

**REPORT TO THE  
UN COMMITTEE AGAINST TORTURE  
52<sup>nd</sup> Session – April / May 2014**

**Regarding the List of Issues Prior to Reporting (LOIPRs) to be  
presented to Peru**

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## **Introduction**

In its Concluding Observations on the combined fifth and sixth periodic reports of Peru, the Committee against Torture (CAT) expressed its concerns at reports of violent and discriminatory practices against persons with disabilities in medical settings, including minors, deprivation of liberty, without access to basic legal safeguards, and the use of restraint, as well as the continuous enforced administration of treatments such as Electro Convulsive Therapy. The Committee also welcomed the suspension of the technical norm for Family Planning 536/2005-MINSA, of 26 July 2005, which permitted persons with “mental incompetence” to be sterilized without their free and informed consent, but expressed its concerns that the decree was not repealed (Arts. 2, 12, 13, 14, 16).

The Committee recommended the State party to adopt the draft bill on the rights of persons with disabilities, and to ensure that all legal safeguards for people in institutions are respected; urged the State party to promptly, effectively and impartially investigate all instances of ill-treatment, and to prosecute those responsible. Finally, the Committee recommended to the State party to repeal, as a matter of urgency, the suspended administrative decree which allowed the forced sterilization of persons with mental disabilities.

Sociedad y Discapacidad – Sodis (“Society and Disability”) has prepared this brief report for the Committee in relation to the forthcoming review of Peru. We request the Committee to consider the arguments presented in this report when drafting the List of Issues Prior to Reporting.

### **Arbitrary detention and forced treatment of persons with disabilities**

Laws No. 29973 (General Law on Persons with Disabilities) and No. 29889 (Law on the Rights of Persons with Mental Health Problems), passed on 2012, constitute important advances towards the recognition of the rights of persons with disabilities. Nevertheless, persons with disabilities still face significant limitations in their personal freedom and integrity.

Article 11 (g) of the Law No. 26943, General Health Act (modified by Law No. 29889), establishes that the treatment and detention of persons with drug or alcohol addictions (persons with perceived disabilities)<sup>1</sup> do not require the patient’s informed consent when ‘his or her capacity of judgement is affected’. In these

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<sup>1</sup> Committee on the Rights of Persons with Disabilities. Concluding Observations to the Initial Peruvian Report. CRPD/C/PER/CO/1. May 16<sup>th</sup> 2012. Parr 28.

cases, the consent may be given by a family member. Additionally, due to the fact that the Peruvian Civil Code allows the possibility of declaring legally incompetent 'people who are deprived of discernment', 'people mentally retarded', 'people who suffer mental deterioration', 'drug addicts' and 'habitual drunkards', all of them can be subjected to a judicial interdiction (guardianship) and, thus, can be treated or detained against their will which is a violation of the right to liberty, right to legal capacity, right to health and freedom from torture, cruel, inhuman or degrading treatment or punishment.

Furthermore, despite the fact that Law No. 29889 was expressly enacted to eliminate involuntary treatment and detention of persons with 'mental health problems', the regulations draft of the above-mentioned law, published by the Ministry of Health, admits the involuntary detention of people with addiction for treatment under criteria of risk or dangerousness.<sup>2</sup> As these deprivations of liberty are based on a disability (psychosocial, intellectual or perceived), all these regulations qualify as arbitrary detentions treating freedom from torture and ill-treatment. The CRPD Committee has condemned such practices.<sup>3</sup>

As the Special Rapporteur on Torture has highlighted, detentions realized under these assumptions can constitute torture, punishments or cruel, inhumane or degrading treatment (A/63/175, paras. 38, 40, 41, 65). Therefore, it is essential to establish an absolute ban on all coercive and non-consensual measures of people with disabilities in all places of deprivation of liberty, including in psychiatric and social care institutions (A/HRC/22/53, para. 63). Moreover, the fully respect of persons with disabilities' legal capacity should be the first step for the prevention of torture and ill-treatment (A/HRC/22/53, paras. 65, 66).

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<sup>2</sup> Article 8. Involuntary hospitalization.

- a. The involuntary hospitalization of a patient must be considered as an exceptional therapeutic alternative when it is not possible an outpatient treatment and it will be performed when the mental health problem and/or psychiatric disorder involves danger to the person himself and/or others. (...)

See: <[ftp://ftp2.minsa.gob.pe/normaslegales/2013/RM177\\_2013\\_MINSA\\_EP.pdf](ftp://ftp2.minsa.gob.pe/normaslegales/2013/RM177_2013_MINSA_EP.pdf)>

<sup>3</sup> The CRPD Committee has condemned such practices: « The Committee is deeply concerned that Austrian laws allow for a person to be confined against his or her will in a psychiatric institution where they have a psychosocial disability and it is forecast that they might endanger themselves or other persons. The Committee is of the opinion that the legislation is in conflict with article 14 of the Convention because it allows a person to be deprived of their liberty on the basis of their actual or perceived disability.

(...) The Committee urges the State Party to take all necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any kind of mental health facility. It urges the State party to develop deinstitutionalization strategies based on the human rights model of disability». See: CRPD Committee Concluding Observations on Austria, September 2013, CRPD/C/AUT/CO/1, paras 29, 30.

## **Situation of persons with disabilities declared not subjected to criminal liability**

The situation of persons with disabilities who have been judicially declared “not subjected to criminal liability”, in particular those with intellectual and psychosocial disabilities, is particularly problematic.

Firstly, the Peruvian domestic legislation allows their involuntary treatment in a mental health facility instead of a jail sentence.<sup>4</sup> In this respect, the CRPD Committee has urged Australia “to ensure that no diversion programs are implemented that transfer individuals to mental health commitment regimes or that require the individual to participate in mental health services rather than providing such services on the basis of the individual's free and informed consent”.<sup>5</sup>

Secondly, because the lack of beds in psychiatric institutions, these persons often remain detained in common prisons without adequate supports and reasonable accommodations.<sup>6</sup> Moreover, due to the delay of the judicial review on the medical reports recommending stopping both situations, these persons are unnecessarily detained for an extended period of time in both mental health institutions and prisons.<sup>7</sup> The Peruvian Constitutional Court has declared this critical situation as an “unconstitutional state of affairs”.<sup>8</sup>

## **Investigation and prosecution of torture and ill-treatment in institutions**

Although the Peruvian Ombudsman has documented flagrant violations in mental health facilities to the rights of personal liberty, integrity, privacy, among others,<sup>9</sup> as acknowledged by the Committee in its concluding observations, the Peruvian State has not taken any measure to prevent, monitor, investigate and, in particular, punish acts of torture and other ill-treatments committed against persons with disabilities.

In 2002, concerned at consistent reports of the use of continuous forcible medication and poor material conditions in psychiatric institutions, the CRPD Committee urged the State party to promptly investigate the allegations of cruel,

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<sup>4</sup> Criminal Code. Articles 20, 71, 72, 73, 74, 75, 76, 77.

<sup>5</sup> See: CRPD Committee Concluding Observations on Australia, October 2013, CRPD/C/AUS/CO/1 para 29.

<sup>6</sup> Peruvian Constitutional Court. Judgement 03426-2008-PHC/TC.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid

<sup>9</sup> See: Ombudsman Reports No 102 & 140, Mental Health and Human Rights <<http://www.defensoria.gob.pe/informes-publicaciones.php>>

inhuman or degrading treatment, or punishment in psychiatric 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 (CRPD/C/PER/CO/1, paras 31, 32).

### **Forced sterilization of persons with psychosocial and intellectual**

The Technical Norm for Family Planning 536/2005-MINSA, of 26 July 2005, which permitted persons with “mental incompetence” to be sterilized without their free and informed consent, has been suspended but not derogated. Moreover, despite the existence of evidence that many women and girls with disabilities has been sterilized against their will (some of them still living in psychiatric institutions),<sup>10</sup> the Peruvian State has not taken any measure to investigate and punish these acts nor to identify and provide redress to the victims. Significantly, investigations on forced sterilization carried out by the Office of the Public Prosecutor did not include persons with disabilities sterilized because of their “mental incompetence”.<sup>11</sup>

### **Suggestions for the List of Issues Prior to Reporting**

In view of the aforementioned facts, we urge the Committee to include the following questions in the List of Issues Prior to Reporting:

- Please indicate steps taken to repeal legislation that allows the involuntary detention and treatment of persons with disabilities and the denial of legal capacity of person with disabilities, and which permit the deprivation of liberty based on mental health grounds or which link disability to other factors such as likelihood of harm/danger to the person or others or an ascribed need for care and treatment. Please provide information on the number of persons with disabilities subjected to involuntary treatment, institutionalization and judicial interdiction.
- Please indicate what measures have been taken to ensure dignified and adequate treatment of persons with disabilities who have been judicially declared not to be subject to criminal liability and to review their judicial orders. Please provide information on the number of persons with disabilities who have been declared to be not subjected to criminal liability and who are detained in prisons and psychiatric hospitals.

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<sup>10</sup> See: Ombudsman Report No 102, Mental Health and Human Rights <<http://www.defensoria.gob.pe/informes-publicaciones.php>>

<sup>11</sup> See: <http://www.amnesty.ie/content/justice-2000-women-peru>

- Please describe actions taken to prevent, monitor, investigate and punish acts of torture and ill-treatment against persons with disabilities, especially those deprived of their liberty. Please provide information on the number of personnel of mental health institutions who were punished, dismissed or prosecuted due to the flagrant violations documented by the Ombudsman Office.
  
- Please indicate the reason for not repealing the aspects of the Technical Norm for Family Planning 536/2005-MINSA that allow the involuntary sterilization of persons with “mental incompetence”. Please provide information on the actions taken to investigate and punish past use of that norm, and to identify and provide redress to the victims.