=en), [CEDAW 2014](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPER%2fCO%2f7-8&Lang=en)

**Grade** A

**Concluding Observations**

*CRPD Committee:*

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

**INCLUDED FOLLOW UP REQUEST TO SUBMIT REPORT WITH DUE DATE IN 2014**

*CAT Committee:*

*The State party should, as a matter of urgency, repeal the suspended administrative decree which allows the forced sterilization of persons with mental disabilities.*

*The State party should review its legislation with a view to:*

 *(f) Promptly investigate and prosecute all cases of forced sterilization and provide adequate redress to victims.*

*CEDAW Committee:*

*The Committee reiterates its concern that, to date, many acts of violence inflicted against women during the period of internal armed conflict have not been investigated and prosecuted and that remedies are often not readily available to victims. It also notes that the cases of some victims of the forced sterilizations undertaken in the context of the National Programme on Reproductive Health and Family Planning 1996-2000 have not been effectively investigated and the victims have received no compensation.*

*22. The Committee reiterates its recommendation (ibid., para. 21) that the State party should identify all women who were victims of violence during the internal armed conflict, investigate, prosecute and punish perpetrators and provide individual reparations to those women who experienced any form of violence.*

**Strengths**

The State submitted a report to the CRPD Committee, in response to the follow up concluding observation.

Through the adoption of Ministerial Resolution no 603-2012-MINSA of 21 July 2012, the Technical Norm for Family Planning 536/2005-MINSA of 26 July 2005 -which permitted persons with “*mental incompetence*” to be sterilised without their free and informed consent- was suspended.

Further, Law 29973 was adopted and supersedes the technical norm. Under Article 9 of that law, it ensures that persons with disabilities enjoy and exercise their legal capacity on an equal basis with others including with respect to the right to marry and to decide freely on the exercise of sexuality and reproduction.

Finally, on 31 August 2016, through the adoption of Ministerial Resolution no 652/2016 of the Ministry of Health, Technical Norm no 032-MINSA/DGSP-V.01, on Family Planning was repealed.[[103]](#footnote-103)

**Limitations**

In practice, it has been shared that there are still instances of non-consensual sterilisation of women with psychosocial or intellectual disabilities, upon the request of their families, guardians and heads of institutions.

No comprehensive measures have been taken to investigate and punish these acts nor to identify and provide redress to the victims. These represent continuing violations for the individuals concerned. Significantly, isolated investigations on forced sterilisation carried out by the Office of the Public Prosecutor has not included persons with disabilities sterilised on the basis of “*mental incompetence*”.

**Conclusions and recommendations**

Take steps to adopt legislation and protocols to ensure that people with disabilities can access accessible sexual and reproductive health services on an equal basis with others with the provision of support if requested.

Conduct training of health care staff and professionals on the prohibition of forced sterilisation and generally on the right to free and informed consent

Take steps to investigate, prosecute and sanction acts of forced sterilisation of persons with disabilities and provide redress to individuals who were subjected to the practice.

**Issue** Living independently and being included in the community

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** C2

**Concluding Observations**

*The Committee urges the State party to initiate comprehensive programmes to enable persons with disabilities to access a whole range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community, especially in rural areas.*

**Strengths**

Please see the social protection section in this annex below.

**Limitations**

There is no personal assistance program in place.

INABIF has a network of social care institutions in Lima for: older persons (2), children (2) and adults with disabilities (4). Persons from different regions are usually transferred to these facilities.

**Conclusions and recommendations**

In close consultation with organisations of persons with disabilities, adopt a national plan on independent living that includes the provision of home, residential and other community support services, including personal assistance in order to allow people with disabilities to be included and participate in their communities, and as a priority ensure the return of those currently living in segregated facilities.

**Issue** Education[[104]](#footnote-104)

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [UPR 2012](http://www.ohchr.org/EN/HRBodies/UPR/Pages/PESession14.aspx), [CEDAW 2014](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPER%2fCO%2f7-8&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** B2

**Concluding Observations**

*CRPD Committee:*

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

*UPR:*

*Continue the efforts to provide high quality education to all children and adolescents in the Peruvian territory, particularly to those belonging to groups in situations of vulnerability, such as indigenous peoples, Peruvian afro- descents, Afro-Peruvian communities and persons with disabilities (Costa Rica)*

*CEDAW Committee:*

*Allocate sufficient human and financial resources for the implementation and monitoring of laws and public policies designed to combat discrimination in access to education and to include the use of temporary special measures in promoting the education of girls and women, in particular in rural areas and indigenous communities and among girls with disabilities;*

*CRC Committee:*

*The Committee notes the measures taken to guarantee the rights of persons with disabilities and establish an inclusive education system, such as the adoption in December 2012 of General Law No. 29973 on persons with disabilities. However, the Committee is concerned that legislative and policy measures are not implemented effectively in practice. In particular, it is concerned at: […]*

 *(b) Information received that approximately 54 per cent of children with disabilities do not know how to read or write;*

*(c) Limited access to inclusive education for children with disabilities, in particular in rural and remote areas, owing, inter alia, to the lack of adequate infrastructure and resources and the limited support provided by the Assistance and Advice Services for Students with Special Educational Needs;*

*52. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights- based approach to disability, and: […]*

 *(b) Strengthen its efforts to implement an inclusive education system for all children at all levels, including by allocating the necessary human, technical and financial resources, providing accessible schools and educational materials, ensuring training of teachers, providing transportation and strengthening and expanding the support provided by its Assistance and Advices Services for Students with Special Education Needs in all areas of the State party;*

*(c) Establish a system to provide education to children with disabilities who have not attended school for many years and do not know how to read and write;*

**Strengths**

Law no 29973 included the right to inclusive education (Article 35) and modified the General Law on Education in order to ensure and reinforce the right to inclusive education, across all levels of education. The law includes references to accessibility of physical infrastructure (Article 26), equipment and pedagogical materials; the use of accessible and alternative modes, means and formats of communication including Braille and sign language; as well as curricular adaptations, provision of reasonable accommodation, support services and support for the inclusion of students with disabilities, and training issues related to the rights of persons with disabilities. Further, it explicitly includes a non-rejection policy applicable to both public and private educational institutions to ensure that they cannot deny access to schooling of an individual on the grounds of disability. Finally, the regulations on the General Law also set out a definition of inclusive education as “*the process of strengthening the capacity of the education system to reach all learners; therefore it is understood as a key strategy for achieving education for all*.”[[105]](#footnote-105)

The Ministry of Education is increasing its budget for programmes specific for the inclusion of persons with disabilities.

Law 29973 includes a 2 student quota for children with disabilities in schools and a 5% quota for universities and other higher education institutions. Supreme Decree no 001-2015-MIMP establishes that 5% of the quota assigned for people with disabilities in universities and superior education institutions should be reserved for autistic persons (Article 16).

The Early Intervention Program (PRITE) of the Ministry of Education was created.

**Limitations**

Inclusive education has not been duly considered in the context of the educational reform in Peru. There have been limited advances in practice. In general, there is lack of progress toward inclusive education.

In Peru, literacy reaches 93.2% for the general population, whilst for persons with disabilities the figure is 70.9%. It has been documented that half of children with disabilities do not attend school at all- rendering the situation of children with disabilities the most alarming out of all groups of children, faring worse than indigenous children.[[106]](#footnote-106)

The figures on exclusion of children with disabilities in the education system remain high. An official report of 2013 determined that only 1.5% of the population with disabilities of school age are included in regular schools with specialized support. The Ministry of Education acknowledged in 2012 that 85% of students with disabilities "do not receive educational attention."[[107]](#footnote-107)

Special education is still provided in the General Education Law and its regulations for cases of “severe impairment” and “multiple disability”, even when it should have an “inclusive approach”.

Most of the resources are allocated to special education. Even when the intention is that special schools provide support to mainstream schools, the former -450 approx.- are largely outnumbered by the latter -80.000 approx.-, making the task almost impossible.

Most students with disabilities in mainstream schools receive no supports.

School accessibility remains a pending task. The National Regulation on Buildings does not include this as a requirement for existing and new facilities. According to the 2012 ENEDIS Survey, 18,3% of persons with disabilities informed that they had difficulties while transporting to educational buildings**[[108]](#footnote-108)**. According to the Office of the Ombudsperson, 48% of educational institutions have no autonomous entrance**[[109]](#footnote-109)**. And according to the 2013 National Survey to Educational Institutions less than 1% of schools are accessible.**[[110]](#footnote-110)**

There is only one primary school for deaf children in the whole country.

Training of teachers on inclusive education is not mandatory (there is only one private university who has a “special needs education” course), therefore there is an important lack of knowledge on the subject.

The non-rejection policy is neither upheld in practice, and some private schools require parents to fill in a “non-disability declaration” regarding their children, with poor control from public authorities. [[111]](#footnote-111)

The division of responsibilities in which inclusive education remains the domain of the Directorate General of Specialised Educational Services (*Dirección General de Servicios Educativos Especializados*) and is not mandated to the mainstream system itself under the Directorate General of Basic Education (*Dirección General de Educación Básica Regular*) only serves to embed the barriers to implementing the right to inclusive education.

The budget remains divided in two: on special education and inclusive education with most activities and budget being directed to special schools.

The quota has been used by schools to deny enrolment of children with disabilities.

The network of Early Intervention Program centers (PRITE) of the Ministry of Education do not reach the entire country. According to the Survey ENEDIS 2012, only 4,9% of the children of 0 to 3 years old assist to a PRITE center[[112]](#footnote-112). In fact, only 71 PRITE centers are registered countrywide. [[113]](#footnote-113)

**Conclusions and recommendations**

Adopt all legal and other measures necessary to ensure the provision, as a legally enforceable right, of inclusive quality education to children and adults with disabilities in mainstream schools within their communities by:

- adopting a strategy to transform the education system toward a fully inclusive education system by redirecting resources from special schools to mainstream schools

- ensuring the accessibility of school environments and materials including through incorporating accessibility criteria to public procurement processes for goods and services in the education system

- providing reasonable accommodation and individualised support measures to students with disabilities

- ensuring bilingual education for deaf students

- ensuring the mandatory pre-and in-service training of teachers and other education personnel on inclusive education.

Take steps to amend the definition of inclusive education included in Supreme Decree no 001-2015-MIMP to align it with the CRPD and General Comment no 4 of the CRPD Committee.

Take measures to enforce the no-rejection of enrolment in both public and private schools of children with disabilities.

Undertake data collection disaggregated by disability in order to determine and monitor qualitative and quantitative results (e.g., in the Statistic on Quality of Education -ESCALE-).

Ensure identification by local authorities of children with disabilities out of school and that their right to receive education is guaranteed.

Extend the network of Early Intervention Program centers (PRITE) of the Ministry of Education across the country.

**Issue** Health

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** B1

**Concluding Observations**

*CRPD Committee:*

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

*Review its legal framework in order to ensure that insurance companies and other private parties do not discriminate against persons with disabilities;*

*Apply budgetary resources and create skills among health personnel, in order to effectively comply with the right to health care of persons with disabilities, ensuring that hospitals and health centres are accessible to persons with disabilities;*

*Provide services of early identification of disabilities, in particular deafness, designed to minimize and prevent further disabilities, including among children.*

*CRC Committee:*

*The Committee notes the measures taken to guarantee the rights of persons with disabilities and establish an inclusive education system, such as the adoption in December 2012 of General Law No. 29973 on persons with disabilities. However, the Committee is concerned that legislative and policy measures are not implemented effectively in practice. In particular, it is concerned at: […]*

 *(d) The insufficient availability of rehabilitation services and early detection programmes, in particular in rural and remote areas, and the limited coverage of rehabilitation and treatment for children with disabilities under the universal health insurance;*

*52. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights- based approach to disability, and: […]*

 *(d) Ensure that children with disabilities throughout the State party have effective and free access to health and rehabilitation services, including early detection and intervention programmes;*

**Strengths**

Law no 29973 prohibits discrimination against people with disabilities regarding health insurance (Article 28.1). Some cases were solved positively by the consumer rights agency (INDECOPI). For example: Resolution no 2135-2012/SC2-INDECOPI.

Law no 30150 of 2014 on the “protection of individuals with autism spectrum disorders” has a similar provision. That law also mandates for a National Plan for Autistic Persons.

Some steps have been taken to ensure early identification of children with disabilities through the adoption in 2012 of Law no 29885 on declaring of national interest the creation of the Universal Neonatal Screening Program,[[114]](#footnote-114) as well as technical norm no 106 on comprehensive neonatal health care in December 2013.[[115]](#footnote-115)

**Limitations**

No specific public policy is in place to eradicate discrimination on access to health insurance services.

According to surveys, there is some evidence which shows that the number of persons with disabilities with insurance has increased since the creation of the Integral Health Insurance (*Seguro Integral de Salud- SIS*) in 2002.[[116]](#footnote-116)

**Conclusions and recommendations**

In close consultation with organisations of persons with disabilities, take steps to devise a strategy on health and rehabilitation programmes for persons with disabilities, including the mandatory training of health personnel.

Take steps to ensure continuation of engagement by the Bank, Insurance and Pension Superintendence (SBS) to actively monitor and sanction discriminatory practices of health insurance companies which restrict or deny people with disabilities’ access to health insurance on an equal basis with others.

**Issue** Work

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CESCR 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPER%2fCO%2f2-4&Lang=en)

**Grade** B2

**Concluding Observations**

*CRPD Committee:*

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

*CESCR Committee:*

*The Committee recommends that the State party take steps to promote the employment of persons with disabilities, as well as to protect them from discrimination in the workplace. The Committee also recommends that the State party ensure effective compliance by public institutions with the 3 per cent quota accorded to persons with disabilities.*

**Strengths**

Law no 29973 amended the law on labour skills and productivity and included disability-based discrimination -including the denial of reasonable accommodation- as a ground for wrongful dismissal.

It also created income tax exemptions in order to promote hiring of persons with disabilities.

Law no 29973 (Article 50) included the right to reasonable accommodation in work environments. Ministerial Resolution no 127-2016-TR approved its regulation, after a process of consultation with DPOs and with the consultation to the ILO. It included as an annex a model form for employees to request a deliberative process of determination of supports, including the possibility of participation of support persons and union representatives; and accessibility measures. It also includes an advisory service for employers and persons with disabilities and the publication of a report on all reasonable accommodation that were provided.

There was a specific amendment on the law of the judicial career (Law no 29277, Article 4.6) that previously blocked persons with disabilities from the possibility of becoming judges and prosecutors (or remaining as such if they acquired an impairment while in the position).

It also includes the establishment of a quota in the public sector (5%) and in companies over 50 employees (3%).

The Law on Transparency and Access to Public Information was modified in order to include information on people with disabilities working in public entities. This promotes the monitoring of the implementation of the quota.

The Ministry of Labour has been campaigning for the improvement of the level of employment of people with disabilities, informing a 50% increase in private companies for 2015[[117]](#footnote-117). Also, the Ministry has informed about the National Plan on Training for People with Disabilities 2015-2016 in labour skills of 1700 people with disabilities in the regions of Lambayeque, La Libertad, Piura, Arequipa, Cusco, Ica, Lima, Callao, Junín, San Martín y Tacna, through the programs *Jóvenes Productivos* and *Impulsa Perú[[118]](#footnote-118).*

**Limitations**

The Minister of Labour is currently monitoring and leading the implementation of the quota for private employers but there is no control or guidance on public entities.

The regulations of the quota on private companies was issued two years after the deadline.

In case of breach of the quota, companies can justify it by probing that there were no candidates with disabilities for a position, or pay a fine, which some view as an easy way out of the obligation.

Ministerial Resolution no 127-2016-TR (Articles 17 & 18, Annex I) includes an extra requirement that the denial of reasonable accommodations must be “unjustified” to constitute discrimination, which departs from the Convention standard.

**Conclusions and recommendations**

Extend the good practice of the technical norm on reasonable accommodation in employment in other chapters of the harmonisation.

Consider implementing a monitoring system for the implementation of the quota for public entities.

Undertake regular monitoring of the implementation of the quota in private companies to check if they are actually hiring people with disabilities. If the enforcement system does not guarantee that, consider reviewing it.

Eliminate the “*unjustified*” requirement referred to in Articles 17 & 18 in Annex I of Ministerial Resolution no 127-2016-TR for the denial of reasonable accommodations.

**Issue** Social Protection

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CESCR 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPER%2fCO%2f2-4&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** B2

**Concluding Observations**

*CRPD Committee:*

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

*CESCR Committee:*

*The Committee recommends that the State party take steps to ensure universal social security coverage, and extend the coverage of social security to all workers in the private sector, as well as persons with disabilities. The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.*

*CRC Committee:*

*The Committee notes the measures taken to guarantee the rights of persons with disabilities and establish an inclusive education system, such as the adoption in December 2012 of General Law No. 29973 on persons with disabilities. However, the Committee is concerned that legislative and policy measures are not implemented effectively in practice. In particular, it is concerned at: […]*

 *(e) The fact that many social protection programmes, while they do not directly exclude children with disabilities, are not accessible to such children owing to the fact that the programmes are often solely provided in schools, taking into account that only 50 per cent of children with disabilities attend school;* […]

*In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights- based approach to disability, and:* […]

*(e)  Ensure that its social protection programmes are inclusive in practice;*

**Strengths**

Law no 29973 (Article 59) and its Regulation (Supreme Decree no 002-2014-MIMP and Supreme Decree no 004-2015-MIMP°) created a pension to people with “*severe*” disability. The coverage of this program is progressive and currently covers four regions (Piura, Ayacucho, Huánuco y Tumbes). The regulation of this right was approved by Ministerial Resolution 175-2015 MIMPV (Operation Manual) and determines that the monthly amount of the pension is S/150.00 (about USD 43). Currently, approximately 500 people receive this pension and the government expressed publicly its intention to extend its coverage to 50.000 people in a 5-year period[[119]](#footnote-119).

**Limitations**

According to the 2015 INEI Survey, people with disabilities are 2,4% poorer than people without disabilities. In 2016 the value decreased to the 1,5%[[120]](#footnote-120).

A 2015 research that analysed several social protection programmes (Cuna Mas, Qali Warma, Juntos, Pensión 65, etc.) found that “*Although persons with disabilities in the study were found to have equal access to the two individual-level social protection programmes ‘Pensión 65’ and ‘Seguro Integral de Salud’, as well as the family-level programs, the low coverage rates of ‘Pension 65’ and ‘Juntos’ suggests that many adults with disabilities in particular may not have access to social protection that can decrease their vulnerability, which ought to be addressed so as to ensure full inclusivity of the programmes.” “As many of the barriers that persons with disabilities face are avoidable, policies need to focus on reviewing existing legislation and developing strategies to reduce these barriers. Social protection programmes should consider adding disability status to selection criteria of so as to reduce these barriers.”[[121]](#footnote-121)*

The same study concluded that specific attention should be paid in the improvement of the public services for people with disabilities -such as healthcare, rehabilitation and education- and the consideration for the extra costs associated with disability.**[[122]](#footnote-122)**

The study also established that in the program “Juntos” children with “severe” disability could be exempted from the requisite of presenting school attendance and medical certificates, with no further action in order for guaranteeing the exercise of those rights.**[[123]](#footnote-123)**

Article 4 of the Supreme Decree no 004-2015-MIMP establishes as the criteria for receiving the disability pension that the person should not “*perceive income or pensions that comes from private or public source*”. Therefore, the regulation puts the person in the unacceptable decision of getting a job or getting a pension. Also, the medical model prevails in the characterisation of what constitutes “*severe disability*” which requires a doctor’s approval. It does not consider the barriers encountered in society in determining who should be a beneficiary.

In the annex to the Ministerial Resolution No. 013/2015-MINSA of January 2015 (Technical Health Norm on Evaluation, Qualification and Certification of Person with Disability) considers a person with severe disability on the level of third-party-support that needs and, when a person have received some diagnosis in particular, there is no need for evaluation.

Supreme Decree no 007-2016-MIMP introduced a method of payment. For people of legal age that can manifest her will, it included the criteria of appointing a “*representative*” in order to receive the pension.

In cases of minors and people of legal age who cannot express her will, their situation is assimilated. In both cases, a third person is always receiving the pension on behalf of the beneficiary.

**Conclusions and recommendations**

Take steps to incorporate the disability perspective in all current social protection programs, giving priority access to people with disabilities, taking due consideration to the extra costs and specificity of disability.

Establish a “two-way” approach: while maintaining existing social protection programs of universal coverage, consider establishing disability-specific ones.**[[124]](#footnote-124)**

Extend the coverage of the disability pension to anyone who faces extra charges due to her disability in the whole country.

Take steps to avoid purely medical assessment or assessment based on the “degree” of a disability within social protection programmes.

Take steps to eliminate requirements substituting persons with disabilities with third persons (guardians) in the payment of social security pensions. Take steps to introduce individual support systems as opposed to necessitating guardianship to facilitate access to social protection schemes.

Take steps to increase the amount of the disability pension in order to meet an adequate standard of living on an equal basis with others, taking into account disability related expenses.

**Issue** Political life

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** B1

**Concluding Observations**

*The Committee recommends that the State party restore voting rights to all people with disabilities who are excluded from the national voter registry, including people with disabilities subject to judicial interdiction;*

*Reach out to vulnerable individuals and protect people with disabilities from such violations in the future, including through relevant training.*

*Guarantee the right to vote of people with disabilities in institutions, by ensuring that they are physically permitted to go to assigned polling stations and have the support required to do so, or to permit alternative options.*

**Strengths**

RENIEC (civil registry office) allowed the procedural possibility for people deprived of the right to vote to restore them.

Training for people with disabilities living in institutions has been made by the ONPE (electoral process national office)[[125]](#footnote-125). Some measures have been taken by this office in order to guarantee electoral accessibility[[126]](#footnote-126).

**Limitations**

Article 10 of Law no 26859, the Law on Elections, is still in force and denies the right to vote of persons under interdiction (guardianship).

Similarly, the Constitution suspends the exercise of one’s citizenship through judicial interdiction (Article 33(1)).

Thousands of persons with disabilities have not initiated the process for the restoration of voting rights, therefore, they are still deprived from exercising this right.

No systematic plan is actively promoting the right to vote among persons with disabilities.

**Conclusions and recommendations**

Repeal Article 10 of Law no 26859 and Article 33(1) of the Constitution which deny or suspend the right to vote of persons under interdiction.

Take steps to actively reach-out to all persons deprived from the right to vote (as a consequence of a guardianship regime or any other reasons) and restore their rights in all cases, without any further procedure needed.

Take steps to conduct information and awareness raising campaigns to promote the right to vote among all persons with disabilities, regardless of the type of impairment.

**Issue** Data collection

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en), [CEDAW 2014](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPER%2fCO%2f7-8&Lang=en), [CERD 2014](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fPER%2fCO%2f18-21&Lang=en), [CRC 2016](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en)

**Grade** B2

**Concluding Observations**

*CRPD Committee:*

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

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*The Committee urges the State party to improve its data gathering in order to have clear statistics on indigenous and minority persons with disabilities.*

*CEDAW Committee:*

*The Committee recommends that the State party provide comprehensive information and statistical data in its next periodic report on the situation of disadvantaged groups of women and the implementation of the existing policy instruments to address their specificities. It urges the State party to pay special attention to the needs of rural, indigenous and minority women and to ensure that they participate in decision-making processes and have full access to justice, basic services, land tenure and credit facilities.*

*CERD Committee:*

*The Committee reminds the State party of the importance of compiling and publishing disaggregated statistical data on the composition of its population. Bearing in mind that the next census will take place in 2017, the Committee urges the State party to compile data and indicators on the Afro-Peruvian and indigenous population, disaggregated by sex, age and disability, to facilitate active participation by indigenous peoples and the Afro-Peruvian population in developing the methodology to be used and to ensure that such a methodology is based on the criterion of self-identification.*

*CRC Committee:*

*While noting the significant efforts made by the State party to collect and analyse data on children, the Committee is concerned that data are not sufficiently disaggregated and consolidated, which may constitute an obstacle for an adequate understanding and assessment of the situation of children in vulnerable and marginalized situations.*

*16. In the light of its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee recommends that the State party continue to strengthen its data collection system, in particular by ensuring that data cover all areas of the Convention and are disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background in order to facilitate analysis on the situation of all children. It also recommends that the data and indicators be shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention. Furthermore, the State party should take into account the conceptual and methodological framework set out in the report of United Nations Office of the High Commissioner for Human Rights entitled “Human rights indicators: a guide to measurement and implementation” when defining, collecting and disseminating statistical information.*

**Strengths**

The National Disability Survey (ENDI) was conducted in 2012 -after consultation with DPOs- and was published in 2013 and it is the first of its kind. It indicates high rates of labour and education exclusion.

### The National Household Survey (*Encuesta Nacional de Hogares –ENAHO*) and Demographic and Family Health Survey (*Encuesta Demográfica y de Salud Familiar –ENDES*) have included disability-related questions, and National Statistics Commission ([*Instituto Nacional de Estadística e Informática*](https://www.inei.gob.pe/)*- INE*I) publishes each year a report summarising their findings.

INEI also included disability in other annual surveys. For example, in 2016 the Living Conditions of People with Disabilities Survey was published.[[127]](#footnote-127)

**Limitations**

According to ENDI 5.4% of population has a disability which is low compared to international standards and estimates.

**Conclusions and recommendations**

Take steps to systematically facilitate the collection, analysis and dissemination of disaggregated data across all sectors including health, education, employment, political participation, access to justice, social protection, and violence by disability and according to other categories listed above, and ensure training of surveyors for increased awareness of collection of data related to disability in close cooperation with organisations of persons with disabilities.

**Issue** Monitoring

**Mechanism** [CRPD 2012](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPER%2fCO%2f1&Lang=en)

**Grade** B2

**Concluding Observations**

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

**Strengths**

Law no 29973 (Article 86) designates the Office of the Ombudsperson (*Defensoría del Pueblo*) as the CRPD Article 33.2 body.

**Limitations**

The Office of the Ombudsperson is not equipped in terms of human and financial resources to fulfil its mandate as the Article 33(2) body including to undertake systematic and meaningful consultation with organisations of persons with disabilities.

**Conclusions and recommendations**

Strengthen the capacities of the Office of the Ombudsperson by ensuring the availability of resources for more comprehensive and effective monitoring and active engagement with organisations of persons with disabilities.

Provide DPOs and other civil society organizations with adequate resources for full and effective participation in the national implementation and monitoring process.

1. CRPD Committee, Working Methods, CRPD/C/5/4, September 2011, para 21; Guidelines on the procedure for follow-up to Concluding Observations, Annex II to Report of the Committee on the Rights of Persons with Disabilities, CRPD/C/12/2, 5 November 2014, para 1. [↑](#footnote-ref-1)
2. Namely, the Human Rights Committee and the Committee against Torture which are the two treaty bodies which have adopted a grading system for measuring implementation of Concluding Observations. For more information on this grading system and treaty body practices on follow up, see Annex I. [↑](#footnote-ref-2)
3. CRPD Committee, Concluding Observations on Peru, CRPD/C/PER/CO/1, 20 April 2012 [↑](#footnote-ref-3)
4. Recommendations from other treaty bodies and procedures directed to Peru include: Committee on Economic, Social and Cultural Rights (E/C.12/PER/CO/2-4, 2012); Universal Periodic Review (A/HRC/22/15, 2012); Human Rights Committee (CCPR/C/PER/CO/5 2013); Committee against Torture (CAT/C/PER/CO/5-6, 2013); Committee on the Elimination of Discrimination against Women (CEDAW/C/PER/CO/7-8, 2014); Committee on the Elimination of Racial Discrimination (CERD/C/PER/CO/18-21, 2014); Committee on Migrant Workers (CMW/C/PER/CO/1, 2015) and Committee on the Rights of the Child (CRC/C/PER/CO/4-5, 2016) [↑](#footnote-ref-4)
5. CRPD Committee, Concluding Observations on Peru, CRPD/C/PER/CO/1, 20 April 2012, para 53 ; it is worth noting that these are the first Concluding Observations in which the CRPD Committee identified recommendations for short term follow up within two years in accordance with Article 35(2) of the Convention. [↑](#footnote-ref-5)
6. CRPD Committee, Concluding Observations on Peru, CRPD/C/PER/CO/1, 20 April 2012, para 6(a) [↑](#footnote-ref-6)
7. English translation available at <http://www.internationaldisabilityalliance.org/es/resources/peru-ley-general-de-la-persona-con-discapacidad-ley-no-29973> [↑](#footnote-ref-7)
8. Article 8(2), General Law on Persons with Disabilities, Law no 29973. [↑](#footnote-ref-8)
9. Article 50, General Law on Persons with Disabilities, Law no 29973; Amendment of Articles 23, 29, 30 of Unified Rearranged Text of the Law on Labour Productivity and Competitiveness, approved by Supreme Decree no 003-97-TR (*Texto Único Ordenado de la Ley de Productividad y Competitividad Laboral aprobado por Decreto Supremo No. 003-97-TR*). [↑](#footnote-ref-9)
10. Articles 37(1), 38, General Law on Persons with Disabilities, Amendment to Article 49 of the General Law on Education, Law no 28044; Amendment to Article 21 of the Law on University, Law no 23733. [↑](#footnote-ref-10)
11. Article 9, General Law on Persons with Disabilities. [↑](#footnote-ref-11)
12. Article 9.1 Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. The Civil Code regulates the support systems and reasonable accommodations they require for decision making. [↑](#footnote-ref-12)
13. Second, Final Additional Provisions: Create a special commission in charge of reviewing the Civil Code with regards to the exercise of legal capacity of persons with disabilities and to develop, within six months from the date of entry into force of this Law, a preliminary bill to reform the Civil Code in accordance with the provisions established in this Law and the Convention on the Rights of Persons with Disabilities.
The special committee shall be made up of the following members:

a) Two Congressmen, one of whom shall preside the Committee.

b) One representative of the National Council for the Integration of Persons with Disabilities (CONADIS).

c) One representative of the judiciary.

d) One representative for the universities that have law schools, this representative will be appointed by the National Assembly of University Chancellor.

e) One representative of the Office of the Ombudsperson.

f) One representative of the National Registry of Identification and Civil Status.

g) Three representatives of organizations of persons with disabilities. [↑](#footnote-ref-13)
14. Article 35, General Law on Persons with Disabilities, Law no 29973; Amendments to Articles 10, 39, 66 of the General Law on Education, of Law no 28044. [↑](#footnote-ref-14)
15. Fifth Supplementary Provision and Amendment: Amendment to Article V and 9 of the General Law on Health, Law no 26842: “V. It is responsibility of the State to monitor, prevent and address the problems of malnutrition and mental health of the population, and those of environmental health, as well as the health problems of persons with disabilities, children, adolescents, mothers and older persons in situation of abandonment. Article 9. The person with disability has the right to access health and rehabilitation quality services, without discrimination, on equal conditions with others. The State provides early detection and intervention services, as well as services directed to prevent and reduce to a minimum the appearance of new impairments. Rehabilitation services are provided in the fields of health, employment, education and social services in a decentralised and community based manner. The Ministry of Health ensures the availability and access of the person with disability to assistive technologies, devices, medication and compensatory aid required for their care and rehabilitation”. (*Artículo 9º, “La persona con discapacidad tiene derecho a recibir prestaciones de salud y rehabilitación de calidad, sin discriminación, en igualdad de condiciones que las demás. El Estado presta servicios de detección e intervención temprana, así como servicios dirigidos a prevenir y reducir a su mínima expresión la aparición de nuevas discapacidades. Los servicios de rehabilitación se prestan en los ámbitos de la salud, el empleo, la educación y los servicios sociales de manera descentralizada y comunitaria. El Ministerio de Salud garantiza la disponibilidad y el acceso de la persona con discapacidad a tecnologías de apoyo, dispositivos, medicamentos y la ayuda compensatoria necesaria para su atención y rehabilitación.”*) [↑](#footnote-ref-15)
16. Sixth Supplementary Provision and Amendment, Amendment to Law no 28278, Law on Radio and Television, Article 38. [↑](#footnote-ref-16)
17. Article 59, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-17)
18. Article 58, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-18)
19. Ninth Supplementary Provision and Amendment, General Law on Persons with Disabilities, amending Article 37(z) of the Income Tax Law (*Texto Único Ordenado de la Ley del Impuesto a la Renta*). [↑](#footnote-ref-19)
20. Tenth Supplementary Provision and Amendment, General Law on Persons with Disabilities, amending Article 147(d) of the General Customs Law (*Decreto Legislativo 1053, Ley General de Aduanas*). [↑](#footnote-ref-20)
21. Twelfth Supplementary Provision and Amendment, General Law on Persons with Disabilities, amending Article 5(2) of the Law on Transparency and Access to Information, Law no 27806 (*Texto Único Ordenado de la Ley de Transparencia y Acceso a la Información Pública*). [↑](#footnote-ref-21)
22. Thirteenth Supplementary Provision and Amendment, General Law on Persons with Disabilities, amending the Law on the Promotion of Access to Internet for Persons with disabilities and of Adaptation of Physical Space of Public Internet Booths, Law no 28530 (*Ley de promoción de acceso a Internet para personas con discapacidad y de adecuación del espacio físico en cabinas públicas de Internet*). [↑](#footnote-ref-22)
23. Fourteenth Supplementary provision and amendment General Law on Persons with Disabilities, amending Article 4 of the Law on Judicial Career, Law no 29277. [↑](#footnote-ref-23)
24. Art 86, General Law of Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-24)
25. Congress of the Republic, Social Inclusion and Persons with Disabilities Commission, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-25)
26. CONADIS, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-26)
27. CONADIS, “You already know my disability, now learn about what I am capable of” (*Ya conoces mi discapacidad ahora conoce de lo que soy capaz*). [↑](#footnote-ref-27)
28. CONADIS, Regulations of Law no 29973, 2015. [↑](#footnote-ref-28)
29. Final complementary provisions, Thirteenth: Regulation. The Executive Power, through Supreme Decree, regulates the current act in a timeframe no higher than 120 days from its entry in force, considering what is established in article 14. [↑](#footnote-ref-29)
30. A Constitutional remedy to require any authority or official to comply with a legal standard or administrative act, Article 200(6), Constitution of Peru, 1993. [↑](#footnote-ref-30)
31. Article 3(2), Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP. [↑](#footnote-ref-31)
32. A directive on technical standards for the application of reasonable accommodation, which may include changes in physical space, provision of technical aids, support services, adaptation of work tools, adjustments in work organization and hours depending on the needs of workers with disabilities, to facilitate access to the workplace, and efficient development, training programs, job updating and promotion programs. It also establishes the criteria for determining whether reasonable accommodation constitutes an undue economic burden. Article 57(1), Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP. [↑](#footnote-ref-32)
33. Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment, 28 June 2016 (*Norma Técnica para el diseño, implementación y ejecución de ajustes razonables para el empleo de personas con discapacidad en el sector privado, y el formato de solicitud de ajustes razonables resolución ministerial, 28 junio 2016*). [↑](#footnote-ref-33)
34. See Chapter IV of Annex I, Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment, 28 June 2016. [↑](#footnote-ref-34)
35. Seventh final additional provision, Annex I, Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment, 28 June 2016. [↑](#footnote-ref-35)
36. Article 3(b), Annex I, Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment, 28 June 2016. [↑](#footnote-ref-36)
37. Articles 17 & 18, Annex I, Ministerial Resolution no 127-2016-TR of the Ministry of Labour and the Promotion of Employment, 28 June 2016. [↑](#footnote-ref-37)
38. Article 4, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-38)
39. Article 4(1)(i) & (j). [↑](#footnote-ref-39)
40. Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP, Article 3.25. [↑](#footnote-ref-40)
41. Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP, Article 3.11.  [↑](#footnote-ref-41)
42. As stated by the head of the Peruvian delegation in their opening statement during the dialogue with the Committee in 2012, Julio Rojas Julca, Vice Minister for Vulnerable Populations, Ministry for Women and Vulnerable Populations. [↑](#footnote-ref-42)
43. The Law on Foreigners (*Ley de Extranjería*) of 1991 which was replaced by Legislative Decree no 1236, stipulated in Article 28 that “Foreigners who suffer from insanity, paralysis, blindness, deaf-muteness who cannot fend for themselves may enter the country if they are accompanied or received by persons accountable for them.” (“*Los extranjeros que padezcan alienación mental, parálisis, ceguera, sordomudez, que no puedan valerse por sí mismos podrán ingresar al país si son acompañados o recibidos por personas que se responsabilicen por ellos.*”) [↑](#footnote-ref-43)
44. Legislative Decree on Migration no 1236, September 2015, see Article 17. [↑](#footnote-ref-44)
45. Mesa de Discapacidad y Derechos Humanos de la Coordinadora Nacional de Derechos Humanos (APRODEH, CODIP, GIN, SODIS, CONFENADIP, Paz y Esperanza, Musas Inspiradoras de Cambios, SPSD, CNDDHH, IDEHPUCP, ONG Anynimundo, CEMPDIS Lima Sur, Peru Equidad, FENAMUDIP y Sense Internacional Perú) ad hoc Brief Report on the situation of Persons with Disabilities, 2015. [↑](#footnote-ref-45)
46. Final Additional Provisions, Second: Creation of the Commission for the Review of the Civil Code, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-46)
47. Congressman Jhon Reynaga y Rosa Mavila; President of CONADIS; representative of the Judicial Branch, representative of the Law Faculty of the Pontifical Catholic University of Peru, representative of the Office of the Ombudsperson, representative of the National Registry of Identification and Civil Status (*Registro Nacional de Identificación y Estado Civil- RENIEC*); and three representatives of civil society from Alamo Perú (organisation of persons with psychosocial disabilities), Sociedad Peruana de Síndrome Down (SPSD) and SODIS, a human rights organisation working on the rights of persons with disabilities. [↑](#footnote-ref-47)
48. A video entitled “*Apoyemos para abolir la muerte civil que ellos viven*” was produced, available at <https://www.youtube.com/watch?v=0BfqEuWf1Bs> . [↑](#footnote-ref-48)
49. “Essential Principles: Irish Legal Capacity Law”, April 2012, guidelines developed by civil society organisations, comprising DPOs, NGOs and academic institutions for legal capacity reform in Ireland. <https://www.amnesty.ie/reports/essential-principles-irish-legal-capacity-law> [↑](#footnote-ref-49)
50. 3rd Family Court Cusco - Case *Ciprian vda de Velasquez, Marta Rosalvina v Velasquez Ciprian, Ruben, Ciprian Velasquez, Wilbert Ciprian Velasquez, Miracle and Corina* (on interdiction), Decision of 15 June 2015, paragraph 9.2.H : “*Considerando lo expuesto precedentemente, la forma en la que se encuentra redactada los artículos tantas veces referidos del Código Civil, y especialmente su concepción, es atentatoria al derecho a la igualdad en el reconocimiento de la capacidad jurídica de las personas con discapacidad sicosocial e intelectual, no pudiendo interpretarse de alguna forma que sea compatible con los derechos fundamentales ya señalados por ser claramente contradictorios, por lo que declarar una interdicción parcial o solo para determinados aspectos de la vida, afecta al derecho intrínseco y de la PCD y el espíritu del artículo 12 de la CDPD al no tomar en cuenta la decisión y autonomía de las PCD*". [↑](#footnote-ref-50)
51. Superior Court of Cusco, Case of Erika Fernández Asin, January 2016; Case of Marcos Esteban Portugal Duenas, January 2016; Case Jose Antonio Segovia Soto, May 2016 (restoration of legal capacity); Case Teresa Lazo Echari, April 2016 (person with low vision – access to social security benefit). [↑](#footnote-ref-51)
52. Session summary of the Family Jurisdictional District Plenary of the Supreme Court of Justice of Santa, Civil interdiction and the rights of persons with disabilities to the equal recognition to legal capacity, 15 July 2016 (*Acta de Sesión del Pleno Jurisdiccional Distrital de Familia de la Corte Superior de Justicia des Santa, La interdicción civil y el derecho de las personas con discapacidad al igual reconocimiento a la capacidad jurídica, 15 julio 2016*) [↑](#footnote-ref-52)
53. Article 43: The following are absolutely incapable: (2) Those that for whatever cause are deprived of discernment; Article 44: The following are relatively incapable: (2) The mentally retarded. (3) Those that suffer from mental deficit that prevents them from expressing their free will. (*Artículo 43: Son absolutamente incapaces; (2) Los que por cualquier causa se encuentren privados de discernimiento; Artículo 44: Son relativamente incapaces: (2) Los retardados mentales. (3) Los que adolecen de deterioro mental que les impide expresar su libre voluntad*) [↑](#footnote-ref-53)
54. Article 14, General Law on Persons with Disabilities, Law no 29973, 2012. [↑](#footnote-ref-54)
55. Source: Document made by Mesa de Discapacidad y Derechos Humanos de la Coordinadora Nacional de Derechos Humanos (APRODEH, CODIP, GIN, SODIS, CONFENADIP, Paz y Esperanza, Musas Inspiradoras de Cambios, SPSD, CNDDHH, IDEHPUCP, ONG Anynimundo, CEMPDIS Lima Sur, Peru Equidad, FENAMUDIP y Sense Internacional Perú) ad hoc Brief Report on the situation of Persons with Disabilities, 2015. [↑](#footnote-ref-55)
56. The Mesa on disability and human rights is a specific group within the National Coordinator for Human Rights (*Coordinadora Nacional de Derechos Humanos -CNDDHH*) which is a coalition of civil-society organisms that work towards the defense, promotion and education of human rights in Peru, <http://derechoshumanos.pe>. [↑](#footnote-ref-56)
57. CONADIS, “You already know my disability, now learn about what I am capable of” (*Ya conoces mi discapacidad ahora conoce de lo que soy capaz*) [↑](#footnote-ref-57)
58. CONADIS, “You already know my disability, now learn about what I am capable of” (*Ya conoces mi discapacidad ahora conoce de lo que soy capaz*) [↑](#footnote-ref-58)
59. Article 12, Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP

12.1 Under the right to consultation prior to the adoption of legislative and administrative regulations, policies and programs on issues relating to disability, they must be released by no less than thirty (30) days, as established Article 14 of Supreme Decree No. 001-2009-JUS, period in which organizations and people with disabilities make the corresponding observations.

12.2 The entity making the query facilitates organizations and infrastructure accessible for people with disabilities, interpreters, guides interpreters; and other augmentative or alternative modes and media, to facilitate the exercise of their right to information and consultation.

12.3 and organizations for people with disabilities participate in consultations through their duly accredited legal representatives.
12.4 The entities of public and private sector that have an impact on decision-making in which people with disabilities participate will design and implement the procedures required to implement systems support and reasonable accommodation. [↑](#footnote-ref-59)
60. The *Comisión Nacional por la Reivindicación de los Derechos de las Personas con Discapacidad*, a DPO, presented a legal action in order to repeal the Supreme Decree 052-2015-PCM (that approves the short list of candidates to that office). Finally, there was an announcement that the procedure was unsuccessful and that the position remains vacant. [↑](#footnote-ref-60)
61. Supreme Decree no 012-2016-MIMP [↑](#footnote-ref-61)
62. Article 65(2) sets out the composition of the advisory body as follows :

a) One representative elected by organizations of persons with disabilities related to physical impairments.

b) One representative elected by organizations of persons with disabilities related to hearing impairments.

c) One representative elected by organizations of persons with disabilities related to visual impairments.

d) One representative elected by organizations of persons with disabilities related to deafblindness.

e) One representative elected by organizations of persons with disabilities related to mental impairments.

f) One representative elected by organizations of persons with disabilities related to intellectual impairments.

g) One representative elected by organizations of persons with disabilities of the armed forces and Peru’s national police.

h) One representative elected by the sports federations of persons with disabilities. [↑](#footnote-ref-62)
63. See Articles 35-39 of the General Law on Persons with Disabilities, Law no 29973. [↑](#footnote-ref-63)
64. Article 35(2) of General Law on Persons with Disabilities, Law no 29973. [↑](#footnote-ref-64)
65. Article 3(5), Regulations of Law no 29973, General Law on Persons with Disabilities, Supreme Decree no 002-2014-MIMP. In addition, the National Plan of Action for the Children and Adolescents 2012-2021 (Supreme Decree no 001-2012-MIMP) has as one of its goals that children with disabilities access to services of specialised attention in education and to reduce dropout statistics. Also, the National Educative Project 2021 (Supreme Resolution Number 001-2007-ED) includes as one of its goals the eradication of discrimination against persons with disabilities on the educative system; also the expansion of the PRITE network; the implementation of programs of inclusive education and support. [↑](#footnote-ref-65)
66. The Decade of Inclusive Education 2003-2012 for Children with Disabilities, National Council of Education of Peru (*La Década de la Educación Inclusiva 2003 - 2012 Para niños con discapacidad*, Consejo Nacional de Educación del Perú), September 2013, p50-51, available at <http://www.cne.gob.pe/images/stories/cne-publicaciones/DecadadelaEducacionInclusiva.pdf> . [↑](#footnote-ref-66)
67. Figures from ENEDIS on educational exclusion resulting from a 2012 survey are fewer but equally high, "62.8% of children between 3 and 5 years are not attending school; nor 36.9% of children between 6 and 11 years and 49.2% of adolescents 12 to 17 years." According to the National Survey on Schools 2013, it is estimated than less than 1% of schools have accessibility; see Consortium for the Rights of Persons with Disabilities (Asociación Irariwa, Asociación Hellen Keller Perú, CEMPDIS, Paz y Esperanza, Diagnostic of the situation of Policies on Accessibility, Health and Education for Persons with Disabilities in Peru, 2015 (*Consorcio por los Derechos de las Personas con Discapacidad* (Asociación Irariwa, Asociación Hellen Keller Perú, CEMPDIS, Paz y Esperanza, *Diagnóstico de la Situación de las Políticas sobre Accesibilidad, Salud y Educación para Personas con Discapacidad en el Perú*, 2015). Regarding sign language environment, only 7% of schools had at least one interpreter. Deaf children are particularly left behind. According to DPOs, there is no secondary school for deaf students in the whole country; sign language interpretation is not guaranteed and there is only one elementary school for deaf students and it is placed in Lima. A 2012 Report from the Office of the Ombudsperson indicated that only 7% of the elementary schools had a sign language accessible environment. Source: Office of the Ombudsperson, Boys and girls with disabilities: Scope and limitations in the implementation of the inclusive education policy in primary level educational institutions. Series Ombudsperson reports – Report no 155, 2012 (*Defensoría Del Pueblo, Los niños y niñas con discapacidad: Alcances y limitaciones en la implementación de la política de educación inclusiva en instituciones educativas del nivel primaria. Serie Informes Defensoriales - Informe no 155, 2012*) [↑](#footnote-ref-67)
68. National Institute of Statistics and Informatics (INEI), Peru, Characterization of the Living Conditions of the Population with Disabilities (*Caracterización de las Condiciones de Vida de la Población con Discapacidad*), 2014 [↑](#footnote-ref-68)
69. The data from 2012 to 2015 on this issue remains the same, demonstrating no progress in raising the school attendance of children with disabilities. [↑](#footnote-ref-69)
70. Consortium for the Rights of Persons with Disabilities (Irariwa Association, Hellen Keller Association Peru, Empowerment of Persons with Disabilities Center, Peace and Hope), Diagnostic on the situation of policies on accessibility, health and education for persons with disabilities in Peru. [↑](#footnote-ref-70)
71. Office of the Ompbudsperson, Peru (*Defensoría del Pueblo del Perú*), Office of the Ombudsperson and persons with disabilities (*La Defensoría del Pueblo y las personas con discapacidad*), 2014; Office of the Ombudsperson, Peru (*Defensoría del Pueblo del Perú*), Girls, boys and adolescents with disabilities, we also have rights (*Las niñas, los niños y los adolescentes con discapacidad también tenemos derechos*), 2014 [↑](#footnote-ref-71)
72. “*51. The Committee notes the measures taken to guarantee the rights of persons with disabilities and establish an inclusive education system, such as the adoption in December 2012 of General Law No. 29973 on persons with disabilities. However, the Committee is concerned that legislative and policy measures are not implemented effectively in practice. In particular, it is concerned at:* […] *(b) Information received that approximately 54 per cent of children with disabilities do not know how to read or write; (c) Limited access to inclusive education for children with disabilities, in particular in rural and remote areas, owing, inter alia, to the lack of adequate infrastructure and resources and the limited support provided by the Assistance and Advice Services for Students with Special Educational Needs;* […]*. 52. In the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party adopt a human rights-based approach to disability, and:* […]*; (b) Strengthen its efforts to implement an inclusive education system for all children at all levels, including by allocating the necessary human, technical and financial resources, providing accessible schools and educational materials, ensuring training of teachers, providing transportation and strengthening and expanding the support provided by its Assistance and Advices Services for Students with Special Education Needs in all areas of the State party;(c) Establish a system to provide education to children with disabilities who have not attended school for many years and do not know how to read and write; …”* Committee on the Rights of the Child, Concluding Observations on Peru., CRC/C/PER/CO/4-5, 2 March 2016 [↑](#footnote-ref-72)
73. Source: ENEDIS [↑](#footnote-ref-73)
74. In fact, the policy was in force until October 2011 when the CRPD Committee adopted the list of issues on Peru and raised the measures which resulted in the exclusion of persons with disabilities from electoral registries, CRPD/C/PER/Q/1, 10 October 2011, para 20 See also Human Rights Watch report, *I Want to be a Citizen Just like Any Other; Barriers to Political Participation for People with Disabilities in Peru*, May 2012 [↑](#footnote-ref-74)
75. Law amending Article 11 of the Law no 26842, the General Health Law, and providing rights of people with mental health problems. [↑](#footnote-ref-75)
76. Paragraph c of Article 15 of Act 29737, as modified by Article 1 of Act 29899. [↑](#footnote-ref-76)
77. Paragraph g of the Article 15 of Act 29737, as modified by Article 1 of Act 29899. [↑](#footnote-ref-77)
78. In accordance with Article 1 of Ministerial resolution no 603-2012-MINSA, published on 21 July 2012, the following is suspended: the effects of point m of paragraph 1 of General Dispositions, of subsection A, Provisions for Family Planning Services, of Section VI Technical Component of NT no 032-MINSA/DGSP-V.01, Technical Norm for Family Planning. [↑](#footnote-ref-78)
79. Source: ftp://ftp2.minsa.gob.pe/normaslegales/2016/RM\_652-2016-MINSA.pdf [↑](#footnote-ref-79)
80. See: Office of the Ombudsperson Report No 102, Mental Health and Human Rights. <http://www.defensoria.gob.pe/informes-publicaciones.php> [↑](#footnote-ref-80)
81. See: <http://www.amnesty.ie/content/justice-2000-women-peru> [↑](#footnote-ref-81)
82. Two years in the case of CEDAW. The CRC Committee has commenced designating five to six recommendations for which “urgent measures” are required but does not set out a timeframe for reporting back on implementation of those measures. [↑](#footnote-ref-82)
83. See CAT Committee, *Guidelines for follow-up to Concluding Observations*, CAT/C/55/3, 17 September 2015; CEDAW Committee, *Methodology the follow up procedure*, CEDAW/C/54/3, 13 March 2013; CERD Committee, *Rules of procedure of the Committee on the Elimination of Racial Discrimination*, Rule 65, and Guidelines to follow-up on Concluding Observations and recommendations, CERD/C/68/Misc.5/Rev.1, 2 March 2006 [↑](#footnote-ref-83)
84. It is not our purpose to develop further on this in this report. [↑](#footnote-ref-84)
85. See for example, the CAT Committee Website on Follow up to Concluding Observations procedure. [↑](#footnote-ref-85)
86. See Human Rights Committee, Note by the Human Rights Committee on the procedure for follow-up to Concluding Observations, CCPR/C/108/2, October 2013, para 17. [↑](#footnote-ref-86)
87. CAT Committee, Guidelines for follow-up to Concluding Observations, CAT/C/55/3, 17 September 2015, para 20. [↑](#footnote-ref-87)
88. See CEDAW Committee, Methodology the follow up procedure, para 3: (a)“Implemented” indicates that the State party has fully implemented or has made significant progress in implementing the recommendation made by the Committee; in this case, no additional information is requested from the State party; (b)“Partially Implemented” indicates that the State party took some steps towards the implementation of the recommendation but needs to take further actions; in this case, the Rapporteur requests additional information on further steps taken by the State party to implement the recommendation, within a specific time frame or in the next periodic report; (c)“Not Implemented” indicates that the State party has taken no action to implement the recommendation or the action taken has not directly addressed the situation; in this case, the Rapporteur requests information on steps taken to implement the recommendation within a specific time frame or in the next periodic report; (d)“Lack of sufficient information to make an assessment”; in this case, the Rapporteur requests information on the measures taken to implement the recommendation. [↑](#footnote-ref-88)
89. CRPD Committee, Working Methods, CRPD/C/5/4, September 2011, paras 19-22; Guidelines on the procedure for follow-up to Concluding Observations, Annex II to Report of the Committee on the Rights of Persons with Disabilities, CRPD/C/12/2, 5 November 2014, para 4. [↑](#footnote-ref-89)
90. Diario Uno, Evalúan cumplimiento de los derechos de los discapacitados <http://diariouno.pe/2015/10/06/evaluan-cumplimiento-de-los-derechos-de-los-discapacitados/>; Andina, Naciones Unidas: Perú tiene el primer juez invidente de América Latina <http://www.andina.com.pe/agencia/noticia-naciones-unidas-peru-tiene-primer-juez-invidente-america-latina-579113.aspx>; Perú21, ONU destacó que Perú cuente con el primer juez invidente de Ámerica Latina <http://peru21.pe/actualidad/onu-peru-tiene-primer-juez-invidente-america-latina-2229389/5>; Los Andes, Naciones Unidas: Perú tiene el primer juez invidente de América Latina <http://www.losandes.com.pe/Sociedad/20151009/91953.html>; Crónica Viva, ONU destaca que Perú tiene el primer juez invidente de América Latina <http://www.cronicaviva.com.pe/onu-destaca-que-peru-tiene-el-primer-juez-invidente-de-america-latina/>; Con Nuestro Perú, Perú: misión internacional evaluará cumplimiento de derechos de las personas con discapacidad <http://www.connuestroperu.com/actualidad/miscelanea/48028-peru-mision-internacional-evaluara-cumplimiento-de-derechos-de-las-personas-con-discapacidad>. [↑](#footnote-ref-90)
91. Source: <http://senseintperu.blogspot.com.ar/2015/10/mesa-de-discapacidad-y-derechos-humanos.html>; <http://senseintperu.blogspot.com.ar/2015/10/sense-internacional-peru-invitado.html>; Clínica Jurídica de Derechos de las Personas con Discapacidad – PUCP <https://www.facebook.com/discapacidadpucp/photos/pcb.834971249954300/834969979954427/?type=3&theater> [↑](#footnote-ref-91)
92. For further information, please refer to the main body of the follow up report at II.A. [↑](#footnote-ref-92)
93. The grades conferred are based on the grading system used by the Human Rights Committee and Committee against Torture. However, it should be kept in mind that the grades do not fully mirror those grading systems given that the CRPD Committee has not called for any additional information nor issue any reminders.

**Reply/action satisfactory**

A Reply largely satisfactory

**Reply/action partially satisfactory**

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information required

**Reply/action not satisfactory**

C1 Reply received but actions taken do not implement the recommendation

C2 Reply received but not relevant to the recommendation

**No cooperation with the Committee**

D1 No reply to one or more of the follow-up recommendations or part of a follow- up recommendation

D2 No reply received after reminder(s)

**The measures taken are contrary to the recommendations of the Committee**

 E The reply indicates that the measures taken go against the recommendations of the Committee

Source: Note produced by the UN Human Rights Committee on the procedure for follow-up to Concluding Observations, CCPR/C/108/2, 21 October 2013. [↑](#footnote-ref-93)
94. For further information, please refer to the main body of the follow up report at II.A. [↑](#footnote-ref-94)
95. For further information, please refer to the main body of the follow up report at II.A. [↑](#footnote-ref-95)
96. For further information, please refer to the main body of the follow up report at II.A. [↑](#footnote-ref-96)
97. For further information, please refer to the main body of the follow up report at II.C. [↑](#footnote-ref-97)
98. UN Document A/HRC/31/62. Conclusion and recommendations for States:

*“(a) Recognize in domestic legislation the right of persons with disabilities to participate in political and public life on an equal basis with others, including the right to participate in public decision-making;*

*(b) Create an enabling environment for the establishment and functioning of representative organizations of persons with disabilities, especially by:*

*(i) Adopting a policy framework favourable to their establishment and sustained operation;*

*(ii) Guaranteeing their independence and autonomy from the State;*

*(iii) Providing support for capacity-building;*

*(iv) Securing access to funding mechanisms, including public funding and international cooperation;*

*(c) Adopt legislation to require State authorities to closely consult with and actively involve persons with disabilities, including children and women with disabilities, through their representative organizations, in the development and implementation of legislation and policies that directly or indirectly concern them. States should establish formal mechanisms and remedies to challenge decisions that do not adhere to this requirement;*

*(d) Engage with women and girls with disabilities and secure their direct participation in all processes of public decision-making, and guarantee that such participation and consultation is conducted in a safe environment, particularly in processes relating to the development of legislative or policy measures regarding violence and sexual abuse;*

*(e) Ensure the participation of persons with disabilities and their representative organizations in all processes of legal harmonization with the Convention on the Rights of Persons with Disabilities, as well as in national implementation and monitoring;*

*(f) Actively involve and closely consult with persons with disabilities and their representative organizations in public budgeting processes and in international cooperation among States;*

*(g) Guarantee the accessibility of all facilities, procedures and information related to public decision-making and consultation;*

*(h) Provide reasonable accommodation to persons with disabilities in all procedures related to public decision-making and consultation;*

*(i) Adopt strategies to ensure the participation of persons with disabilities in decision-making and provide disability and age-appropriate assistance for their participation in such processes;*

*(j) Encourage and support the participation of persons with disabilities from disadvantaged groups, in particular those who experience discrimination on the basis of their race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status;*

*(k) Support the participation of persons with disabilities in international decision-making processes.”* [↑](#footnote-ref-98)
99. For further information, please refer to the main body of the follow up report at II.E(i). [↑](#footnote-ref-99)
100. For further information, please refer to the main body of the follow up report at II.B. [↑](#footnote-ref-100)
101. For further information, please refer to the main body of the follow up report at II.E(ii). [↑](#footnote-ref-101)
102. For further information, please refer to the main body of the follow up report at II.E(iii) . [↑](#footnote-ref-102)
103. Source: ftp://ftp2.minsa.gob.pe/normaslegales/2016/RM\_652-2016-MINSA.pdf. [↑](#footnote-ref-103)
104. For further information please refer to the main body of the follow up report at II.D. [↑](#footnote-ref-104)
105. Article 3(5), *Reglamento de la Ley n°29973, Ley General de la Persona con Discapacidad, Decreto Supremo no 002-2014-MIMP*. In addition, the National Plan of Action for the Children and Adolescents 2012-2021 (Supreme Decree Number 001-2012-MIMP) has as one of its goals that children with disabilities access to services of specialised attention in education and to reduce dropout statistics. Also, the National Educative Project 2021 (Supreme Resolution Number 001-2007-ED) includes as one of its goals the eradication of discrimination against persons with disabilities on the educative system; also the expansion of the PRITE network; the implementation of programs of inclusive education and support. [↑](#footnote-ref-105)
106. The data from 2012 to 2015 on this issue remains the same, demonstrating no progress in raising the school attendance of children with disabilities. [↑](#footnote-ref-106)
107. Figures from ENEDIS on educational exclusion resulting from a 2012 survey are fewer but equally high, "62.8% of children between 3 and 5 years are not attending school; nor 36.9% of children between 6 and 11 years and 49.2% of adolescents 12 to 17 years." According to the National Survey on Schools 2013 it is estimated than less than 1% of schools have accessibility. (*Consorcio por los Derechos de las Personas con Discapacidad (Asociación Irariwa, Asociación Hellen Keller Perú, CEMPDIS, Paz y Esperanza), Diagnóstico de la Situación de las Políticas sobre Accesibilidad, Salud y Educación para Personas con Discapacidad en el Perú, 2015.*) Regarding sign language environment, only 7% of schools had at least one interpreter. Deaf children are particularly left behind. According to DPOs, there is no secondary school for deaf students in the whole country; sign language interpretation is not guaranteed and there is only one elementary school for deaf students and it is placed in Lima. A 2012 Ombudsperson Office Report indicated that only 7% of the elementary schools had a sign language accessible environment. (*Defensoría Del Pueblo, Los niños y niñas con discapacidad: Alcances y limitaciones en la implementación de la política de educación inclusiva en instituciones educativas del nivel primaria. Serie Informes Defensoriales - Informe no 155. 2012).* [↑](#footnote-ref-107)
108. *Diagnóstico de la Situación de las Políticas sobre Accesibilidad, Salud y Educación para Personas con Discapacidad en el Perú, Consorcio por los Derechos de las Personas con Discapacidad, 2015.*  [↑](#footnote-ref-108)
109. *Diagnóstico de la Situación de las Políticas sobre Accesibilidad, Salud y Educación para Personas con Discapacidad en el Perú, Consorcio por los Derechos de las Personas con Discapacidad, 2015, p. 16.* [↑](#footnote-ref-109)
110. *Guía Para La Inclusión De Las Personas Con Discapacidad En Los Planes De Gobierno, SODIS, 2015.*  [↑](#footnote-ref-110)
111. Document “*Aportes De La Clínica Jurídica De La PUCP Para El Comité De Derechos Del Niño Sobre La Situación De La Educación Inclusiva En Centros Educativos Privados En El Perú*” of the Legal Clinic on Disability of the Pontificia Universidad Católica del Perú, 2015, submitted to the UN Commitee on the Rights of the Child. [↑](#footnote-ref-111)
112. *Diagnóstico de la Situación de las Políticas sobre Accesibilidad, Salud y Educación para Personas con Discapacidad en el Perú, Consorcio por los Derechos de las Personas con Discapacidad, 2015, p. 18.* [↑](#footnote-ref-112)
113. Source: <http://escale.minedu.gob.pe/web/inicio/padron-de-iiee> . [↑](#footnote-ref-113)
114. *Ley no 29885, Programa de Tamizaje Neonatal Universal, 9 June 2012.* [↑](#footnote-ref-114)
115. *Norma técnica no 106 de salud para la atención integral de salud neonatal,, December 2013* [*http://www.essalud.gob.pe/ietsi/pdfs/guias/eNorma\_Tecnica\_de\_Salud\_para\_atencion\_integral\_de\_salud\_neonatal.pdf*](http://www.essalud.gob.pe/ietsi/pdfs/guias/eNorma_Tecnica_de_Salud_para_atencion_integral_de_salud_neonatal.pdf) [↑](#footnote-ref-115)
116. The SIS aims to benefit Peruvians who do not have health insurance, giving priority to those vulnerable populations who are at poverty and extreme poverty. [↑](#footnote-ref-116)
117. TV interview with the Labour Minister: “*Ministro de Trabajo informó el incremento en la contratación de personas con discapacidad.| TV Perú*” <https://www.youtube.com/watch?v=AAkf75nh1Z4> . [↑](#footnote-ref-117)
118. See: <http://www.trabajo.gob.pe/mostrarNoticias.php?codNoticia=4683> / <http://www.mintra.gob.pe/mostrarNoticias.php?codNoticia=4536> . [↑](#footnote-ref-118)
119. See: “*Gobierno entregará pensión a 50,000 personas con discapacidad en 5 años*” <http://www.andina.com.pe/agencia/noticia-gobierno-entregara-pension-a-50000-personas-discapacidad-5-anos-626963.aspx> . [↑](#footnote-ref-119)
120. See: <https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1369/Libro.pdf> . [↑](#footnote-ref-120)
121. Vásquez A., Zapata Gotelli V., Walsham M., Blanchet K.: Applied research concerning inclusion of persons with disabilities in systems of social protection. Social protection policy analysis – Peru, London School of Hygiene and Tropical Medicine, SODIS, Cronicas, Eschborn: GIZ, May 2015. <https://www.giz.de/expertise/downloads/giz2015-en-report-peru-quanti-research-bf.pdf> . [↑](#footnote-ref-121)
122. Ibid. [↑](#footnote-ref-122)
123. Ibid. [↑](#footnote-ref-123)
124. Vásquez A., Najarro Gutiérrez L., Martínez Ramírez C., Walsham M., Kuper H., Blanchet K.: Applied research concerning inclusion of persons with disabilities in systems of social protection. Qualita- tive Research Report, Peru, London School of Hygiene and Tropical Medicine, SODIS, Cronicas, Eschborn: GIZ, May 2015. [↑](#footnote-ref-124)
125. See: <http://www.eleccionesenperu.com/noticias-onpe-capacita-a-personas-con-discapacidad-inabif-para-emitir-correctamente-su-voto-2014-2389.html> . [↑](#footnote-ref-125)
126. See: <http://www.eleccionesenperu.com/categoria-votantes-personas-discapacidad-18.html> . [↑](#footnote-ref-126)
127. See <https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1369/Libro.pdf> . [↑](#footnote-ref-127)