



# PERUVIAN NATIONAL CONFEDERATION OF PEOPLE WITH DISABILITIES CONFENADIP



PERUVIAN NATIONAL CONFEDERATION OF PERSONS WITH DISABILITIES

(CONFENADIP)

## REPORT – BALANCE OF THE COMPLIANCE OF PERUVIAN STATE'S OBLIGATIONS WITH A VIEW TO THE CRPD

### Introduction

The entry into force of the Convention of the UN on the Rights of Persons with Disabilities (hereafter called “The Convention” or “CRPD”) and its Optional Protocol<sup>1</sup>, paved the way for its real implementation and compliance. It also promoted the ardent desire for the opportunity to engage in participation and monitoring by persons with disabilities (PWDs) and their organisations throughout the world, and as expected, also in Peru.

Two years after the entry into force of the CRPD, the Peruvian State has provided the Monitoring Committee (hereafter “The Committee”) with its official report on the measures adopted to comply with the obligations set forth in the Convention.

Persons with disabilities and their most representative organisations are aided by the right to submit alternative reports on their opinions about the compliance of the CRPD.

By using this right, the Peruvian National Confederation of Persons with Disabilities (CONFENADIP) hereby submits to the Convention Monitoring Committee this Alternative Report (AR), containing the perspective of persons with disabilities regarding the real and effective exercise of their rights as recognised in the CRPD.

This Report contains considerations on the general framework for the promotion and protection of human rights, and specifically the rights of persons with disabilities, as well as the application of the specific mandates of the CRPD in Peru.

Given that this is the first alternative report on the compliance with the Convention in Latin America, we took on the challenge of drafting it with the conviction that pointing out problems and proposing solutions, from the perspective of the compliance with human rights, is the primary responsibility of the Peruvian State, with the direct participation of and in close consultation with persons with disabilities and their organisations, as established in Articles 4 and 33 of the Convention.

From this point on, the CONFENADIP will work to disseminate this report, seeking commitments to the compliance of the CRPD mandate, with the national, regional and local governments of our country; as well as looking for support and involving more people with disabilities and their families, human rights organisations in the country, and other public and private working to promote sustainable and concerted development, as well as the different collectives of excluded sectors without disabilities.

Regarding the methodology used for the drafting of this Optional Report, it has been structured thoroughly in order to grant persons with disabilities the most possible participation; from the capital of Lima, as well as from inside the country, for both urban and rural zones.

The developed research has used primary instruments (questionnaires and surveys) validated with the participation of the parties involved; as well as secondary instruments. But particularly, through the review of the national and international laws that obliges Peru in this matter, the review of the official report presented to the UN on the compliance of the CRPD, the review of official documents about

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<sup>1</sup> The Convention on Rights of Persons with Disabilities was signed on March 30<sup>th</sup>, 2007, in New York, United States of America, and approved by the Peruvian Congress through Legislative Resolution No 29127 of October 31<sup>st</sup>, 2007. Such instruments were subsequently ratified by the Peruvian State in December 2007 through the Supreme Decree No 073-2007-RE.



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activities carried out, letters, and interviews of officials, NGOs' representatives and human rights organizations of the country.

## CHAPTER I

### COUNTRY GENERAL CONTEXT

#### 1. General description

The Republic of Peru is located in the Midwest of South America. On the West it is bounded by the Pacific Ocean, on the Northwest by Ecuador, on the Northeast by Colombia, on the East by Brazil, on the Southeast by Bolivia and on the South by Chile.

Its territory comprises 1 285 216 km<sup>2</sup> or 496 223 miles<sup>2</sup>. It is the third biggest country in South America, and it has 3 very distinct geographic regions: Coast, Highlands and Jungle.

At present, its population amounts to 29 132 013 million of inhabitants<sup>3</sup>. Its nominal Gross Domestic Product (GDP) is US\$ 127 598 millions and a real GDP of 0.9% regarding year 2009, and its per capita GDP amounts to US\$ 4 453.

The total volume of its exports currently amounts to 2 376 millions of dollars<sup>4</sup>, which means a percentage increase of 46% regarding the existing values by March 2009.

As for its Human Development Index (HDI)<sup>5</sup>, it is ranked in 0, 806 (taking the 78<sup>th</sup> place of the scale of 182 countries considered by the United Nations Development Program (UNDP), which – on the base of standardized values between 0 and 1 – is considered in the High rank<sup>6</sup>.

However, in accordance with available information by year 2008, the 36.2% of its population is under the poverty line, while the 12.6% is in extreme poverty<sup>7</sup>. Likewise, poverty is distributed regionally in the following way: 21.3% in the coast, 56.2% in the highlands and 40.9% in the jungle.<sup>9</sup>

The Peruvian economy growth and the reduction of the poverty and extreme poverty rate in the country must not, however, make us ignore the fact that it has a strong inequality. In fact, according to the GINI Coefficient, Peru – with a rate of 0.476 – is in 4<sup>th</sup> place in income inequality in the whole Latin America.<sup>10</sup>

#### 2. Politic Regime

##### 2.1 Form of Government

The Peruvian State is a republic, structured within a mainly presidential system<sup>11</sup>. The Head of State and Government is the President, who is elected by popular vote. The executive and legislative

<sup>2</sup> Source: National Geographic Institute (IGN) – Geography Direction.

<sup>3</sup> Source: National Institute of Statistics and Data Processing (INEI).

<sup>4</sup> Source: Ministry of Foreign Trade and Tourism (MINCETUR).

<sup>5</sup> The HDI is a synoptical measure of the human development in order to place again people in the development process center, in terms of economical discussions, policies creation and promotion.

<sup>6</sup> Source: Report on Human Development 2009. "For a density of the State at people's disposal". United Nations Development Program (UNDP).

<sup>7</sup> Source: National Institute of Statistics and Data Processing (INEI).

<sup>8</sup> According to the XXX of the United Nations Economic Commission for Latin America and the Caribbean (UNECLAC or ECLAC) 2008, the rest of the economies of Latin America grew also in a steady way between 2003 and 2008, reducing poverty from 44% to 35% and extreme poverty from 18.6% to 12.7% between 1980 and 2007. Source:

<sup>9</sup> Source: National Institute of Statistics and Data Processing (INEI).

<sup>10</sup> The Gini Coefficient is a figure expressed in percentages between 0 and 1, in which 0 corresponds to the perfect income equality and 1 corresponds to the perfect income inequality. United Nations Economic Commission for Latin America and the Caribbean (UNECLAC or ECLAC). Statistics Yearbook 2009.

<sup>11</sup> PLANAS Pedro, Regímenes Políticos Contemporáneos, Fondo de Cultura Económica, Lima, 1997, pages 70-82.



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branches are separated. As the President, Congress members are also elected by direct elections, the first one is entitled to making and observing laws<sup>12</sup>, as well as choosing and dismissing his Ministers.<sup>13</sup>

## 2.2 Electoral Regime

The politic regime of Peru is in line within a democratic system, in which citizens choose their representatives (President of the Republic, Congressmen, Regional Presidents and local and provincial Municipal Authorities) by direct and free elections. Voting is universal and compulsory until the person is 70 years old, except for the restrictions set forth in the law.<sup>14</sup>

The electoral system is established in multi-member districts (in other words, where two or more seats are distributed per district).

## 2.3 State Structure

### 2.2.1 Horizontal dimension of the State's structure

In order to understand the structure and organization of the Peruvian State, two dimensions must be taken into consideration: a vertical and horizontal dimension. The vertical one refers to the application of the principle of separating public branches in Executive, Legislative and Judicial branches.

These branches are autonomous at politic, economic and administrative levels; and they are of national competence (in the whole territory). This autonomy is reflected in the faculty of: a) adopting and regulating their plans and programs, as well as other issues of its competence (politic autonomy); b) establishing its internal organization (administrative autonomy), and c) collect and manage its own revenues and income, as well as approving its institutional budgets (economic autonomy).

#### 2.2.1.1 Executive Branch

The Executive Branch consists of the President of the Republic, Council of Ministers, Presidency of the Council of Ministers, Ministries and public entities of the Executive Branch<sup>15</sup>. It holds exclusive competences and shared competences with Local and Regional Governments. The first ones are included in article 4 of the Organic Law of the Executive Branch (OLEB), regarding the design and supervision of the national and sectorial plans and policies, as well as other topics, such as:

- Safety, Armed Forces and National Defence
- Foreign Affairs, Justice (as long as it is not about Justice Administration)
- Internal Order, National Police and Frontiers
- Tax Administration
- Trade Regime and Tariff
- Regulation of the Merchant Marines and Commercial Aviation
- Public Services of its responsibility
- Public Infrastructure

The Executive Branch is in charge of law regulation, as well as its application and evaluation; planning and execution of plans and national policies; establishing cooperation mechanisms with entities of Public Administration, etc.<sup>16</sup>

#### 2.2.1.2 Legislative Branch

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<sup>12</sup> Article 108 of the Constitution.

<sup>13</sup> Idem. Article 122.

<sup>14</sup> Idem. Article 31 and 33.

<sup>15</sup> Article 2 of the Organic Law of the Executive Branch (LOPE) Law No 29958.

<sup>16</sup> Article 6 of LOPE.



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The Legislative Branch is carried out by the Congress of the Republic in representation of the Nation. It is in charge of the legislative activity, public control and election of certain authorities as the Parliamentary Commissioner, members of the Constitutional Court and General Comptroller, and others<sup>17</sup>. The Congress is unicameral (since 1993) and comprises 120 parliamentary seats, chosen by direct elections every 5 years.

The legislative function comprises the discussion and approval of Constitution reforms, laws and legislative resolutions, as well as their interpretation, amendment and abolition, in accordance with the procedures established by the Political Constitution and Congress Regulations. Its political control function, on the other hand, comprises the investiture of the Council of Ministers, the discussion, execution of activities and research and the approval of agreements on the Government's political behaviour, the activities of the administration and authorities of the State, the delegation of legislative powers, the issuance of emergency decrees and the audit on the usage and disposal of goods and public resources, the fulfilment of the annual message by the President of the Republic to the Congress of the Republic and political impeachment, making sure that the Political Constitution and the laws are fulfilled and disposing what is convenient to make the offender's responsibilities effective.

### 2.2.1.3 The Judicial Branch

The article 139 of the Constitution entrusts the Judicial Branch with the function of justice administration (solution of intersubjective problems), through its hierarchical organizations: Supreme Court, Superior Courts, Mixed and Specialized Courts and Magistrate's Court<sup>18</sup>. The Judicial Branch is represented by the Supreme Court President.

The jurisdiction function is one, but it has interpretations in ordinary, military and arbitral jurisdiction.

The authorities of the Peasant and Native Communities can execute jurisdictional functions within their territory in accordance with their customary right, as long as this does not violate the fundamental rights.

### 2.2.1.4 Autonomous Constitutional Organizations

Established in the Constitution, they require organic laws for their regulation. The organizations in this field include the Banking and Insurance Superintendency and Pension Fund Managing Companies; the Central Reserve Bank; the Public Ministry; the Office of the National Comptroller General; the Ombudsman's Office; the National Jury on Elections; the National Office of Electoral Procedures; the National Identification Registry; the National Judicial Council and the Constitutional Court.

### 2.2.2 The vertical dimension of the State's structure

The article 43 of the Constitution states that the Peruvian Government is unitary and decentralized<sup>19</sup>. Peru is currently going through a decentralization process in accordance with the article 188 of its Constitution<sup>20</sup>, and it has 25 Regions, with a Regional Government in each one of them.

The law No 27783 (the Decentralization Bases Law) establishes in its article 7 that Peru is divided by regions, departments, provinces, districts, and communities. The National Government has jurisdiction over the whole territory, while the Regional and Local Governments have autonomy in their respective district. The assignment and transfer of competences to the Regional and Local governments are controlled by the subsidiarity, selectivity and proportionality, provision and concurrency criteria.

<sup>17</sup> Articles 2 and 5 of the Congress Regulations

<sup>18</sup> Article 26 of Organic Law of Judicial Branch.

<sup>19</sup> Even though both premises seem to be contradictory at first sight, they are not. Unitary state means that there is only one Legislation governing the whole Peruvian territory, in other words, the public organizations enjoy national competences. This unitary aspect comes to reality in the National Government and the autonomous constitutional organizations.

<sup>20</sup> The Article 188 of the Peruvian Constitution states that "Decentralization is a way of democratic organization and it constitutes a permanent policy of State, which is compulsory, and its fundamental objective is the comprehensive development of the country. The decentralization process is carried out in stages, in a progressive and organized way in accordance with the criteria that allow a proper competences assignation and resources transfer of the national government towards the regional and local governments."



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The article 26 of the Decentralization Bases Law brings exclusive competences to the National Government (see 2.2.1.1.), without any possibility of transferring them. Likewise, the Regional Governments have exclusive competences regarding the following<sup>21</sup>:

- Plan the comprehensive development of its region and carry out the applicable socioeconomic programs.
- Formulate and approve the regional development plan arranged by municipalities and the civil society of its region.
- Approve its internal organization and its institutional budget in accordance with the State's Budget Management Act and the Budget Annual Laws.
- Promote and carry out the public investments region-wide on road infrastructure, energy, communications and basic services projects of regional scope, with the use of sustainability strategies, competitiveness, private investment opportunities. As well as to activate markets and make activities profitable.
- Design and carry out regional programs of basins, economic corridors and intermediate cities.
- Promote the creation of enterprises and regional economic units in order to set up services and production systems.
- Facilitate processes aimed at international markets for agriculture, agribusiness, handicrafts, forestry and other production sectors, according to their potential.
- Develop touristic circuits that could become economic development hubs.
- Settle alliances and agreements with other regions in order to promote economic, social and environmental development.
- Manage and allocate urban lands and wastelands that are property of the State under its jurisdiction, except for lands of local property.
- Organize and approve technical files on territorial demarcation under its jurisdiction, in accordance with the applicable law.
- Promote the modernization of regional small and medium businesses, linked to education, employment, and technological update and innovation.
- Establish the regulations on issues and matters of its responsibility, and propose the corresponding legislative initiatives.
- Promote the sustainable use of forest resources and biodiversity.
- Other competences appointed by law.

At the same time, Local Governments have exclusive competence on the following matters<sup>22</sup>:

- Plan and promote the urban and rural development of its district, and carry out the corresponding plans.
- Control the zoning, urban planning, regional improvement and human settlement.
- Manage and regulate the local public services aimed to satisfy local collective needs.
- Approve its internal organization and its institutional budget in accordance with the State's Budget Management Act and the Budget Annual Law.
- Create and approve the local development plan arranged with its community.
- Carry out and supervise the local public work.
- Approve and facilitate the participation, agreement and inspection mechanisms and spaces of the community in the local government management.
- Establish the regulations on issues and matters of its responsibility, and propose the corresponding legislative initiatives.
- Other competences resulting from its own powers and functions, and appointed by law.

On the other hand, there are functions that are shared between the Regional Government and the National Government<sup>23</sup>, on matters such as:

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<sup>21</sup> Idem. Article 35.

<sup>22</sup> Idem. Article 42.



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- Education
- Public Health
- Promotion, management and regulation of economic and production activities in its scope and level, corresponding to the sectors of agriculture, fishing, industry, commerce, tourism, energy, hydrocarbons, mining, transport, communications and environment.
- Sustainable management of natural resources and improvement of the environmental quality.
- Protection and management of regional protected natural areas and reserves.
- Dissemination of culture and boosting of all regional artistic and cultural institutions.
- Regional competitiveness and production employment promotion at all levels, arranging public and private resources.
- Public participation, encouraging agreements between private and public interests at all levels.

### 3. The fundamental rights protection in the Peruvian legal system

#### 3.1 Principles ruling the constitutional system

The constitutional principles are legal regulations and interpretation criteria, as they complement the Peruvian legal system when legislative gaps<sup>24</sup> exist. Those are:

- Principle of Representative Democracy
- Principle of Democratic Pluralism
- Principle of Presumption of innocence
- Principle of Competence
- Principle of Congruence
- Principle of Proportionality
- Principle of Reasonableness
- Principle of Separation of Powers, the democratic principle
- Legal Principle of Constitutional Supremacy
- Political Principle of Popular Sovereignty

#### 3.2 Mechanisms established in the Constitution and Laws for the exercise and protection of human rights

Said mechanisms are listed in the Constitution under the title of *Constitutional Rights* and they are recorded in section 200 therein, comprising the processes of *Habeas Corpus*, *Appeal for protection*, *Habeas Data* and *Compliance*.

##### 3.2.1 Habeas Corpus

The Habeas Corpus action proceeds against the act or omission from any authority, official, or person that violates or threatens the individual freedom or related constitutional rights. It represents a constitutional right that can be activated against the omission of a necessary behavior or against an act made by an individual, without making a difference between authorities, officials or persons.

It aims at protecting personal freedom as a human right and its procedure is controlled by the Constitutional Procedural Code<sup>25</sup>.

There are different types of Habeas Corpus in the Peruvian legal system according to the purpose and type of protection to be given to the rights of the individual:

- Repairing Habeas Corpus: Seeks for solutions against arbitrary detentions.
- Limited Habeas Corpus: Operates against the impediment of the use of freedom of movement.

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<sup>23</sup> Idem. Article 36.

<sup>24</sup> An understanding interpretation of these principles can be found in RUBIO CORREA, Marcial, "La interpretación de la Constitución según el Tribunal Constitucional", Fondo Editorial de la Pontificia Universidad Católica del Perú, Lima, 2005.

<sup>25</sup> Constitutional Procedural Code, Articles 25 to 36.



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- Corrective Habeas Corpus: Operates against cases where other rights related to personal freedom are involved.
- Preventive Habeas Corpus: It is used against threats to personal freedom.
- Irrevocable Habeas Corpus: Operates against delays in legal proceedings where personal freedom is affected.
- Innovative Habeas Corpus: It is used for cases that aim at setting out guidelines for future cases.

### 3.2.2 Appeal for protection

The Appeal for Protection proceeds against the act or omission from any authority, official or person that violates or threatens other rights approved by the Constitution that are not individual freedom rights or related human rights. It does not proceed against legal regulations nor against court rulings from regular proceedings.

### 3.2.3 Habeas Data

The Habeas Data proceeds against the act or omission from any authority, official or person that violates or threatens the rights to access information.

### 3.2.4 Writs of Injunction

It is used to protect fundamental human rights against possible administrative omissions or laws by officials or authorities. This mechanism is fundamental for the proper operation of the State because it allows identifying reluctant problems in the compliance of laws and administrative acts.

## 3.3 Ombudsman's Office

The article 161 of the Peruvian Constitution established the Ombudsman's Office, represented by the Ombudsman, who is elected by qualified majority in the Peruvian Congress. It has autonomy and its functions are: to control that the Public Administration's duties are carried out, to defend the individuals' fundamental rights and to act as a mediator between the administration and the general public, looking for the protection of their fundamental rights.

As mandated by Law No 27050, the General Persons with Disabilities Act (LGPD), article 50, the Office for Human Rights and Persons with Disabilities Rights was created in the Ombudsman's Office. Afterwards, in February 2009 the Defense and Promotion of the Persons with Disabilities Rights Program was created, which is attached to the Office for Human Rights and Persons with Disabilities Rights<sup>26</sup>. Its aim is to promote the inclusion of the disability perspective in the public policies and the different sectors of the population, using defense, diffusion, information, supervision and control mechanisms.

Under the criteria outlined above and based on complaints, list of legal claims and consultations of administrative initiative, it makes proposals of public policies, rights of initiatives, reports and recommendations; develops research and intervention projects; promotes discussion and agreement, while it contributes to the society and public sector awareness. Furthermore, it supervises the fulfillment of the State administration's duties and the respect for the regulations in force; it trains promoters of human rights from the disability perspective; and it promotes the strengthening of the organizations that represent or work with or for persons with disabilities.

## 3.4 Mechanism of Constitutional control

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<sup>26</sup> Ombudsman's Report No 001-2009/DP/11 of February 2009.



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The Peruvian Constitution includes in its title V two mechanisms for exerting control of law constitutionality<sup>27</sup>: unconstitutionality action and popular action.

Unconstitutionality action proceeds against law level regulations, and it is aimed to guarantee the Constitution supremacy if any incompatibility between a legal and a constitutional regulation exists. The Constitutional Court<sup>28</sup> is in charge of exerting this control.

On the other hand, the Popular Action is directed against lower-order regulations regarding the laws that go against superior regulations in its form or content. They should be, in any case, general regulations; therefore, administrative acts cannot be reviewed in this kind of procedures but through administrative contentious actions.

The popular action process does not involve, necessarily, the total derogation of the regulation, but its partial non-application.

#### 4. The registration of Peru to international regulations of human rights

Peru took part of the UN Convention on the Rights of Persons with Disabilities 2007<sup>29</sup> and its Optional Protocol<sup>30</sup>. It has ratified, also, a great number of agreements of the universal and Inter-American system of human rights protection.

The Universal System mechanisms include: the International Covenant on Civil and Political Rights, constitutionally ratified by the sixteenth General Regulation of the Constitution of 1979; the International Covenant on Economic, Social and Cultural Rights, ratified on April 12<sup>th</sup>, 1978; the Optional Protocol of the International Covenant on Civil and Political Rights, ratified on October 3<sup>rd</sup>, 1980; Convention on the Elimination of all Forms of Discrimination against Women, ratified on September 13<sup>th</sup>, 1982; United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on July 7<sup>th</sup>, 1988; Convention on the Rights of the Child, ratified on September 4<sup>th</sup>, 1990; International Convention on the Elimination of All Forms of Racial Discrimination, ratified on September 29<sup>th</sup>, 1971; Convention on the Prevention and Punishment of the Crime of Genocide, ratified on February 24<sup>th</sup>, 1960; International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified on November 1<sup>st</sup>, 1978; Convention on the Political Rights of Women, ratified on November 5<sup>th</sup>, 1955; Convention Against The Crime of Apartheid in Sports, ratified on June 14<sup>th</sup>, 1988; Slavery Convention, ratified on September 7<sup>th</sup>, 1956; International Convention on the Protection of the Rights of All Migrating Workers and their families, ratified on September 14<sup>th</sup>, 2005; Convention Relating to the Status of Refugees, ratified on June 6<sup>th</sup>, 1964, the Protocol on Status of Refugees, ratified on August 9<sup>th</sup>, 1983; Convention 169 of International Labor Organization, ratified on December 3<sup>rd</sup>, 1993.

In the Inter-American System, Peru has ratified the American Convention on Human Rights on July 28<sup>th</sup>, 1978; the Inter-American Convention to Prevent and Punish Torture on March 28<sup>th</sup>, 1991; the Inter-American Convention On The Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém Do Pará) on June 4<sup>th</sup>, 1996; the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights (Protocol of San Salvador) on June 4<sup>th</sup>, 1995; and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, on July 10<sup>th</sup>, 2001. It has accepted, likewise, the contentious competence of the Inter-American Court of Human Rights.

#### 3.5 Persons with disabilities in the constitutional system

<sup>27</sup> Constitution, Article 200: "Constitutional Guarantees are: (...) 4. The Unconstitutionality Action, which proceeds against the law level regulations: laws, legislative decrees, emergency ordinance, agreements, Congress's regulations, general regional regulations and municipal ordinance that violates the Constitution in its forms or content. 5. The Popular Action, that proceeds, for the Constitution and the law infraction, against the regulations, administrative regulations and resolutions and general decrees, from any authority.

<sup>28</sup> Constitution, Article 202 subsection 1.

<sup>29</sup> Approved by Legislative Resolution No 29127.29, promulgated on November 1<sup>st</sup>, 2007.

<sup>30</sup> Peru ratified the Convention and its Optional Protocol through the Supreme Decree No 073-2007-RE of December 30<sup>th</sup>, 2007.





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Section 7 of the Political Constitution of Peru (1993) establishes that

“The person with disabilities, in order to watch over him or herself because of a mental or physical handicap, has the right to the respect of his or her dignity and to a protection, attention, readjustment and safety legal regime.”

### 3.6 National Plan of Human Rights and the persons with disabilities

The Plan is not mentioned in the National Legal Framework of the Official Report, that the Peruvian State has presented before the Committee; however, Peru has a National Plan of Human Rights 2006-2010. Such plan was made official by the Peruvian government through Supreme Decree No 017-2005-JUS<sup>31</sup>, which was prepared taking into consideration the Principles of the UN Office of the High Commissioner for Human Rights. The Plan reflects the obligations formally contracted by Peru in the framework of the international system for the protection and promotion of human rights and its constitutional system.

It is worth mentioning that the omission of the regulation above is surprising because not only is it part of the national legal system for the protection of human rights, but it also contains an specific chapter with a complete and comprehensive collection of agreements and actions taken in regards to persons with disabilities.

### 3.7 General Persons with Disabilities Act

The Law 27050, General Persons with Disabilities Act (LGPD), was approved on December 31st, 1998. Section 2 of the Law defines a person with disabilities as:

“an individual that has one or more evident handicaps along with a significant loss of one or some of his or her physical, mental or sensorial functions, involving the decrease or absence of the ability to carry out an activity within normal margins or manners that limits him or her to perform a role, function or activities and opportunities in order to equally participate in society.”

This definition is not in accordance with the standards under the Convention on the Rights of Persons with Disabilities. In fact, it contains a definition of the person with disabilities of individual nature, and it does not include the definitions found in section 2 of the Convention, which are aimed at promoting the accessibility and social inclusion of persons with disabilities.

The definition used by the Peruvian Law does not consider that, as appointed by the Introduction of the Convention, “disability is a concept that evolves and results from the interaction between persons with deficiencies and barriers resulting from the attitude and environment that avoid their full and effective participation in society, in equal conditions as any other person”. It does not make a reference either about the General Principles that frame its content<sup>32</sup>, which is why plans and policies may not be based on the principles appointed by it.

The General Persons with Disabilities Act is regulated by Supreme Decree No 003-2000-PROMUDEH that regulates the following aspects:

- The definition of a person with disabilities
- The purpose and objective of the law
- The Rights protected by it: life, health, rehabilitation, work, education and accessibility
- Tariff exemptions planned for the import of vehicles and orthopedic equipment
- The executer organization of policies on disabilities
- The registry of persons with disabilities

<sup>31</sup> See Official Gazette “El Peruano”, December 11<sup>th</sup>, 2005, page 306003.

<sup>32</sup> CRPD, article 3: “The principles of this Convention shall be: a) The respect to the inherent dignity, the individual autonomy, including freedom to make their own decisions, and the people’s independency; b) the full and effective participation and inclusion in the society; d) The respect for the difference and the acceptance of the persons with disabilities as part of the human diversity and condition; e) Equal opportunities; f) The accessibility; g) The men and women equality; and h) Respect for the faculties evolution of children with disabilities and for their right to preserve their identity.



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- The procedure to obtain the disability certificate
- The penalty for breaching any regulation set forth in the Law
- A bonus in the contest of merits to fill work vacancies in the public sector
- The promotional companies for persons with disabilities
- The appointment of a Specialized Counsel for the defense of the rights of persons with disabilities, within the Ombudsman's Office.
- The President of the National Council for the Integration of Persons with Disabilities (CONADIS), appointed by the President of the Republic, giving him the faculty to assist the sessions of the Council of Ministers with voice but without a vote.
- CONADIS is complied, among others, by the State Vice Ministers in the departments of Women, Health, Work, Education, Defense and Interior, as well as representatives of the organizations of persons with disabilities and their families.
- The obligation of Local and Regional Governments to create Municipal Offices for the Attention of Persons with Disabilities (OMAPED).
- The obligation of education centers of any level to adapt the admission processes for persons with disabilities. Likewise, the obligation of public and private universities and schools of higher education to reserve 5% of their vacancies in their admission processes for persons with disabilities.
- The right of persons with disabilities to enjoy a 50% discount on the value of tickets for cultural, sports or recreational events organized by State Entities, applicable to a maximum of 25% of the total number of tickets.
- The obligation of the Ministry of Labour to create the National Office of Labour Promotion for Persons with Disabilities, as an independent organization of said Ministry, in charge of promoting the use of the rights of workers with disabilities, giving them free consultancy, legal defense, mediation and conciliation services.
- The obligation of all public sector entities, as well as Regional Governments and Municipalities, to hire persons with disabilities in no less than 3% of their total staff.
- The right of persons with disabilities to enjoy a 15% bonus on the final score obtained in public merit contests of Public Administration, as long as they fulfill the requirements for the position and have obtained an approving score.

The law establishes the National Council for the Integration of Persons with Disabilities (CONADIS)<sup>33</sup> as the organization that carries out the public policies on disability topics. It is an entity of decentralized nature of the Women's and Social Development Ministry (MIMDES). Its main objectives are: (i) develop public policies; coordinate attention, prevention and integration activities with other community sectors, in order to increase the quality of life of persons with disabilities; and (ii) carry out and motivate research in the field of disabilities and channel national and international resources in this field.

## Chapter II National Situation of the Persons with Disabilities (PWDs) Rights

### 1. General Information

This chapter has been developed based on 6 sources: (i) National Census of Population carried out in 1993; (ii) The studies about "Deficiencies, Disabilities and Physical Handicaps Prevalence in Peru" created by the National Rehabilitation Institute (INR) in 1993; (iii) The Survey of Households with Disabilities (EHODIS) 2005 created by the National Institute of Information and Statistics (INEI) in the city of Lima; the 2 Continuous Surveys, carried out by INEI in 2006; the National Census of Population carried out in 2007; the National Registry of Disability (RND) of the National Council of Disabilities (CONADIS) and the Executive Summary of the Optional Plan of Equal Opportunities for Persons with Disabilities, created by CONFENADIP in 2008.

#### 1.1 Number and Percentage of Persons with Disabilities over the total population

<sup>33</sup> Related regulations: articles 6 and 10 of Law No 28164 (Law that modifies different articles of Law No 27050); article 1 of the Supreme Decree No 003-2000-PROMUDEH (Regulation of Law No 27050), articles 5 to 13 of the President Resolution No 009-2003-P/CONADIS (which modify different articles of the Election of Associations and Institutions of Persons with Disabilities Representatives Regulation, before the National Council of CONADIS).



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For the preparation of their reports before the Committee on the Persons with Disabilities Rights, the States are obliged to have statistic data about the exercise of each one of the rights under the Convention, separated by gender, age, type of disability (physic, sensorial, intellectual and mental), ethnic origin, urban or rural population and other pertinent categories, so that they can be presented on a comparative-annual basis during the last four years<sup>34</sup>. However, as it was expressly recognized by the National Plan for Equal Opportunities 2003-2007, there are not official statistic data about the number of persons with disabilities that live in Peru, nor the type of disability they have, or information about their socio economic and labor condition<sup>35</sup>. The statistic information related to their situation and the fulfillment degree of their rights is really scant, and in many cases nearly inaccessible.

Additionally, the information available, apart from being scant, has serious incongruities because of the usage of different concepts, the diversity of methodologies and the scope of the statistic sample used as reference in each case.

The absence of serious statistics shows the lack of concern that the Government brings to the creation of necessary measure instruments for the creation of development policies for the sector. As a consequence, until 2006 the main source of information was the social and demographic profile of the persons with disabilities based on the National Population census of 1993<sup>36</sup>, which informed that only 1,3% of the participating population had a limitation. The 1993 census used the international classification of deficiency, disability and handicap.

However, in the same year, the course “Prevalence of deficiencies, disabilities and handicaps in Peru 1993” of the National Rehabilitation Institute (INR) took place, with the technical support of the National Institute of Information and Statistics (INEI) and the Pan American Health Organization (PAHO), which brought totally opposite figures: 31,28% of the national population had a certain type of disability, within 630 homes nationwide and the clinic evaluation of 2791 people.

Twelve years later, in 2005, the “The Survey of Households with Disabilities in the city of Lima” (EHODIS 2005) was implemented with the international CIF classification of the World Health Organization (WHO)<sup>37</sup> and resulted a prevalence rate of 5.7% (around half a million of people) in the City of Lima and the Constitutional Province of El Callao.

Subsequently, INEI was in charge of the “Continuous Survey” (ENCO), which took place in 2006. It informed that 8,4% of the Peruvian total population, 2 343 398 people, had a certain type of disability. In Lima, the prevalence would be 11,7% and in El Callao 8,5%; showing a great difference with the derived results of the EHODIS 2005.

According to the last National Population Census of 2007, there are 735 334 homes in the country with at least one person with physical or mental disabilities, representing the 10.9% of the Peruvian Total population<sup>38</sup>. Nevertheless, this statement must also be clarified because such census did not include questions that could determine figures based on a number of people, but questions focused on the

<sup>34</sup> Guidelines related to the specific document about the Convention that must be presented by the States according to paragraph 1 of the article 35 of the Convention on the Persons with disabilities' rights, approved by the Committee on Persons with Disabilities' Rights during its second sessions period, which took place at Geneva, from October 19<sup>th</sup> to 23<sup>rd</sup> point A.3.2.h.

<sup>35</sup> See: <http://www.congreso.gob.pe/comisiones/2002/discapacidad/PIO-2003-2007.pdf>

<sup>36</sup> It is important to point out that the reference statistics prevailing until then came from the “VIII National Census of Population and Housing” (INEI, 1981) that comprised 26,560 censused persons with disabilities; and from the “Statistic Bulletin of the National Survey: The person with disabilities problem in the country”, investigation carried out by the Social Benefits Manager Office, Social Protection and Rehabilitation Deputy Manager Office, Division of Protection to Persons with Disabilities of the Peruvian Social Security Institute (IPSS) of 1982, which comprised a total of 58,038 persons with disabilities.

<sup>37</sup> The “International Classification of Functioning, Disability and Health” (ICF), modifying previous criteria, does not mention deficiency, disability or handicap. Avoiding the negative connotations of certain terms, it does not mention “deficiencies” but “functioning”; the word “disability” is replaced by the neutral term “activity”. The negative circumstances in this dimension are described as “activity’s limitations”. The term “handicap” is replaced by “participation”, and the negative circumstances in this dimension are described as “participation restrictions”. Nevertheless, the most valuable contribution of the ICF was that the participation restrictions, previously called “handicap”, it is no longer interpreted from a health perspective, as something that affects an isolated individual affected by a damage, injury or illness, but as a relationship between people and the world around them (environmental factors or design errors).

<sup>38</sup> See: <http://inei.inei.gob.pe/inei/RedatamCpv2007.asp?ori=C>



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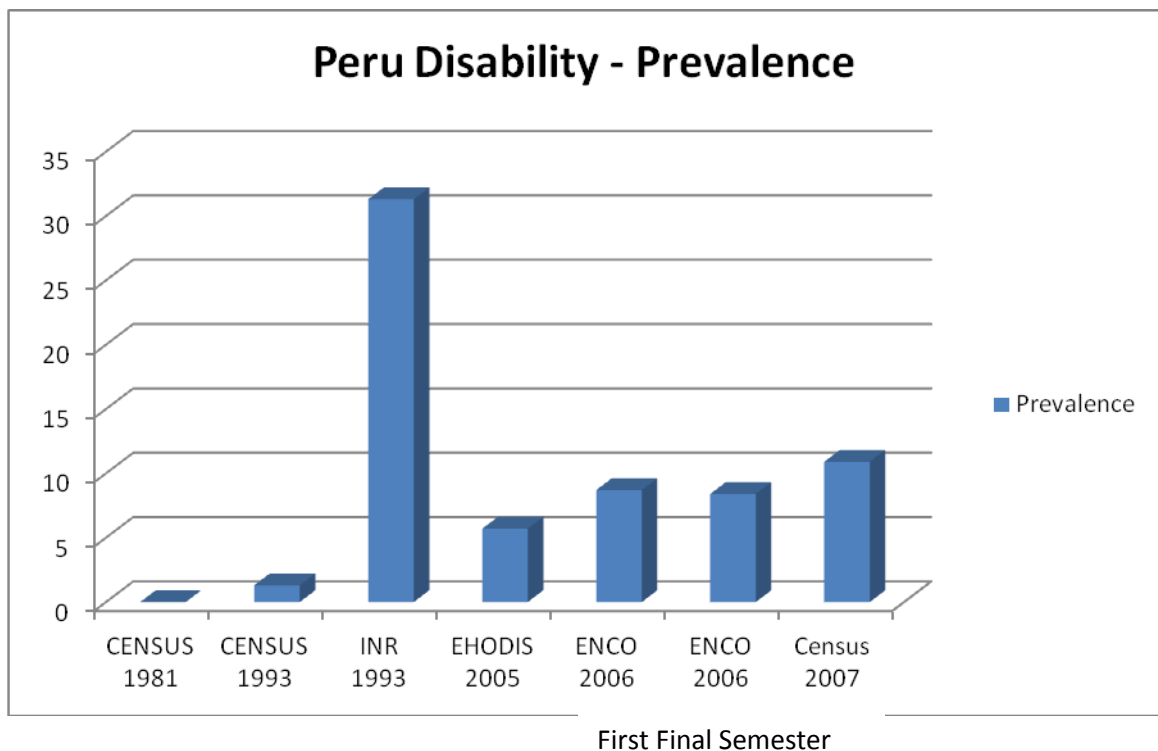
number of families with persons with disabilities (see chart of Homes and Population with a certain type of disability).

In such chart shows, according to the processing of the information available in REDATAM format, that Peru has a total of 3 208 309 people with one or more disabilities.

Under the General Persons with Disabilities Act, the National Registry of Persons with Disabilities (RNPD)<sup>39</sup> was established, and the National Council for the Integration of Persons with Disabilities (CONADIS)<sup>40</sup> was in charge of it. It is free and it has the following special aspects and registries: a) the affiliation of persons with disabilities and their families; b) the public and private entities that bring attention, services and programs in aid of persons with disabilities; c) the voluntary non-profit institutions that work with or for persons with disabilities. According to RND (sic), 68 125 persons with disabilities and 289 persons with disabilities associations<sup>41</sup> had been voluntarily registered until September 2009.

Regarding the Plan for Equal Opportunities (PIO) 2009-2018, approved by the government under the Supreme Decree No 007-2008-MIMDES, it is important to point out that the information results from the integration processes of the sources above, existing a possible high margin of error. Despite it and the difficulties that this represents, CONFENADIP gave, a year ago, several recommendations related to PIO 2009-2018, whose contributions could have been based on the statistic data derived from the available information above. The most outstanding part of the CONFENADIP observations of the PIO in force is that, as it occurred with the previous PIO- 2003-2007, it does not contain many indicators to evaluate the impact, effectiveness and efficiency of the proposed measures; it also lacks a specifically assigned budget for its corresponding compliance and monitoring<sup>42</sup>.

The presented report includes the chart below which emphasizes the evolution of the official course of statistics figures collection related to the persons with disabilities during the last three decades.



<sup>39</sup> Law No 27050, article 12.

<sup>40</sup> Idem. Article 8.

<sup>41</sup> See: <http://www.conadisperu.gob.pe/web/registronacional.php>

<sup>42</sup> Optional Plan of Equal Opportunities for Persons with Disabilities, CONFENADIP.



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## 1.2 Distribution by gender

According to RND, from the total number of persons with disabilities registered voluntarily in their registry, 60% are males and 39% are females. ENCO, on the other hand, pointed out that, from the total of 2'343,398 persons identified as affected by a type of disability, 44.5% were males and 55.50% were females.

## 1.3 Specificity and incidence by disability

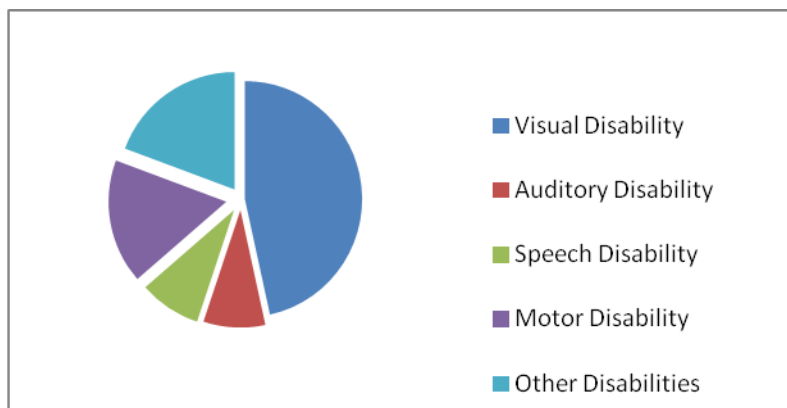
The following chart, taken from the Population National Census of 2007, reflects the types of disabilities existing in Peru of that year.

### TOTAL HOUSEHOLDS IN PRIVATE HOUSING WITH PRESENT PERSONS , SUFFERING FROM ANY PERMANENT PHYSICAL OR MENTAL DIFFICULTY OR LIMITATION , BY DEPARTMENT, PROVINCE, DISTRICT, URBAN AND RURAL AREA, TYPE OF HOUSE AND TOTAL NUMBER OF PRESENT PERSONS

Peru	Total	Physical or Mental Disability					No person with disabilities	Household with members with disabilities and persons with disabilities	%
		To see, even using glasses	To hear, even using headphones for deafness	To speak (modulate / vocalize)	To use arms and hands / legs and feet	Any other difficulty or limitation			
Households	6754074	352982	81396	66117	135663	178941	6018740	735,334	10.9
Present Persons	27057199	1484266	329695	322874	606596	822286	23848890	3,208,309	11.86

Source: INEI – National Census 2007 – XI of Population and Housing

However, there are a high number of not specified disabilities, different to the ones shown above, that amounts to 25.63%. This percentage is rather high and covers 822,286 persons who are probably affected by intellectual, psychosocial disabilities and of other nature.





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Source: Diagnosis of the labour situation of persons with disabilities in Peru – 2010 – Trust for the Americas/BID/FOMIN/POETA/CEDAL. Made based on the National Census of Population and Housing 2007 – INEI.

## 1.4 Territorial Distribution

### 1.4.1 Population with disabilities in the rural and urban area

According to the census of 2007, there are 609,972 households in Peru within the urban area that live with at least one person with disabilities, while in the rural area the registered number is of 125,362 households.

#### PERU: HOUSEHOLDS WITH OR WITHOUT MEMBERS WITH DISABILITIES, BY RESIDENCE AREA, 2007

Residence area	Total of households		Households with members with disabilities		Households without a member with disabilities	
	Absolute value	%	Absolute value	%	Absolute value	%
<b>Total</b>	<b>6 755 361</b>	<b>100,00</b>	<b>735 400</b>	<b>10,9</b>	<b>6 019 961</b>	<b>89,1</b>
<b>Residence area</b>						
Urban	5 131 437	100,00	609 972	11,9	4 521 465	88,1
Rural	1 623 924	100,00	125 428	7,7	1 498 496	92,3

Source: INEI – National Census 2007: XI of Population and Housing.

### 1.4.2 Population with disabilities by Department

According to the registered information in said census, the Peruvian population with disabilities is distributed by departments as in the following chart:

#### PERU: HOUSEHOLDS WITH OR WITHOUT MEMBERS WITH DISABILITIES, BY DEPARTMENT, 2007

Department	Total households		HOUSEHOLDS with a member with disabilities		HOUSEHOLDS without a member with disabilities	
	Absolute Total	%	Absolute Value	%	Absolute Value	%
<b>Total</b>	<b>6755361</b>	<b>100,0</b>	<b>735400</b>	<b>10,9</b>	<b>6 019 961</b>	<b>89,1</b>
Amazonas	90 645	100,0	6692	7,4	83 953	92,6
Áncash	260 087	100,0	27549	10,6	232 538	89,4
Apurímac	106 445	100,0	11383	10,7	95 062	89,3
Arequipa	309 892	100,0	38249	12,3	271 643	87,7
Ayacucho	163 147	100,0	15416	9,4	147 731	90,6
Cajamarca	333 311	100,0	28539	8,6	304 772	91,4
Constitutional Province of Callao	216 252	100,0	30489	14,1	185 763	85,9
Cusco	303 974	100,0	27928	9,2	276 046	90,8
Huancavelica	112 817	100,0	8894	7,9	103 923	92,1
Huánuco	180 731	100,0	14915	8,3	165 816	91,7
Ica	180 828	100,0	20994	11,6	159 834	88,4
Junín	304 505	100,0	30215	9,9	274 290	90,1
La Libertad	384 842	100,0	40071	10,4	344 771	89,6
Lambayeque	254 488	100,0	25943	10,2	228 545	89,8



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Lima	2 075 091	100,0	270980	13,1	1 804 111	86,9
Loreto	176 046	100,0	14348	8,2	161 698	91,8
Madre de Dios	27 494	100,0	2237	8,1	25 257	91,9
Moquegua	49 099	100,0	6313	12,9	42 786	87,1
Pasco	66 889	100,0	7183	10,7	59 706	89,3
Piura	389 685	100,0	38670	9,9	351 015	90,1
Puno	363 432	100,0	32677	9,0	330 755	91,0
San Martín	173 646	100,0	13447	7,7	160 199	92,3
Tacna	84 819	100,0	9333	11,0	75 486	89,0
Tumbes	50 005	100,0	4970	9,9	45 035	90,1
Ucayali	97 191	100,0	7965	8,2	89 226	91,8
City of Lima 1/	2 076 821	100,0	276248	13,3	1 800 573	86,7
Provinces of Lima 2/	214 522	100,0	25221	11,8	189 301	88,2

1/ Comprises the province Lima and the Constitutional Province of Callao

2/ Comprises the department of Lima, except for the province of Lima

**Source: INEI / National Census 2007: XI of Population and Housing**

As mentioned above, The National Registry of Disability of CONADIS, on the other hand, displays on its website 68,125 registered natural persons and 289 registered associations, as seen in these charts<sup>43</sup>:

REGISTERED PHYSICAL PEOPLE AS OF DECEMBER 2009/ PER YEAR	
Year	Registered people
2000	4
2001	1 212
2002	3 535
2003	7 523
2004	7 828
2005	10 338
2006	10 562
2007	6 341
2008	10 647
2009	10 135
Total	68 125

Registered Physical People as of 2009 by gender		
Gender		Total
Male	Female	
40 988	27 137	68 125
60.17%	39.83%	100%

<sup>43</sup> See: [http://www.conadisperu.gob.pe/web/pld\\_transparencia.php?octocodigo=Asociaciones&octodescrip=RNASC](http://www.conadisperu.gob.pe/web/pld_transparencia.php?octocodigo=Asociaciones&octodescrip=RNASC). Date: September 27<sup>th</sup>, 2010



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ASOCIACIONES REGISTRADAS EN CONADIS									
YEARS	TOTAL	DEPART.	TOTAL	PROV.	TOTAL	DISTR.	TOTAL		
2000	11	ANCASH	11	DEL SANTA	10	CHIMBOTE	9		
				HUARMEY	1	DEL SANTA	1		
2001	49	APURIMAC	3	ANDAHUAYLAS	3	SAN JERONIMO	1		
						SANTA MARIA DE CHICMO	1		
						TALAVERA	1		
2002	22	AREQUIPA	15	AREQUIPA	13	ALTO SELVA NEGRA	1		
						AREQUIPA	4		
						CERCADO A	2		
						CERRO COLORADO A	1		
						SOCABAYA	1		
						MARIANO MELGAR A	1		
						MIRAFLORES A	2		
						YURA	1		
						CAYLLOMA	1	CHIVAY	1
						ISLAY	1	MOLLENDO	1
2003	36	AYACUCHO	8	HUAMANGA	6	AYACUCHO	3		
				LA MAR	1	JESUS NAZARENO	3		
				VILCASHUAMAN	1	TAMBO	1		
2004	37	CAJAMARCA	7	CAJAMARCA	3	CAJAMARCA	2		
				CELENDIN	1	NAMORA	1		
				JAEN	2	CELENDIN	1		
				SAN MARCOS	1	JAEN	2		
2005	42	CALLAO	16	CALLAO	16	BELLAVISTA	7		
						CALLAO	6		
						LA PERLA	2		
						VENTANILLA	1		
2006	34	CUSCO	5	CHUMBIVILCAS	2	LLUSCO	1		
				CUSCO	3	SANTO TOMAS	1		
				CUSCO	2	CUSCO	2		
2007	10	HUANCAVELICA	3	HUANCAVELICA	3	WANCHAQ	1		
						HUANCAVELICA	2		
2008	41	HUANUCO	5	HUANUCO	4	HUANUCO	3		
				LEONCIO PRADO	1	PILLCOMARCA	1		
				HUANUCO	1	RUPA RUPA	1		
2009	7	ICA	2	PISCO	2	PISCO	1		
				PISCO	1	SAN ANDRES	1		
		JUNIN	10	CHANCHAMAYO	1	SAN RAMON	1		
				CHUPACA	1	CHUPACA	1		
				HUANCAYO	6	CHILCA	1		
				HUANCAYO	4	EL TAMBO	4		
				HUANCAYO	1	HUANCAYO	1		
				JUNIN	1	CARHUAMAYO	1		
				YAULI	1	LA OROYA	1		
				CHEPEN	1	CHEPEN	1		
				SANCHEZ CARRION	1	HUAMACHUCO	1		
				TRUJILLO	8	HUANCHACO	2		
		LA LIBERTAD	10	TRUJILLO	8	TRUJILLO	6		
				CHICLAYO	5				
						CHONGOYAPE	1		





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LAMBAYEQUE	12	CHICLAYO	9	PIMENTEL	1
				REQUE	1
				TUMAN	1
		FERREÑAFE	2	FERREÑAFE	2
		LAMBAYEQUE	1	LAMBAYEQUE	1
LIMA	140	BARRANCA	2	PARAMONGA	2
		CAÑETE	1	SAN VICENTE	1
		HUARAL	2	CHANCAY	1
				HUARAL	1
		HUAURA	1	HUACHO	1
				ATE VITARTE	6
				BARRANCO	2
				BREÑA	5
				CARABAYLLO	4
				CARMEN DE LA LEGUA	1
				CERCADO	3
				CHORRILLOS	5
				CHOSICA	2
				EL AGUSTINO	1
				INDEPENDENCIA	1
				JESUS MARIA	4
				LA MOLINA	4
				LA VICTORIA	2
				LIMA	10
				LINCE	4
				LOS OLIVOS	3
				LURIGANCHO-CHOSICA	1
				MAGDALENA	3
				MIRAFLORES	8
				PACHACAMAC	1
				PUEBLO LIBRE	1
				PUENTE PIEDRA	2
				RIMAC	5
				SAN BORJA	5
				SAN JUAN DE LURIGANCHO	9
				SAN ISIDRO	4
				SAN JUAN DE MIRAFLORES	3
				SAN LUIS	2
				SAN MARTIN DE PORRAS	3
		SAN MIGUEL	8		
		SANTA ANITA	5		
		SANTA EULALIA	2		
		SURCO	9		
		SURQUILLO	2		
		VILLA EL SALVADOR	2		
		VILLA MARIA DEL TRIUNFO	2		
LORETO	3	MAYNAS	3	IQUITOS	1
				SAN JUAN BAUTISTA	2
MADRE DE DIOS	1	TAMBOPATA	1	TAMBOPATA	1
MOQUEGUA	4	ILO	2	ILO	2
		MARISCAL NIETO	2	MOQUEGUA	2
PASCO	1	OXAPAMPA	1	VILLA RICA	1
		PIURA	7	CASTILLA	2
				LA ARENA	1
				PIURA	2
				TAMBOGRANDE	2



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PIURA	15	PAITA	1	PAITA	1	
		SECHURA	2	SECHURA	1	
				VICE	1	
		SULLANA	4		EL OBRERO	1
					SALITRAL	1
					SULLANA	2
		TALARA	1	MANCORA	1	
		TAMBOGRANDE	0			
PUNO	15	AZANGARO	1	SAN ANTON	1	
				AZANGARO	1	
		CHUCUITO	1	JULI	1	
		EL COLLAO	1	ILAVE	1	
		LAMPA	2		CABANILLAS	1
					PUCARA	1
		PUNO	4		MAÑAZO	1
					PUNO	2
SAN ANTONIO DE PUTINA	1	PEDRO VILCAPAZA	1			
SAN ROMAN	2	JULIACA	2			
YUNGUYO	3	YUNGUYO	3			
TUMBES	1	TUMBES	1	TUMBES	1	
UCAYALI	2	CORONEL PORTILLO	1	CALLERIA	1	
		PADRE ABAD	1	PADRE ABAD	1	
289		289		289		

## 1.5 Participation of persons with disabilities in the definition of rules and policies affecting them. (CRPD, articles 4 and 33)

According to article 4 of the Convention, related to the General Duties of the Member states; “in the elaboration and application of legislation and policies to make the present Convention effective, and other decision-making processes on issues concerning persons with disabilities, the States will hold open consultation and will actively participate along with persons with disabilities, including children with disabilities, through the organizations that represent them<sup>44</sup>.”

Number 3 of article 33 of the CRD, related to application and monitoring of the Convention, states, on its part, that “the civil society and, particularly, persons with disabilities and the organizations that represent them, will be integrated and will fully participate in all the levels of the monitoring process.”

However, these rules are not authentically observed in Peru, given that authorities usually ignore persons with disabilities and the organizations that represent them when defining issues concerning them.

An 88.7% out of the 218 representatives of PWDs surveyed by CONFENADIP believed that Peruvian authorities **DO NOT** ask PWDs or their organizations on the design of laws and programs related to the rights acknowledged in the Convention. For instance, we can mention the approval of the law that acknowledges the deaf-blindness as a unique disability, Law N° 29524, for which the government acknowledged sign language, dactylogy and Braille system as official means of communication. Moreover, said Law, established that public and private institutions and organizations that provide public services or customer service, must provide deaf-blind people with the interpreting guide service whenever they require it with no cost on a regular basis.

Contrary to this, the regulation will benefit approximately 15 thousand people that are deaf-blind in the country; however, the deaf-blind groups state that they were not consulted for its creation, and they are victims of – beyond what the regulations state – an effective absence of support for the exercise of other

<sup>44</sup> CRPD, article 4 number 3.



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rights that are inherent and equally important for their existence; such as the right to work, to health, to sports or culture. They state, likewise, that the first proposal about sign language contained in the bill was cut, originating its approval except for the creation of a sign language academy or institute, stating that by creating it, it would generate budget expenses. Furthermore, the approved law states that the Ministry of Education is in charge of establishing the requirements and profile for the training and accreditation of sign interpreters, leaving aside the participation of interested deaf people, who are represented by a Commission.

The PWDs stopped participating in the National Council of Disabilities (CONADIS) in 2007 when this organization's role was redefined in a pejorative way. Although it was reinstated as the governing entity for the sector, integrated to the Ministry of Women's Affairs and Social Development (MIMDES), its participation has been severely diminished since then. Its formal composition has serious deficiencies, as it is proved by the fact that it refers to the families of persons with mental disabilities, but not to them.

The Multi-Sectorial Commission of monitoring and tracking for the Equal Opportunities Plan (PIO) of PWDs does not include the participation of PWDs either, as, in accordance with its creation regulations, their contributions should be channeled by CONADIS but not directly<sup>45</sup>. There is more to the Permanent Multi-Sectorial Commission (CMP) consisting of representatives of the Executive Branch and the Peruvian Congress, with the objective of implementing the Convention. Said commission was established by Supreme Decree No 080-2008-PCM, published on December 4th, 2008, without considering the participation of persons with disabilities. Nonetheless, it was possible to call organizations of the sector thanks to the public pressure of PWDs organizations, and by CONADIS Presidential Resolution published on July 4th, 2009. However, the election of many of these representatives was carried out with unique candidates as a consequence of imposed bureaucratic barriers<sup>46</sup>.

In this regard, the Ombudsman's Office sent a report to the UN Office of the High Commissioner for Human Rights confirming that the Peruvian State has not implemented the required measures to allow the participation of persons with disabilities in planning, executing and monitoring instances of the fulfillment of the Convention, but the mentioned observations have not been attended either<sup>47</sup>.

## **2. ACHIEVEMENTS AND DIFFICULTIES IN THE FULFILLMENT OF THE HUMAN RIGHTS OF PERSONS WITH DISABILITIES IN PERU**

### **2.1 The right to Life and his/her dignity protection (CRPD, Article 10)**

The right to life is recognized in number 1 Article 2 of the Political Constitution of Peru. It is based on the general frame of Article 1 that recognizes that "the defense of the physical person and the respect of his/her dignity are the supreme purpose of the Society and State". As it is stated in a wide variety of international agreements on human rights that have been ratified by Peru, this right comprises two parts: the first one refers to the right to not be deprived of life in an arbitrary way (right to exist), the second one refers to the right to develop a full and worthy life. The infringement of this right – as in connection with the other fundamental rights that are indissolubly connected – can be made by the State or non-state entities.

Article 10 of CRPD, on its part, reaffirms the inherent right to life of persons with disabilities in the same conditions as other people, and forces the States to report if its authentication recognizes and protects the right to life and survival of persons with disabilities in the same conditions as other people; and if persons with disabilities are deprived of life in an arbitrary way.

<sup>45</sup> Supreme Decree No 007-2008-MIMDES that approved the Plan of Equal Opportunities for Persons with Disabilities 2009-2018 (PIO). See: [http://www.conadisperu.gob.pe/web/documentos/pio\\_convencion/pio.pdf](http://www.conadisperu.gob.pe/web/documentos/pio_convencion/pio.pdf)

<sup>46</sup> See: [http://www.conadisperu.gob.pe/web/texto/pld\\_transparencia.php?octocodigo=Convocatorias%202009&octodescrip=ADM](http://www.conadisperu.gob.pe/web/texto/pld_transparencia.php?octocodigo=Convocatorias%202009&octodescrip=ADM)

<sup>47</sup> See Report in [www2.ohchr.org/english/issues/.../PeruDefensoriadelPueblo.doc](http://www2.ohchr.org/english/issues/.../PeruDefensoriadelPueblo.doc)



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As it is mentioned above, 10% of the Peruvian population has a certain type of disability, so it is inferred that almost 3 million persons with disabilities live in Peru, who are not deprived of life in an arbitrary way, but they suffer from systematic violations of their right to live a worthy life and a free development of their personality.

This situation is reflected in the lack of mechanisms implemented by public authorities so that this group could use its rights in an effective way, because, usually, its rights are written in the regulations, but they are not actually exercised.

The main infringements that are related to the right to life of the persons with disabilities, are those related to their low life quality, as it will be shown in the course of this report. Additionally, there is a different consideration for their life protection. For example, the eugenic abortion is penalized with fewer years than other kinds of abortion, showing a different treatment<sup>48</sup>.

## 2.2 Right to freedom (CRPD, article 14)

Article 2, subsection 24, of the Peruvian Constitution of 1993 comprises the rights of all the people to personal freedom<sup>49</sup>. “The right to movement is an essential condition for the free development of a person,” has said the United Nations Committee on Human Rights<sup>50</sup>. And the right to personal freedom comprises the capacity to move freely within a State. The accessibility must be understood, in this context, as the right of all inhabitants to the city and its services without any restrictions<sup>51</sup>.

Article 14 of the Convention on the Rights of Persons with Disabilities says that all persons with disabilities must enjoy the right to freedom and personal safety, and the right to not being deprived of their freedom illegally or arbitrarily, if any disability. To address this matter, States must adopt measures to assure that all persons with any type of disability enjoy the right to freedom and personal safety and that nobody is deprived of their freedom on the basis of their disability; revoke every legislation that allows the institutionalization or deprivation of the freedom of all persons with any type of disabilities; adopt all the legislative measures and of other nature that are required to assure that the persons with disabilities that have been deprived of their freedom are being offered the necessary reasonable adjustments, and that they are benefitting from the same procedural rights than the rest of persons to fully enjoy the rest of human rights.

The Convention points out that the persons with disabilities that are deprived of their freedom by virtue of a process shall have rights in accordance with the international law of human rights and shall be treated in accordance with the principles of the respect of their dignity, including the respect of the principles of non-discrimination and accessibility. However, neither of the principles pointed out in section 14 of the Convention are fulfilled in Peru to the extent that the situation is degrading in prisons.

<sup>48</sup> See in Peruvian Criminal Code (Legislative Decree 635), Chapter II (Abortion), article 119 (Therapeutic Abortion). See: [http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default\\_codpenal.htm&vid=Ciclope:CLPdmo](http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default_codpenal.htm&vid=Ciclope:CLPdmo)

<sup>49</sup> The subsection 24 of the article 2 of the Peruvian Constitution states that “every person has de right to: personal freedom and security. As a consequence: a) Nobody is obliged to do anything that is not stated in the law nor prevented from doing anything that it does not prohibit. b) It is not allowed any kind of restriction of the personal freedom, but only the cases envisaged by law. Slavery, servitude and smuggling are prohibited in any of their forms. c) There is no imprisonment for debts. This principle does not limit the judicial mandate for support non-fulfillment. d) Nobody will be accused or sentenced for an action or omission carried out before it was considered by law as a punishable infringement in a express and unmistakable way, nor punished with a sentence that is not envisaged by law. e) Every person is considered innocent as long as his or her responsibility isn’t declared through the courts. f) Nobody can be arrested but by written order and done by a judge or by the police in case of being caught in flagrante. The detainee shall be put at the corresponding court’s disposal, within twenty four hours or the allotted time. These periods are not applied in terrorism, espionage or illegal drug trafficking cases. In said cases, the police can carry out the preventive arrest of the alleged implicated people for a period no longer of fifteen calendar days. g) Nobody can be isolated but in the indispensable case of case clarification, in the manners and periods established by the law. The authority is obliged under liability to point out, without delay and written, the place where the detainee was found. h) Nobody should be a victim of moral, psychic or physical violence, nor subject to torture or inhuman or humiliating treatments. Anyone can ask immediately for the medical exam of the affected person or of the person disabled to approach the authority. Statements obtained with violence have no value, who uses them will fall into responsibility.”

<sup>50</sup> United Nations Human Rights Committee, General Comments No 27: Freedom of movement (1999).

<sup>51</sup> HUERTA, Jaime. Discapacidad y Diseño Accesible. See: <http://www.codis.pe/publicaciones.php>



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Through its Ombudsman's Report 140, the Ombudsman's Office has widely documented the situation of the admission of persons with mental disabilities in hospitals, who are often taken against their will to shelters and mental health centers<sup>52</sup>.

In turn, the Constitutional Court has issued many judgments declaring itself in favor of the permanent hospitalization of persons with mental disabilities<sup>53</sup> or persons declared incompetent, who have had to stay in prisons because of the lack of beds in the respective hospitals. This situation gets complicated when the Peruvian Civil Code, on the other hand, grants wide permanent<sup>54</sup> faculties to legal guardians to hospitalize persons with mental disabilities.

## 2.3 Right to vote (CRPD, Article 29)

According to the Article 2, number 14 of the Peruvian Constitution, all the persons have the right to:

“Participate, in an individual or associate way, in the political, economical, social and cultural life of the Nation. Citizens have, according to law, rights to elect, remove or revoke authorities, rights of legislative initiative and referendum”.

Article 31 adds:

“Citizens have the right to participate in public matters through referendum; legislative initiative; rights of authorities' removal or revocation and the right to request accountability. They also have the right to be elected and to freely elect their representatives, in accordance with the conditions and procedures determined by organic law.

It is the neighborhood's right and duty to participate in the local government of its jurisdiction. The law regulates and promotes the direct and indirect mechanisms of its participation.

*The citizens with civil capacity have the right to vote. To use this right, it is required to be registered on the corresponding registry.*

The vote is personal, equal, free, secret and compulsory until the age of seventy. It is optional after that age.

The law states the mechanisms to guarantee the state neutrality during the electoral and civic participation processes.

Any action that prohibits or limits the citizen to use his/her rights is null and punishable.” [Added emphasis]

Article 29 of CRPD, which refers to the persons with disabilities' right to participate in the political and public life, guarantees the political rights of persons with disabilities; and imposes the States that are part of the Convention the obligation of adopting the legislation and measures of other nature that are necessary to guarantee political rights to persons with disabilities, especially persons with mental or intellectual disabilities, including, if applicable, existing limitations and measures adopted to overcome them.

Likewise, it forces them to adopt measures to ensure persons with disabilities' right to vote, on their own or with someone chosen by them; to ensure the full voting procedures, installation and materials

<sup>52</sup> See Ombudsman's Report 140 in: <http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-defensorial-140-vf.pdf>

<sup>53</sup> Constitutional Court, File No 3081-2007-PA/TC, R.J.S.A. Vda de R., in her own name and as representative legal guardian of her daughter G.R.S. against the sentence of the 5th Civil Court of the Superior Court of Justice in and for Lima. The plaintiff filed an appeal against EsSalud, stating that the discharge order of her daughter G.R.S. (46 years old) is no longer effective. She suffered from paranoid schizophrenia. Discharge order granted by the Comprehensive Rehabilitation for Chronic Patients Center (CRIPC) Hospital 1 Huariaca-EsSalud – Pasco.

<sup>54</sup> See Civil Code (Legislative Decree 295), article 576 (Legal Guardian's functions): “The legal guardian protects the person with disabilities, helps him/her in his/her re-establishment and, if necessary, in his/her employment in a proper establishment; and represents or helps him/her, depending on the disability degree, in his/her businesses”. See: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codcivil.htm&vid=Ciclope:CLPdemo>



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accessibility; to use indicators to measure the full enjoyment of the persons with disabilities' right to participate in the political and public life; and to bring support to persons with disabilities to create and maintain organizations that represent their rights and interests local-wide, region-wide and nation-wide.

Despite the clarity and the peremptory nature of these obligations, they are not respected in Peru. Actually, as the Ombudsman's Office stated on March, 2000, through its Ombudsman's Report No 37, (report named "The Right to vote of the persons with disabilities"<sup>55</sup>), persons with disabilities in our country have to face strong barriers that hamper the normal practice of their right to vote. Barriers that can be summed up as follows:

1. A great number of persons with disabilities are not registered in the electoral registry, therefore, they cannot use their right to vote.
2. Inappropriate infrastructure for persons with disabilities predominates, preventing them from:
  - a. Being able to access voting centers (previous trajectory, related to the freedom of movement)
  - b. Being able to access voting centers (entry itself, related to accessibility)
  - c. Being able to access voting tables (absence of ramps)
3. Long queues during electoral processes without any special facilities for PWDs.
4. Bad service and lack of knowledge of the rights of PWDs by authorities and local people in charge of the electoral process in the voting center.

As the Ombudsman's Office has stated in such report, "The right to vote is a demonstration of the political rights, which are understood as "those that give people the power to chose their leaders, to present legislative initiatives and express their opinion about the ones presented by their fellow citizens, to participate in the authorities removal or revocation, to be elected for public position or to become a member of political parties. To sum up, we can point out that they are the ones that make participation possible in society's political life"<sup>56</sup>.

As we previously mentioned, the Peruvian Political Constitution states in its Article 31 the universal right to vote; and this right must be understood in accordance with the non-discrimination and equality right, which requires not restricting the right to vote to any citizen, including persons with disabilities. Likewise, according to the same Article, the voting action should not only be understood as a right, but also as a duty, so it is compulsory in Peru and its non-practice carries sanctions as fines or the disqualification for the practice of certain civil rights (such as hiring, for example).

Although through Law No 29478, released on December 18<sup>th</sup>, 2009, the Organic Law of Elections was modified to allow voting facilities<sup>57</sup>; persons with intellectual and mental disabilities were excluded from the electoral census created by the National Vital Statistics and Civil Registry Office (RENIEC).

The persons with disabilities' organizations that were consulted by CONFENADIP in the validation workshop of this report have highlighted, also, that there is an evident lack of accessibility and facilities for PWDs in the voting tables. Moreover, the RENIEC officers in charge of filling data in the National Identity Cards (DNI) of the persons with slight and moderate mental disabilities do not give them a Voting Group Number, leaving them without possibilities of exercising their right to vote. Moreover, the lack of special voting tables for PWDs and the absence of public campaigns aimed to favor the National Identity Cards' expedition for PWDs were reported.

The previous information makes imperative to establish mechanisms that make feasible the practice of the right to vote for PWDs. However, those mechanisms do not exist in Peru. For that reason, the Ombudsman's Office proposed the following recommendations in the report above mentioned in order to guarantee the exercise of the right to vote of PWDs:

1. That the National Elections Office (ONPE) creates templates and voting cards<sup>58</sup> in Braille format for blind people and establishes mechanisms to facilitate the communication with persons with a certain hearing disability.

<sup>55</sup> See: <http://www.defensoria.gob.pe/inform-defensoriales.php>

<sup>56</sup> Idem.

<sup>57</sup> Law No 29478, see: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29478.pdf>



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2. That ONPE carries out electoral education campaigns so that PWDs exercise their right to vote.
3. That allows the access of a trustworthy person, to the voting chamber, that accompanies people that suffer from ankylosed fingers, upper-body disability or with quadriplegic people, to help them to vote.
4. That ONPE spreads information related to the electoral processes in accessible formats to the PWDs.
5. That the National Vital Statistics and Civil Registry Office (RENIEC) adopts actions aimed to registering PWDs.
6. That the public authorities remove architectural barriers that do not allow PWDs to have access to the voting centers.

## 2.4 Right to Equality and Non-Discrimination (CRPD, Article 5)

Discrimination toward persons due to disabilities represents a violation of both dignity and value inherent to all human beings<sup>59</sup>. Article 2, subsections 1 and 2 of Peruvian Constitution, establishes that all human beings have the right to life; moral, psychical and physical integrity and free development and wellbeing, as well as equality before the law. Therefore, nobody in Peru should be discriminated due to their origin, race, sex, language, religion, opinion, economical status or any other nature, including the existence of limitation or disabilities.

Article 5 of the Convention on the Rights of Persons with Disabilities, related to the rights to equality and non-discrimination, recognizes, on its part, that all human beings are equal before the law and have the right to equal legal protection as well as to make use of the law without any kind of discrimination. According to the definitions included in Article 2 of the Convention, by ‘discrimination due to disabilities’, it shall be understood any distinction, exclusion or restriction due to disabilities that aims or causes to hold up or leave without effect the acknowledgement, enjoyment or practice, in equality of conditions, of all the human rights and fundamental liberties of different areas, such as political, economical, social, cultural, civil and other. All kinds of discrimination are included, among them, refusing to reasonable adjustments.

In order to assure this right, the States that are part of this Convention must guarantee that persons with disabilities are able to appeal for legal protection and to devote to their interests in equality with other persons. Likewise, they must guarantee equal and effective legal protection for persons with disabilities against any kind of discrimination, including the precaution to reasonable adjustments that are required; as well as the implementation of policies and programs, including positive action measures in order to achieve de facto equality of persons with disabilities, taking into account their diversity.

By discrimination, it shall be understood a different treatment based on certain reasons forbidden by the legal system whose objective, or result, is to annul or diminish the practice or enjoyment of fundamental rights and liberties of a human being or a group of human beings, notice that, in Peruvian society there are still very strong stereotypes which affect persons with disabilities associating the idea of disabilities with the ideas of illness and infection, with the ideas of punishment and sin, along with the ideas of disability, begging; prejudice and stereotypes that foster the development of different kinds of behavior and/or attitude that produce and keep the discrimination persons with disabilities suffer from.

All the information previously stated brings about a massive and persistent social marginalization toward persons with disabilities which often leads directly to a systematic exclusion and a lack of opportunities that closes the circle of poverty that mainly brings them down.

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<sup>58</sup> Article 263 of the Organic Elections Law.

<sup>59</sup> CRPD, Introduction.



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In addition, the government acts in a discriminatory way toward persons with disabilities regarding the design and implementation of public policies that hold within themselves huge repercussions. For instance, the extremely low investment made by the government in favor of the governing body of the public policies for persons with disabilities, The National Council for the Integration of Persons with Disabilities (CONADIS), whose result is even lower than the investment destined for other sectors.

In effect, as it can be observed in the following chart, the budget contribution for CONADIS during the current year 2010 is only 640 thousand 794 soles, which represents hardly 0.37% of the total investment destined for the Ministry of Women's Issues and Social Development (MIMDES), public organization to which CONADIS is attached to.

Even worse, both CONADIS and the Commission on Disabilities of the Peruvian Congress have presented several proposals regarding that issue which, nevertheless, have not been heard by the governmental organizations that are authorized to approve them.

Another example is the fact that in February this year, the Ministry of Economy and Finances ordered the creation of a *programmatic classifier* that could identify the investments related to issues regarding disabilities made by the different sectors of the three levels of government (local, regional and institutions of the central government) – which is something that did not exist before and did not allow to know and control the investments made by the different levels of governments regarding the issue of disability – but, at the same time, that budget allocation should not be carried out to support the performance of orders required by the CRPD and its correspondent monitoring.

## National Council for the Integration of Persons with Disabilities (CONADIS):

### Evolution of Annual Budgets 2005-2010

#### Ministry of Women's Issues and Social Development (MIMDES)

Year	MIMDES	CONADIS	%	CONADIS PERFORMANCE%
2010	1,528,966,915	5,640,794	0.37	
2009	1,267,705,459	3,886,594	0.31	91.9
2008	986,417,426	2,476,746	0.25	66.2
2007	1,232,000,488	1,089,329	0.09	99.5
2006	1,279,911,413	3,998,691	0.31	91.3
2005	1,292,353,579	4,060,893	0.31	86.7

Source: Based on the Economic Transparency Website of the Ministry of Economy and Finance<sup>60</sup>.

The official report submitted by the State to the Committee says that:

“Specific plans are implemented within the planning of activities of public entities, highlighting its transversality and the adoption of verifiable budgeting commitments. **Additionally, the Equal Opportunities Act, Plan against Violence towards Women, Action Plan for Childhood and Adolescence, Older Adults Plan, Family Support National Plan, Equal Opportunities Plan** for

<sup>60</sup> See: <http://ofi.mef.gob.pe/transparencia/mensual/default.aspx?y=2004&ap=ActProy>





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Persons with Disabilities, among others, are all in force and defined to be monitored during an average period of five years. Ministries are in charge of their monitoring according to their competences...<sup>61</sup>

Likewise, it adds that:

“The Ministry of Women’s Issues and Social Development is the governing Ministry of public policies in the subjects of gender, protection and social development equity of vulnerable communities which are excluded, ensuring the exercise of their rights to widen their opportunities, improve their quality of life; and promote their personal and social development. Among the programs that it administers, we can find the National Cooperation and Social Development Fund – FONCODES (for the period July 2006 to February 2010, it reports an investment of 56 353 860 million Nuevos Soles – about 19,499’000 million Dollars- prioritizing its investment in social infrastructure projects -49%- and abilities development projects -51%-); the Wawa Wasi National Program (PNWW) that has among its direct beneficiaries minors below four years old, who require protection and care because their parents work or are looking for a job and do not have an adult person that can dedicate to their care care and guarantee a complete attention...”

Nevertheless, from the mentioned social programs, according to the “Report on the application of the International Convention on the rights of boys, girls and adolescents in Peru,” given to the Child’s Rights Committee in 2005 by the National Initiative Group (GIN), only in one of them – the Wawa Wasi Program (Daytime care service implementation program for poor children whose parents work outdoors) – beneficiaries with disabilities were detected, a presence otherwise marginal considering that there are only 882 children with disabilities in the Wawa Wasi Program, over a total of 40 thousand kids seen.

On the other hand, none of the action plans of the mentioned programs in the official report include specific indicators of attention for persons with disabilities nor the budgets for its corresponding fulfillment.

There are no result or impact indicators either in the governmental plans of the various public policies that could be applied to the population with disabilities; or serious statistical data that allows establishing baselines from which we can measure the fulfillment advances of goals and advance, impact and result indicators.

The Health investment of the current year, 2010<sup>62</sup>, adds more information to this matter: the total budget amounts to S/. 3,672,534,167 Nuevos Soles, from which only the 2.1% of the budgeted resources are assigned to the Rehabilitation National Institute (INR); the only one in the country, also situated in the capital. Furthermore, the Ministry of Health hardly spends 1.76% of its budget on institutes devoted to the mental health care.

The Equality and non-discrimination principle for persons with disabilities is not considered in the Persons with Disabilities General Act. It is not reflected either in the preparation of social policies or the approval of budgets to promote specifically its access to required measures taking into consideration the need to compare their opportunities. As previously mentioned, the lack of indicators for government social development plans in disability and the corresponding budgets, at all levels, perpetuates the attention’s invisibility of these measures demanded by the Convention.

Likewise, it is important to highlight that there has been various opportunities in which the Ombudsman’s Office has exposed discrimination cases against persons with disabilities, for instance, in its Unit Report No 005-2009-DP/ADHPD and in the Ombudsman’s Office Document No 002<sup>63</sup>.

<sup>61</sup> Official Report, page 25.

<sup>62</sup> See: <http://ofi.mef.gob.pe/transparencia/mensual/default.aspx?y=2004&ap=ActProy>

<sup>63</sup> See in Office Report No 005-2009-DP/ADHPD:

<http://www.defensoria.gob.pe/modules/Downloads/informes/varios/2009/Informe-005-2009-DP-ADHPD-vf.pdf>, and Ombudsman’s Report No 002: <http://www.defensoria.gob.pe/inform-defensoriales.php>



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Despite what has been mentioned before, we must admit that there has been a little progress, at least at the regulations level related to the equality of opportunities, specifically when considering as an infraction certain acts that prevent it through Law No 29392 (a law that establishes infractions and penalties for failing to comply with the Persons with Disabilities General Act and its regulations), approved in August 2009<sup>64</sup>. Or through the public budget laws of fiscal years 2009 and 2010, that included two critical sections so that the local and regional governments can aim budgets to disability issues. There are sections that authorize the use of 0.5% of their budgets to improve or provide accessibility to the urban infrastructure of cities, as well as municipal buildings that work at the service of all citizens and especially persons with disabilities and older adults. Said regulations also authorize the monthly expenditure of up to one Applicable Tax Unit (UIT) for the opening and the implementation of regional and municipal offices to attend persons with disabilities<sup>65</sup>. Whether or not the foreseen percentages are proportioned or negligible with regards to the stated purpose, the achievement reached with the suitable budgetary disposition measures is unknown.

In regards to the compliance of the Millennium Development Goals, there are no indicators on attention for children, young people, adults and women with disabilities in the national plans of the MDG.

## 2.5. Accessibility (CRPD, Article 9)

The ‘‘Standard Regulations regarding Equality of Opportunities for Persons with Disabilities’’<sup>66</sup> elaborated in the ‘‘World Program of Action for Persons with Disabilities’’ implemented by the United Nations in 1982, summons the States on its Article 5 to take measures in order to achieve the equality of opportunities, acknowledging ‘‘the global importance of the possibilities of access in the process of achieving equality of opportunities at all levels of society’’; pointing out, in particular, the duty to:

- ‘‘a) Set action programs for the physical environment to be accessible, and
- b) Take measures to guarantee the access to information and communication.’’

On its part, Article 9 of the Convention on the Rights of Persons with Disabilities establishes that Member States have the duty to take appropriate measures for persons with disabilities to live in an independent way and fully participate in all the aspects of life. Particularly, to take legislative measures as well as measures of other nature to assure the access of persons with disabilities, in equal conditions with other people: to the physical environment (including the use of warning signs and signposting on the streets): to transportation, to information and communications (including technology and systems of information and communications) and to other facilities and services provided for people by private organizations, even in urban and rural zones; to take technical regulations and guidelines regarding accessibility, as well as audits about its performance and sanctions in case they are not carried out; to apply the resources obtained through monetary sanctions to promote accessibility measures; to use regulations about public acquisition and other measures that establish mandatory requirements in terms of accessibility; as well as the way to identify and eliminate obstacles and barriers to accessibility, including private and public sector, and the existence of national plans of accessibility with clear goals and periods. In our internal field, article 43 of the General Law of Persons with Disabilities establishes that the Ministry of Housing, Construction and Reorganization and the Municipalities must coordinate the progressive adaptation of the urban design of the cities, adapting and providing them with modern technical tools for the use and easy commuting of persons with disabilities.

Sections 1 and 2 of Article 44 of the same law have established, moreover, that as of December, 1998, all facilities that are built for common, public and private use must have circulation access, rooms and halls, as well as facilities that are appropriate for persons with disabilities. In addition, owners and managers of businesses, premises and places where activities and/or public shows take place, as well as the organizers

<sup>64</sup> See [http://www.congreso.gob.pe/ntley/LeyNume\\_1p.asp](http://www.congreso.gob.pe/ntley/LeyNume_1p.asp)

<sup>65</sup> As recorded in Official Report, p. 52

<sup>66</sup> Document approved by the United Nations General Assembly, in its 48<sup>th</sup> period of sessions, through Resolution 46/96, of December 20<sup>th</sup>, 1993.



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of such activities and/or shows must prepare and set up access, areas, rooms, appropriate signs for the commuting of persons with disabilities, for the execution of each event.

In a different section, number 44.3, it was stated, in the same way, that all infrastructure of common, public and private use that was built prior to the promulgation of the Law, has a two-year period to set up circulation access, rooms and halls, for persons with disabilities to commute and use. Fortunately, that section was repealed by the Second Amending and Complementary Provision of Law N°27920, issued on January 14<sup>th</sup>, 2003.

Articles 61 and 62 of the Law Regulations<sup>67</sup> state, on its part, that “the design of common elements for development and urban furniture, as well as constructions built in the cities of the country must stick to the technical regulations for the current architectural and town-planning adaptation enforcing Local Governments the duty to make sure that cities have facilities for mobility and movement for persons with disabilities”; being CONADIS’s duty to manage, along with the Ministry of Transportation and Communications and the Ministry of Housing, Construction and Reorganization, as well as local Governments “to make sure cities have infrastructure of common, public and private use that provides facilities for mobility and movement as well as services for persons with disabilities.”

According to the report on “Disabilities and Accessibility” written by the Special Commission of Studies on Disabilities of the Peruvian Congress; by accessibility, it shall be understood a “necessary condition to allow people to participate in social and economical activities; purposes for which the infrastructure has been built.”<sup>68</sup>

Even though such accessibility is crucial to achieve social integration of persons with disabilities; it is properly provided as it should be. Like other people, PWDs require appropriate infrastructure; in transportation, communications, technology, construction, housing, etc. Nevertheless, according to the National Survey of Housing – EHODIS 2005, 57% of persons with disabilities in Peru have difficulty in connecting with society. The situation repeats for persons that have speaking and hearing limitations, who also claim, in high percentages, that they do not integrate with others easily<sup>69</sup>.

It is extremely common to see persons with disabilities dealing with physical barriers when entering supermarkets, educational centers or public places in general; coping with inappropriate urban and architectural constructions that prevent them from full integration. Such events point out how society is and not disability itself, which excludes and discriminates PWDs. Moreover, in that context, women with disabilities suffer the most, as it can be observed in the following chart:

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<sup>67</sup> Regulations of the General Persons with Disabilities Act, Supreme Decree No 003-2000-PROMUDEH.

<sup>68</sup> HUERTA PERALTA, Jaime and ISOLA LAVALLE, José Antonio. “Disability and accessibility – Unknown dimension” (“Discapacidad y accesibilidad – Dimensión desconocida”) Special Research Commission on Disability, Congress of the Republic, List of titles of the Congress of Peru, 2006.

<sup>69</sup> INEI – CONADIS (2006) “City of Lima: Socio-Demographic profile of the Population with Disabilities, 2005” (“Perfil Socio-Demográfico de la Población con Discapacidad, 2005”). Household Survey on Disability of the City of Lima – EHODIS 2005. Research carried out in the City of Lima and Callao, p. 130.



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Chart 3.52  
Population with Disabilities:

Do you have difficulty moving around the house?

Feature	Total	Yes	No
<b>Total</b>	<b>426 298 100%</b>	<b>85 855 20%</b>	<b>340 443 80%</b>
<b>Sex</b>			
<b>Male</b>	211 081 100%	35 357 17%	175 724 83%
<b>Female</b>	215 217 100%	50 498 23%	164 719 77%
<b>Age Groups</b>			
<b>0 to 14</b>	59 596 100%	7 993 13%	51 603 87%
<b>15 to 29</b>	57 578 100%	5 262 9%	52 316 91%
<b>30 to 64</b>	169 559 100%	26 584 16%	142 975 84%
<b>above 64</b>	139 565 100%	46 016 33%	93 549 67%
<b>Type of Disability</b>			
<b>One Disability</b>	234 223 100%	32 488 14%	201 735 86%
<b>Motor Disability and Skills</b>	81 715 100%	24 150 30%	57 565 70%
<b>Visual</b>	73 632 100%	5 139 7%	68 493 93%
<b>Speaking</b>	16 757 100%	525 3%	16 232 97%
<b>Hearing</b>	41 309 100%	1 706 4%	39 603 96%
<b>Intellect</b>	9 559 100%	468 5%	9 091 95%
<b>Behavior</b>	11 251 100%	500 4%	10 751 96%
<b>Two Disabilities</b>	111 758 100%	24 031 22%	87 727 78%
<b>Three or more disabilities</b>	80 317 100%	29 336 37%	50 981 63%

Source: INEI-CONADIS. Survey of Households on Disabilities in the City of Lima - 2005

Among the main urban and architectural barriers that are commonly present in Peru, we have the lack of wheelchair ramps or appropriate types of access, the lack of restrooms adapted to public places, the privation of public transportation for persons with disabilities, the lack of appropriate tarmac in roads and sidewalks, and others<sup>70</sup>.

The indolence of authorities on extreme difficulties that persons with disabilities face every day lets those barriers remain. Moreover, the approval of several regulations prevails over those barriers and limits the impact they make in terms of physical accessibility. That is the case of the technical regulations included in mechanisms such as the General Law of Persons with Disabilities, which was previously mentioned, and its regulations. We can mention Law No 27920, which establishes sanctions on the non-fulfillment of technical regulations on urban and architectural adaptation<sup>71</sup>; Law N° 28084, which regulates special parking for vehicles carrying persons with disabilities<sup>72</sup>; Law No 27408, which deals with special treatment to pregnant women, elderly people and persons with disabilities<sup>73</sup>; Law N° 28735, which focuses on attention to persons with disabilities, pregnant women, elderly people in airports, airfields,

<sup>70</sup> HUERTA PERALTA, Jaime and ISOLA LAVALLE, José Antonio. Op. Cit.

<sup>71</sup> Law No 27920, from December 20<sup>th</sup>, 2002, with which sanctions were established by the non-fulfillment of Construction Technical Regulations NTE U.190 and NTE A.060, on urban and architectural adaptation for persons with disabilities.

<sup>72</sup> Adopted by the Peruvian Congress on September 16<sup>th</sup>, 2003, points out that the responsibility of the fulfillment of the technical regulations of urban and architectural adaptation lies on municipalities, since the municipality officials are in charge of verifying that license requests for constructions are adapted to the regulations in force. Likewise, it establishes that, before the non-fulfillment of the corresponding regulations, fines will be imposed as well as keeping the obligation of correcting the infrastructure, since otherwise, public use of the building would not be possible.

<sup>73</sup> Approved on January 23<sup>rd</sup>, 2001, and then modified on March 11<sup>th</sup>, 2006 by Law No 28683. It establishes that in public facilities pregnant women, girls, boys, elderly people and persons with disabilities must be attended with priority access. Likewise, public use facilities and services, private or state-owned, must implement measures to facilitate its use and/or access.



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train/railway stations, marine terminals, river ports and means of transportation<sup>74</sup>, Law N° 27157, which regulates constructions<sup>75</sup>; or the National Regulations for Constructions<sup>76</sup>, among other, like Law N° 23347, which regulates that there must be at least one wheelchair ramp of easy access for persons with disabilities to enter schools, churches, libraries, universities and public buildings with no difficulties<sup>77</sup>.

However, the problem does not lie in the lack of corresponding regulations, but in the lack of control and impunity that prevails on the violations and infringements of the fixed regulations. Unfortunately, the municipalities do not verify the consistency of the license requests with the regulations and they do not punish their infringements.

That is the general situation that the Ombudsman's Office informed on its Ombudsman's report 114 concerning accessibility<sup>78</sup>.

Regarding air transport, the situation does not get any better. The following examples can illustrate the situation better. According to the Security Guide for the Passenger, published by the General Direction of Civil Aeronautics of the Ministry of Transportation of Peru, passengers – with no exception – are not allowed to take their pets inside the passenger's cabin. However, persons with disabilities need service animals that help them perform their daily activities. This expresses vulnerability of rights, given that service animals help persons with disabilities to move or to perform certain tasks.

Another example is the one that is part of the Extraordinary Technical Guidelines N° 4, approved by the Directorial Resolution 218-2003-MTC-12 of August 30<sup>th</sup>, 2003, that states that necessary measures have to be taken to guarantee the access of persons with disabilities to services of air transport, since they get to the departure airport until they leave the arrival airport. According to the study on accessibility elaborated by the Commission of Studies on Disabilities by the Peruvian Congress in 2006<sup>79</sup>, airlines that provide services inside the country do not have well-trained personnel or the necessary equipment for the boarding and landing of persons that use wheelchairs. In addition, they do not have information regarding the Braille system for blind persons and the personnel on board does not know how to communicate with deaf persons or persons with difficulty in hearing.

The issue of lack of information for persons with disabilities does not only take place on board, but also in the facilities of the airport. Moreover, in national airports there are not any information areas for blind or deaf persons; which puts them through a helpless situation.

<sup>74</sup> Law No 28735 of April 24<sup>th</sup>, 2006, published on May 18<sup>th</sup>, 2006, established the regulations that regulate the attention of passengers with disabilities, pregnant women and elderly people at airports and aerodromes; as well as bus, train, sea and river stations, route station, airplanes, land transportation vehicles and trains, in order to guarantee the respect of the principles of equal rights, movement and choice, and the right to develop themselves with the highest level possible of autonomy and independence; as well as the right to safety during travels and transportation. It is mandatory applying said Law, in all airports, aerodromes and civil and commercial airplanes, including military planes carrying civil personnel; in bus, train, sea and river terminals and route station; in interprovincial land transportation vehicles for passengers and interprovincial tourism and passenger trains nation-wide. Companies in charge of airports, bus, train, sea and river terminals and route station; as well as airplanes, services of interprovincial land passenger transportation, interprovincial tourism and trains for passenger transportation operators, who will adopt the following accessibility measures for passengers with disabilities, pregnant women and elderly people.

<sup>75</sup> Establishes procedures for the reorganization of ownership and property units in which goods of exclusive and joint property, such as apartments in buildings, apartment buildings, houses in co-ownership, shopping malls or centers or fairs, other property units with joint goods and construction of exclusive property goods; as well as the procedure for acquiring the factory statement and the legal regime of the property units that comprise goods of exclusive and joint property.

<sup>76</sup> The former National Regulations for Constructions was replaced on June 2006 by the National Regulations for Buildings published in the official gazette "El Peruano" on Thursday 8<sup>th</sup>, June 2006.

<sup>77</sup> Published on December 9<sup>th</sup> 1981. It points out as well that hospitals that do not count with adequate ramps and corridors for the movement of wheelchairs shall be subject to their respective remodeling. It also prescribes that public buildings are obliged to count with adequate elevators, with enough capacity to carry wheelchairs, as well as sidewalk corners with a design allowing the movement of wheelchairs; and that zoning plans of the City of Lima and the principal cities of the country count with Rehabilitation Centers with easy access for persons with disabilities. The Law points out that the National Office of Town Planning will be in charge of coordinating the specific regulations for the elimination of architectural barriers and that said entity shall *recommend* the law's scope to the city's Municipalities, with the purpose of taking the appropriate measures for contributing with the integration of persons with disabilities as active members of society.

<sup>78</sup> See Ombudsman's Office, Ombudsman's Report 114 on accessibility in <http://www.defensoria.gob.pe/inform-defensoriales.php>

<sup>79</sup> HUERTA PERALTA, Jaime and ISOLA LAVALLE, José Antonio. Op. Cit. Pages 80-83.



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The infringement of urban and architectural provisions that allow accessibility for persons with disabilities, is the only violation related to this issue and included in the Law of Infringements and Sanctions<sup>80</sup>.

Regarding access to information, through Law N° 27471<sup>81</sup>, it has been stipulated that all educational and cultural programs of information of national production broadcast by the Peruvian Institute of Radio and Television (INRT) must also include visual means of communication, progressively on private and cable TV, where signs, body language and texts are used for persons with disabilities – due to hearing impairment – to communicate and read.

The National Regulations of Constructions, on its part, contains Rule A.120 “Accessibility for Persons with Disabilities”, which includes what is set forth on the NTE A.060 and NTE U. 190, technical rule that establishes conditions and technical requirements for design to elaborate projects and execute building constructions and to adapt the existing ones wherever possible, in order to make them accessible for persons with disabilities. However, such conditions and requirements must be revised since there are aspects from the previous rules that have not been included in the current regulations regarding accessibility.

The National Regulations of Constructions also establishes the infringement of this Rule as a punishable violation, pursuant to Law mandate N° 27920 on Violations and Sanctions due to infringement of the rules of accessibility. This last rule states that municipalities are the institutions responsible for imposing established sanctions. Therefore, the revenues collected from the imposition of fines must be set aside for local projects or programs for social, labor and educational support in favor of persons with disabilities; as well as for programs that assure the compliance of the current regulations regarding accessibility. CONADIS is the organization in charge of controlling the compliance of Law and appropriately informing the corresponding municipality about the commission on violations under its jurisdiction.

The new Law N° 29392 regarding violations and sanctions on failure to comply certain articles of the General Law of Persons with Disabilities (some of them are related to issues different to accessibility), states that the Ministry of Women’s Affairs will be in charge of imposing sanctions instead of the municipalities; which will involve difficulty nationwide. The revenues collected from the imposition of fines shall be exclusively set aside for CONADIS to promote the rights of persons with disabilities nationwide. It would be better if municipalities were the ones in charge of the imposition of fines. Likewise, it would be wiser if both municipalities and MINDES-CONADIS were in charge of controlling.

There are many reasons for that: it is necessary to decentralize the government’s functions; it is crucial to strengthen the functions and resources of the Municipal Offices for Attention to Persons with Disabilities (known as OMAPEDs), which are located in all the cities of the country, which is not the case for CONADIS. The revenues collected from fines due to non-accessibility could economically support the development of its functions. Another reason is that organizations in charge of granting construction

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<sup>80</sup> Law No 29392 became effective on January 1<sup>st</sup> 2010. It financially sanctions people who do not fulfill the provisions established in the General Persons with Disabilities Act and its regulations. This Act establishes infractions and sanctions and fixes fines that, according to the type of offense (misdemeanor, gross misconduct or extreme misconduct), range between the 50% of 1 Applicable Tax Unit (UIT) equivalent to S/. 1,775 and 12 UITs (S/. 42, 600). Article 6.3.c distinguishes the “contravention of architectural and urban dispositions that allow the accessibility of persons with disabilities, taking the environment into consideration” as an extreme misconduct. However, roughly 68 thousand persons with disabilities, out of approximately 3 million in the country, can access the benefits of this regulation because only these 68 thousand are registered in the National Registry of Persons with Disabilities of the National Council for the Integration of Persons with Disabilities, and count, therefore, with a license that allows them the access to most of the benefits of the Persons with Disabilities Act.

<sup>81</sup> The Peruvian Congress approved Law No 27471 on May 11<sup>th</sup> 2001, Law for the use of Additional Visual Media in TV programs and of Public Service on Cable TV for persons with Disabilities due to Auditory Deficiency. It points out that national news, educational and cultural programs, broadcasted by the Institute of Radio and Television of Peru, “must include (sic) additional visual media with sign or manual language and texts, for the communication and reading of persons with disabilities because of auditory deficiency” (article 1), additionally, it indicates that “National news, educational and cultural programs, broadcasted by television and for public service by cable TV, [will] include *optionally and progressively* the use of additional visual media, under technical methods and phases established by the Regulations of the Law mentioned herein” (article 2).



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licenses (municipalities) shall supervise the compliance of the Technical Rules in new constructions, before they are built.

Regarding the rules on accessibility, the Technical Committee for the Standardization of Accessibility to the Physical Environment of INDECOPI has been set up. This committee, conformed by different institutions, from both the public and private sector, will elaborate new technical rules of accessibility for persons with disabilities in urban and architectural areas, taking international regulations into consideration. In that sense, its duty is to establish minimum requirements for universal design to be met by the rooms, equipments and means of transportation for them to be suitable for persons with disabilities to use without difficulties or obstacles when they perform individual or group activities. This activity is related to the acquisition of ISO approval for buildings.

However, as it has been previously mentioned, there is no information concerning the compliance of the regulatory provisions on budgets 2008 and 2009 regarding the use of 0.5% of each municipality's budget for the execution of buildings, repairing or modifications in order to improve or provide accessibility to the urban infrastructure.

Law N° 28735<sup>82</sup> was issued on May 18th, 2006 in regards of accessibility in air transport. Such Law controls the attention for persons with disabilities, pregnant women and elderly people in airports, airfields, bus stations, train/railway stations, marine terminals, river ports and means of transportation; it also establishes sanctions that go up to 50 UITs, depending on the degree of the misdemeanor on this matter.

On its temporary and final provisions, the law approved on May 16<sup>th</sup>, 2006 stated that companies had to adapt to the law within a year and that the Executive Branch would announce the statutory regulations and other administrative lawsuits. Nevertheless, even though well-known experts with disabilities supported the elaboration of the regulations, the companies have not adapted to its mandates or the announced regulations so far.

On the other hand, it should be noted that there is regulated legislation for incorporating options of access on web pages in public and private organizations as well as in universities that provide online services, for persons with visual disabilities to be able to access the information. However, there are still important official web pages of public institutions that do not comply with providing accessibility, such as the Office of the President of the Republic, the National Superintendency of Tax Administration (SUNAT), the Superintendent's Office of Public Registry, the Ministry of External Affairs, the Ministry of Housing, and the Ministry of Transportation, among others.

In addition, other official web pages, do not allow to download important information attached in an accessible version; which is the case of the official gazette "El Peruano", which publishes legal regulations issued by the government; also the case of web pages of MINDES, the Ministry of Labor, the Ministry of Health, the Ministry of Trade, the Ministry of Energy and Mines, or the Ministry of Production.

There are no accessible public services of transportation, either; that is, services conformed by buses adapted with platforms for wheelchair access, and the audible traffic lights, which are absolutely rare in our urban environment.

## **2.8 Awareness (CRPD, Article 8)**

Article 8 of CRPD establishes the Member States' duty of applying effective policies in favor of an awareness of this population sector, promoting a positive image of persons with disabilities; a greater awareness of themselves; the encouragement of respecting their rights and dignity; the recognition of their capabilities and contributions; as well as going against the stereotypes and prejudices that are created towards them.

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<sup>82</sup> See <http://www.lagranvida.com.pe/data/normas.legales/Ley-28735.pdf>



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States must also implement awareness campaigns aimed to the whole society, within the education system, and through the main spreading means. Moreover, they must announce the Convention and the rights it acknowledges, reporting this matter to the persons with disabilities and other society sectors.

However, in Peru, persons with disabilities face many kinds of obstacles that hamper their full participation in society. And many of these obstacles emerge because persons with disabilities are not sufficiently considered.

The basic factors that generate these obstacles are created by a restricted or null access to the social environment and services; by unemployment; by lack of proper teaching; by marginalization towards persons with disabilities and insufficient compensation of disability derivative additional costs. Not to mention that the discrimination towards persons with disabilities leads them frequently to poverty and social exclusion.

Some of these barriers, as the ones from the environment or communication could be deleted with proper legal measures; meanwhile others, based on people's idiosyncrasy, would require permanent awareness campaigns. These campaigns are, unfortunately, rare in our society: The State has a TV channel (Canal 7) and a nation-wide radio (Radio Nacional del Peru) at its disposal, but these means hardly ever have a program space to promote a positive image of the persons with disabilities or a greater awareness of themselves.

The representatives of organizations of persons with disabilities, summoned by CONFENADIP to discuss this report, held that the State does not promote the Convention spreading, although it could do it through El Peruano Gazette, Canal 7 or Radio Nacional del Peru. And this lack of spreading happens in the regional and local governments.

So, the Peruvian State is not doing its duty of carrying out the training and spreading activities of the Convention among the state officers, the whole population or even persons with disabilities. And as a consequence, the state and social insensitivity, with the organizational dispersion of persons with disabilities, allows, in many cases, serious setbacks in legal matters or a total scarcity of the foreseen enforceability mechanisms to guarantee their rights.

The spreading that the Peruvian State brings to the CRPD is proportional to the poor resources that it gives to the sector. In a field, however, in which it is necessary to highlight the efforts that are carried out by entities such as the Peruvian Congress Special Disability Commission, that has released and promoted around 1 550 printed copies of the Convention in text and 500 in Braille format, or CONADIS that has published around 5 000 printed copies of the Convention. On its part, the Peruvian Congress has carried out in recent dates a public hearing in Lima and fourteen inside the country, in order to train about the Convention content; hearings in which it is reported that around 1500 persons with disabilities and their families have participated.

Despite these progresses, an evident campaign has not been carried out regarding the dispersal of the Convention or the information against stereotypes, prejudices and discrimination, which continue and affect the persons with disabilities, in other social scenarios such as schools or private means of communication. Except for the weekly program of the CONADIS radio that, contrary to the general trend, has promoted the Convention.

## **2.9 Risk situations and humanitarian emergencies (CRPD, article 11)**

Article 11 of the Convention on the Rights of Persons with Disabilities binds the member States to guarantee protection and safety of persons with disabilities in risk situations, including situations of armed conflicts, humanitarian emergencies and natural disasters. To fulfill this obligation, States shall adopt measures to guarantee the protection and safety of persons with disabilities, including them in national emergency protocols, and they shall also assure that the humanitarian help assistance is distributed in an accessible way to persons with disabilities found in a humanitarian emergency situation, applying adopted measures to assure that there are latrines and accessible toilet facilities for persons with disabilities in emergency shelters and refugee camps.

Nonetheless, Peru lacks prevention and attention measures for persons with disabilities in situations of natural disasters, considering that Peru is –paradoxically- located in an area with historically seismic





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characteristics. Furthermore, geographically, Peru is part of the Pacific Ring of Fire and therefore, it has a high seismic potential.

Among the strategies included in the National Plan for Prevention and Attention in Natural Disasters<sup>83</sup>, there is no specific treatment for persons with disabilities and most vulnerable population. However, as highlighted by said Report, Peru is located in a zone of very active tectonic and volcanic interaction that generates high seismicity conditions. The alteration of the oceanic – atmospheric conditions causes, moreover, very destructive recurrent phenomena; and the existence of The Andes determines a varied external geodynamics phenomenology that permanently threatens the country.

Beside the described natural disasters we can also find the ones generated by men because of an inadequate use of the territory that pollutes the air, soil, ocean and inland waters and, also, often times, they aggravate the effects of disasters of natural origin. Throughout our history, the consequences of these natural events have led to huge economic loss and the loss of lives, as well as thousands of victims and the deterioration of our quality of life.

The earthquake in Ancash on May 31<sup>st</sup>, 1970, for instance, was of 7.8 degrees in the Richter magnitude scale and left 67,000 deaths, 150,000 injured people, 800,000 homeless people and 2'000,000 affected people. Additionally there were 95% of adobe houses destroyed.

The earthquake in Nazca on November 12<sup>th</sup>, 1996, was of 6.4 degrees in the Richter magnitude scale. It left more than 100 thousand victims, 624 injured people, 14 deaths and 4 thousand destroyed houses, 11,071 affected houses and 80% of adobe houses were destroyed.

The earthquake in Arequipa on June 23<sup>rd</sup>, 2001, was of 8.4 degrees in the Richter magnitude scale. It affected the departments of Arequipa, Moquegua, Tacna, Ayacucho and Apurimac. It caused the collapse of drainage systems of the cities mentioned above; 66 persons were missing, most of them from the coastal area of Camaná because of the tsunami that it caused; it left 1,565 injured people, 17,584 destroyed houses and 35,601 affected houses.

The last earthquake that hit our country was in Ica on August 15<sup>th</sup>, 2007. It was of 7.9 degrees in the Richter magnitude scale, its hypocenter was located in the seaside of Ica, southwestern area of Peru, at 30.2km deep. It left 519 deaths, 1,366 injured people and 56,363 completely destroyed houses.

Apart from earthquakes, Peru gets hit by seaquakes or tsunamis, floods, droughts, El Niño-Southern Oscillation and alluviums. Nonetheless, there are no regulations in the national legislation, nor activities developed by the national institute of Civil Defense on prevention and attention specifically and first and foremost focused in favor of persons with disabilities in situations of natural disasters, because of their vulnerable situation. The attention for persons with disabilities in earthquake drills is not visible either.

The Directive No 002-2010-INDECI (“INDECI Regulations for Persons with Disabilities”), which has been mentioned in the State’s Official Report on the fulfillment of the Convention, does not exist either.

## **2.10 Equal acknowledgement as a human being before the law (CRPD, article 12)**

Article 12 of the Convention on the Rights of Persons with Disabilities reaffirms that persons with disabilities have the right to the acknowledgement of their legal person. To guarantee the fulfillment of this right, the States must adopt measures to assure that persons with disabilities can carry out their legal capacity in equal conditions as the rest of people in every aspect of life, particularly the measures to guarantee the right of persons with disabilities to maintain their physical and mental integrity, to fully participate as citizens, to be owners and inherit properties, to control their own economical matters and to access bank loans, mortgages and other types of financial credit in equal conditions, and their right to not be deprived arbitrarily from their goods. Likewise, they should assure that their legislation does not restrict the full legal capacity because of a disability, as well as watching over the existence of support for

<sup>83</sup> National Plan for Prevention and Attention in Natural Disasters, National System for Civil Defense, approved through Supreme Decree No 001-A-2004-DE/SG on January 15<sup>th</sup> 2004.



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persons with disabilities so that they can carry out their legal capacity and manage their finances; guarantee that they have safeguards at their disposal against the abuse of the assisted models for adopting decisions; promote awareness and implement educational campaigns on the acknowledgement of the equality of persons with disabilities before the law.

The Peruvian Civil Code denies the ability to exercise their civil rights to deaf-mutes, blind deaf and blind mutes that cannot express their will indubitably, and to mentally handicapped persons or that suffer from mental damage. Likewise, it determines that those who suffer from a chronic mental illness, even if the person has lucid intervals, the blind deaf and blind mutes that do not know how to express their will indubitably cannot get married.

## 2.11 Access to Justice (CRPD, Article 13)

The International Covenant on Civil and Political Rights states in its Article 14.1 that every person has the right to be publicly heard, with the proper guarantees, when he/she defends him/herself against any legal accusation or when he/she determines his/her civil rights or duties. On its part, the American Convention on Human Rights in its Article 8.1 has a similar regulation, but, in this regulation the right's scope is extended as well as these guarantees' application in the whole process, stating that:

“Every person has the right to be heard, with the proper guarantees and within a reasonable term, by a competent, independent and impartial judge or court, previously established by law, in the defense against any legal accusation against him/her, or for the determination of his/her civil, labor, fiscal or other rights and duties of other nature.”

The Inter-American Court of Human Rights has stated about this matter that:

“when the Convention refers to the right of every person to be heard by a competent judge or court for his/her rights determination, this expression refers to any public authority, whether administrative, legislative or judicial, that determine through its resolutions the persons' rights and duties.”

The Article 13 of the Convention on the Rights of Persons with Disabilities acknowledges, on its part, the right of persons with disabilities to have effective access to justice in the same conditions as the other people, without being excluded from the legal procedures. To guarantee this right, the States must adopt measures to ensure to persons with disabilities the effective access to justice in all of the stages of legal procedures, including the instruction phases and other preliminary stages. Likewise, they must ensure the effective training of the Judicial Branch and national penitentiary system about the respect of persons with disabilities' rights; guarantee the existence of reasonable adjustments, including procedure adjustment in legal processes to ensure the effective participation of persons with any kind of disability in the justice system, independently of their situation (e.g. as victims, defendant, witnesses, jury members, etc.); as well as adjustment related to age, to guarantee the effective participation of children and young people with disabilities.

Our Constitution also acknowledges the right of any person to have access to justice, including all persons with disabilities. And, in the legal field, when the Law No 28983, (“Equal opportunities between women and men Act”), refers to the Judicial Branch and the Justice Administration System's Guidelines, specifies that for the purposes of the Law fulfillment the “access to justice in the same conditions, impelling the modification of discriminatory conceptions, attitudes and values of the justice officials. Principle that, by extension, involves women and men with disabilities, so in a constitutional and legal way, persons with disabilities have the right to have access in an effective way to justice in the same conditions as the other people, without being excluded from legal procedures.

However, persons with disabilities have to face great difficulties in order to have access to justice. Among other reasons, (i) because their access to physical facilities of the establishment where justice is imparted, especially in the provinces inside the country, and for persons with physical limitations, it is not always feasible because of the lack of proper ramps or elevators, as well as difficulties that are provoked by a transport system that is not connected to PWDs' needs; (ii) because, in the case of persons with visual and hearing limitations, the courts that could know their wishes, do not have mouthpieces; or (iii) because economical limitations that traditionally sign their existence prevent them to pay for the legal procedures and assistance that are required to prosecute an action in justice.



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The General Persons with Disabilities Act grants in its Article 8 subsection i) faculties to CONADIS to bring Compliance lawsuits in favor of persons with disabilities. Nevertheless, the twelve years that have passed since the approval of such law and the existence of an evident noncompliance of regulations that acknowledge the persons with disabilities' rights, such entity has not exercised said faculty until today.

The case of the Ombudsman's Office is different, its action in defense of the persons with disabilities' rights has been more evident. For example, one of the cases of its participation is in favor of Edwin Romel Bejar Rojas's rights; he was affected by discrimination actions in the public administration access. In this case, Edwin Romel Bejar Rojas made a complaint against the National Council of Magistrates (CNM), because he was excluded from the process of selection and appointment for the Provincial Assistant Public Prosecutor post of the Cusco public prosecutors pool due to his visual disability (bifocal blindness). So, because of this situation and the refusal from the CNM of accepting Ombudsman's Office recommendations of including him in the process mentioned above, the Ombudsman's Office accompanied the sentence execution in order to watch over the respect of Edwin Romel Bejar Rojas's rights.

In its Ombudsman's Report No 140 about "Mental Health and Human Rights", referred to the dramatic situation of people confined in mental health institutions, the Ombudsman's Office itself has been emphatic in reminding the sector authorities that the "Principles for the Protection of the people with mental illnesses and the improvement of the mental health service" establish the need to implement specific mechanisms to protect their rights. In accordance with that, all patients must have the possibility to make a complaint due to their rights violation; this must be processed according to the guarantees of the due process. There is also another obligation of watching over the mechanisms to inspect the psychiatric institutions, investigate and solve complaints, and establish proper disciplinary or judicial procedures for improper professional behavior cases or patients' rights violation. An area in which Mental Health Institutions Administrators have the obligation to provide patients with all kind of facilities in order to not hamper the exercise of their right.

The persons with disabilities organizations that are called to authenticate this report highlighted the great difficulty that represents the access to justice by people with a certain mental or psychosocial disability, because they are prevented from reporting or litigating for their rights, since the Peruvian legal framework treat them as disqualified people to make complaints, even when they feel they bear injustices, abuses and they want to defend their rights. As a consequence, many of these people are not considered before law.

Persons with psychosocial disabilities are frequently taken to police stations because they are not "well dressed" or they do not "speak clearly". In fact, many officers think that these people are criminals or drug addicts, and they hit them, and they do not have the chance to defend themselves.

## **2.12 Freedom and safety (CRPD, article 14)**

Section 2.24 of the Political Constitution of Peru establishes that every person has the right to freedom and personal safety. This right is also found in article 14 of the Convention that establishes the obligation to assure that persons with disabilities enjoy their right to freedom and personal freedom, as well as not being deprived of their freedom illegally or arbitrarily, because of the existence of a disability.

To fulfill this purpose, the States have to adopt measures in order to guarantee this right; even abolish any legislation that allows freedom institutionalization or deprivation of all persons with any type of disability and the adoption of legislative measures and of other nature that are required to assure that the required reasonable adjustments are being offered to persons with disabilities that have been deprived of their freedom, and that they are benefiting from the same procedural rights as the people that can fully enjoy the rest of human rights.

Even though the General Persons with Disabilities Act does not expressly consider these rights, we can say that the constitutional expression "all persons" covers persons with disabilities from every intention of excluding them from enjoying it. We can say the same of regulations such as the Children and



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Adolescents Code that points out that every child has the right to freedom, which naturally includes, by extension, girls and boys with disabilities.

## 2.13 Protection against torture and other cruel, inhuman or degrading treatments (CRPD, article 15)

Article 15 of the Convention establishes the obligation to protect persons with disabilities against torture or other cruel, inhuman or degrading treatment or penalties. For that purpose, the member States of the Convention shall adopt protection measures so that persons with disabilities, including the ones that need support to carry out their legal capacity, are not subject to medical or scientific experimentation without their free and informed consent; and they shall include persons with disabilities in national strategies and mechanisms to prevent torture.

Torture and cruel, inhuman and degrading treatments are rejected as practices in the Peruvian Constitution, of which section 2, subsection 24, paragraph H says that every person has the right to freedom and to personal safety. Therefore:

“No one should be victim of physical or psychological violence, or subject to inhuman or humiliating treatments. Anyone can ask immediately for the medical exam of the affected person or of the person disabled to approach the authority. Statements obtained with violence have no value and the person who uses them will fall into responsibility.”

Likewise, it guarantees the right of every person to personal integrity (see subsection 2.12 supra), therefore nobody can be subject to cruel treatments, torture or inhuman procedures.

In addition, the Peruvian State has ratified the “Convention against Torture and other cruel, inhuman or degrading treatments or penalties”<sup>84</sup> that establishes that torture represents any act which inflicts deliberately serious pain or suffering, whether physical or mental, with the purpose of obtaining information or a confession from a person or a third party, punishing them for an act they have or may have committed, or intimidating or coercing that person or others, or for any reason based on any type of discrimination, when said pain or suffering is being infringed by a public officer or any other person that practices public functions, at his own instigation, or with his consent or acquiescence<sup>85</sup>. The same Convention points out that exceptional circumstances to validate said acts will not be invoked.

Despite its importance to safeguard their dignity, the General Persons with Disabilities Act does not consider explicitly any protection over these acts. On the other hand, as various Reports in this matter issued by the Ombudsman’s Office demonstrate, the situation to be dealt with is far from being considered appropriate with conventional and constitutional provisions mentioned above.

We can mention, on this note, the Ombudsman’s Reports No 63 and 127<sup>86</sup>, on the right to education of persons with disabilities; as well as the Ombudsman’s Reports No 102 and 140<sup>87</sup>, on mental health and rights of persons with mental disorders. These reports illustrate the precarious situation of the rights of persons with disabilities that receive attention at educational and mental health establishments in Peru.

The reports No 63 and 127, in regards to the educational scope, directly relate the mistreatment or degrading treatments infringed to children with disabilities as an abuse to their rights to life and integrity. In these reports the high number of registered mistreatment cases in special educational centers during year 2009 is specified, providing references as:

<sup>84</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Penalties was approved by the UN General Assembly by Resolution 39/46 in its General Assembly on December 10<sup>th</sup> 1984.

<sup>85</sup> Convention against Torture and other cruel, inhuman or degrading treatments or penalties, article 1.

<sup>86</sup> Ombudsman’s Report No 63 from December 2001 / Ombudsman’s Report No 127 from November 2007.

<sup>87</sup> Ombudsman’s Report No 102 from December 2005 / Ombudsman’s Report No 140 from April 2009.



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“If we only consider educational centers that register a type of mistreatment, which are 38, we can see that in 53% of them they speak with the parents (and in some cases they report the event) and 45% report the case, in addition, to DEMUNA or to the Police.<sup>88</sup>”

Report No 127 reminds the obligation of educational centers to protect students with disabilities against discrimination and violence, and states as well that 15.6% of interviewed teachers reported having one of these cases; this percentage is similar to the one reported by the students interviewed on this matter (15.7%).<sup>89</sup>

In regards to mental health establishments, through their Reports No 102 and 140, the Ombudsman's Office has reminded the authorities that they have the obligation to offer a decent treatment and respect the integrity of patients treated in said establishments, providing them with appropriate basic services like water and electricity, as well as a good nutrition, appropriate cleaning and enough space for their attention<sup>90</sup>.

The organizations of persons with disabilities of all the country called to validate this report, on the other hand, were emphatic to point out the notorious prevalence of mistreatment for boys and girls with disabilities at home, in educational centers and by authorities. They also highlighted, as a type of mistreatment, the fact that there are no available medicines for patients who suffer from schizophrenia, or that there is a large lack of specialists for PWDs in regions (particularly psychologists, psychiatrists and rehabilitation practitioners.)

The organizations of PWDs have also highlighted the frequent rape of boys and girls with disabilities in educational centers (specially the ones who suffer from mental retardation); situations in which offenders are usually imposed minor penalties. Likewise, they highlighted the omission of the registration of boys and girls with disabilities in the Municipality because this means mistreatment. They also equally reported the sterilization of women with disabilities without consulting the affected ones.

## **2.14 Protection against exploitation, violence and abuse (CRPD, Article 16)**

Article 16 of the CRPD protects every person with disabilities, especially children and women with disabilities, from any kind of exploitation, violence and abuse, in and out of their families. In order to guarantee the exercise of this right, the States must adopt legal, administrative, social, educative and measures of other nature to protect persons with disabilities, in and out of their families, against every kind of exploitation, violence and abuse, including those related to gender and childhood.

The social protection measures must be aimed to support persons with disabilities, including their families and caregivers, and to prevent, acknowledge and report cases of exploitation, violence and abuses, including those related to gender and childhood. All the services and programs aimed to serve the persons with disabilities must be, also, effectively supervised by independent authorities.

The States are obliged to ensure to persons with disabilities that are victims of violence the access to effective programs of social recovery, rehabilitation and reintegration. Likewise, they must adopt measures so that the available services and resources are accessible for persons with disabilities in order to prevent violence, and support and help victims. Their legislation and policies, including the legislation and policies that are focused on women and children, must guarantee the acknowledgement, investigation and, if applicable, submission to justice of all the cases of exploitation, violence and abuse against persons with disabilities.

Regarding the parameters that the Peruvian authorities must follow, the 7<sup>th</sup> Policy of State of the National Agreement called “Violence eradication and Civism and Public Safety Strengthening” comprises the Peruvian State's compromise of fighting against the rooted violence in our society, like family mistreatment and the violation against the physical and mental integrity of children, elderly men

<sup>88</sup> Ombudsman's Report No 63, page 90.

<sup>89</sup> Ombudsman's Report No 127, pages 85 and 87.

<sup>90</sup> Ombudsman's Report No 102, page 212 and Ombudsman's Report No 140, pages 279 to 286.



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and women; as well as consolidating policies aimed to prevent, discourage, penalize and eliminate those social behaviors and practices that threaten the persons' calmness, integrity or freedom.

On its part, the 16<sup>th</sup> Policy of State of the National Agreement called "Family Strengthening, Childhood, Adolescence and Youth Protection and Promotion", establishes the State's compromise of promoting a family community respectful of all members' dignity and rights, and states that it is a Policy of State to prevent, penalize and eradicate the violence within the family relationships.

Through Law No 27337 of July 2000, the Children and Adolescent Code was approved. It considers that children are all human beings since their conception until 12 years old; and adolescents those who are between 12 and 18 years old. 3 of its 252 Articles contain explicit references in accordance with the disability matter and the children with disabilities' rights:

"Article 14: Children and adolescents have the right to education. The State ensures free public education for people who have economical limitations. Children and adolescents must not be discriminated in an educational institution, due to their disabilities or their parents' marital status. The girl or adolescent that is pregnant or is a mother must not be prevented from continuing studying".

"Article 23: Apart from the rights stated in the Convention on Children's Rights and this Code, children and adolescents with disabilities enjoy and exercise the rights that are inherent to their own condition. The State, preferably through the Ministries comprised in the National Council of Persons with Disabilities and society will ensure the equality of opportunities to have access to conditions that are suitable for their situation with adapted material and services, such as health, education, sport, culture and work training. Likewise, their full personality development is ensured to the full of their potential, as well as a full and honorable life enjoyment, facilitating their active participation, equality and opportunities in the community."

"Article 36. - Children and Adolescents with Disabilities Program. - The child and the adolescent with disabilities, temporal or permanently, have the right to receive assisted and permanent attention, under the Health Sector responsibility. They have the right to a specialized education and the work training under the Education and Employment Sectors responsibility.

The abandoned person with disabilities has the right to an assisted and permanent attention under the PROMUDEH responsibility."

Nevertheless, regarding its application field, the Code specifies that "it will be applied to every child and adolescent in the Peruvian territory, without any distinction by race, color, gender, language, religion, political view, nationality, social background, economical status, ethnic group, physical or mental disability, or any other condition, whether it is his/her own or his/her parents', so all the regulations are applicable to every child and adolescent with disabilities.

Although its protection field is wide, the Children and Adolescents Code in force does not have protection measures that guarantee the rights of important groups of children and adolescents in vulnerable situations, like the ones affected with Sexually Transmitted Infection (STI), HIV/AIDS or cancer. Also, the Code does not have full information in the case of specific programs aimed to children and adolescents that are victims of sexual exploitation. It affects, also, the protection guarantees that are required by children with disabilities.

The Code comprises the existence of Local Government Ombudsman of the Child and Adolescent (DEMUNAS), in charge of promoting and protecting the rights that the legislation acknowledges to children and adolescents, and their families; watching over the superior interest of the child and adolescent; intervening when their rights are infringed; promoting extrajudicial settlement in the matter of maintenance, physical custody and visiting system provided that there is not any legal procedures on these matters; knowing the family placement; promoting the voluntary acknowledgement of the filiation; coordinating attention program in aid of children and adolescents that work; bringing multidisciplinary orientation to the family to prevent critical situations, provided that there is not any previous legal procedures; reporting the crimes against children and adolescents to the competent authorities; and bringing full support in family violence cases (legal, psychological, orientation, etc.).

The Unique Ordered Text of the Law No 26260 (Protection against the Family Violence Law), approved by Supreme Decree No 006-97-JUS, states as permanent policy of the State the fight against any kind of



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family violence, and establishes as mandate to strength in all the educative levels the respect for the people's dignity and women, children, adolescents and family rights.

On its part, the National Plan against Violence towards Women 2009-2015 has been issued in order to guarantee the adoption and implementation of public policies aimed to fight against violence towards women, guarantee the access of women affected by violence to quality public services; as well as identify and promote the transformation of socio-cultural patterns that authenticate, tolerate and aggravate the violence towards women. The Plan, which is aimed to all women rights promotion, including persons with disabilities, faces situations such as violation and sexual abuse of girls and women in conflict situations; the human trafficking with children selling and exploitation purposes so they would be prostituted, subjected to sexual slavery or other kinds of sexual exploitation, forced to beg, work, servitude, slavery or practices similar to slavery or other kinds of work exploitation, as well as organs or human tissues extraction or trafficking.

Despite the information above, family violence, which is also the consequence of the lack of political will to effectively implement existing regulations and plans, is a predominant feature of the Peruvian society. According to many researches, there is an under-reporting of this phenomenon as the violence registered cases represent approximately a 20% of the real cases. Mainly because many women do not dare to report or go to the respective authorities when they are victims of violence.

According to Ministry of Internal Affairs' data, during the first semester of 2009 (January-June), the Ministry of Internal Affairs registered 48 602 reports for family violence in the whole country, of which 5156 (10.61%) were towards men and 43 446 (89.39%) towards women, and they do not know how many of them were persons with disabilities.

The 83.03% (36 077) of the reports were carried out by women from 18 to 50 years old. The reason of the aggression in 52.82% (255 671) of the cases were for marital and/or family problems. In 64.04% (31 125) of the cases the aggressor was even-tempered. Likewise, in 84.44% (41 054) of the reported cases, the aggressor was the victim's partner or ex partner (husband/cohabitant/ex husband/ ex cohabitant).

The departments that register more reports for family violence are: Lima 43.08% (20 940 cases), Arequipa 11.87% (5770 cases) and Cusco 6.15% (2991 cases). On the other hand, in the same period, 15 090 reports for psychological violence (31.04%) were registered, 27 891 reports for physical violence (57.38%) and 5621 reports (11.56%) of other cases.

According to other Legal Medicine Institute (IML) data, during 2009, 97 768 injuries for family violence were registered nationwide. 79% (77 238) correspond to women. The percentage of women that present injury cases due to family violence by age range are: between 0 to 5 years old 1.57%, between 6 and 17 years old 7.65%, between 18 to 40 years old 70.91% and from 41 and more years old 19.87%.

A year before, during 2008, IML itself carried out 34 994 sexual integrity examinations. 78.75% (27 559) was made to women. It reported, also, an average of 75 women that were daily attended for sexual violence. That same year, the Ministry of Internal Affairs attended 7 560 rape reports of which 6 932 (91.7%) corresponded to female victims. From all the reports received in the Peruvian National Police (PNP) during that year for sexual violence, a 44% corresponded to young people between 14 and 17 years old. The Ministry of Health, on its part, reported 116 032 teenage pregnancy cases in 2007 and 123 077 during 2008. 14% of the women attended in health centers for abortion complications were younger than 20 years old. Lima (3 646 cases), Arequipa, (521 cases), Loreto and Lambayeque (381 cases) are the Peruvian regions where most of the reports for sexual violence towards women were registered.

## **2.15 Protection of personal integrity (CRPD, article 17)**

Article 17 of the Convention establishes the right of every person with disabilities to the respect of their physical and mental integrity. To assure this right, the States shall adopt measures to protect persons with disabilities from medical treatments (or of other nature) administered without the full and informed consent of him or her; to protect girls and women from forced sterilization or abortion; to guarantee the existence, composition and operation of independent medical examination associations in charge of guaranteeing the fulfillment of this right, through different programs and measures.



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The regulations pointed out in sections 14 and 18 of the Convention, read clearly, are specially related to the treatment of persons with intellectual or psychosocial disabilities. Therefore, acknowledgement and full exercise of their civil rights represent a big challenge for Peru.

On this matter, the Ombudsman's Office carried out a supervision in 2004, aimed at determining the situation of persons with psychosocial disabilities, hospitalized in mental health establishments<sup>91</sup>. Through this supervision, mental health services in our country were confirmed to respond prevalently to an intramural or ultra-institutionalized attention model. This model restricts the attention of psychic problems isolating the patient from society. We are talking about a medical model, not a social one; and, in this sense, it represents an opposite model to the focus of rights of persons with psychosocial disabilities as this model pretends to rehabilitate isolating persons from their own familiar and communal environment. Currently, there does not exist political will to arrange extra-hospitable alternative resources inserted in the community that work as the basis to implement the communal rehabilitation model.

In this regard, the supervision carried out by the Ombudsman's Office from May to December, 2004, applied on six establishments of the Ministry of Health (MINSA) and two of the State Social Security Entity (ESSALUD), allowed to confirm the existence of the following problems:

- a) The lack of consent from patients for their hospitalization and the lack of hospitalization forms. Some do not even count with hospitalization forms that could be used by relatives.
- b) The lack of verification on the existence of a doctor at the moment of hospitalization.
- c) The lack of an organization to check hospitalization orders.

In relation to the right to a decent treatment, the report observed that the facilities of three of the six supervised MINSA establishments (Hipolito Unanue Hospital, Victor Larco Herrera Hospital and CREMI) were very inadequate and they were found in bad conditions.

On the other hand, the Ombudsman's Office detected a considerable number of institutionalized patients marked as "No Name" or that were lacking a national identity document. It also detected that the medical examination of patients was carried out irregularly. Regarding the personnel in charge of services after two in the afternoon (afternoon and night shifts), it generally resulted insufficient. At the moment of the Ombudsman's Office supervision, only the Honorio Delgado-Hideyo Noguchi Institute, Valdizan Hospital, Rebagliati Hospital and the severe patients service of Larco Herrera Hospital counted with a number of nursing assistants that allowed covering the needs of the service.

In general, attention protocols only foresee the need to request the informed consent of the patients' relatives, but they are not fulfilled; and not many times the right of patients to receive information and to give their own consent is considered. They do not mention the need to respect privacy and to accept the requests that they could have in order to subject medical decisions to a second opinion, among other rights.

None of the hospitals that use electroconvulsive therapy (ECT) practice it with anesthesiologists and muscle relaxants, except for special cases, particularly when they are old people or persons with fracture and/or intracranial hemorrhage risks. Out of the six establishments where ECT is practiced, only Honorio Delgado-Hideyo Noguchi Institute and Valdizán Hospital count with modern equipment that have mechanisms that allow controlling intensity and alternating current discharges, as well as controlling their electroencephalographic effects. The rest of hospitals practice said therapy with old equipment of more than 20 years old, and even with "handmade" equipment, which offer higher probabilities of failure in the procedure and adverse effects in patients.

Regarding the respect of the right to privacy, the Ombudsman's Office acknowledged that the nursing personnel in Honorio Delgado Hospital remain present during family visits. According to the health personnel, they do this in order to acknowledge the type of relationship between patients and relatives. As

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<sup>91</sup> Ombudsman's Office, Ombudsman's Report No 102, Mental health and human rights: Human rights situation of persons hospitalized in mental health facilities.





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pointed out, they explain to relatives after the visit how should they relate to patients; and they are also informed about the reasons why do they adopt certain behavior.

In terms of the patients' possibility of maintaining private communication through mail service, the Ombudsman's Office was able to verify that patients are not able to send letters in any of the supervised hospitals.

The Mental Disability Rights International (MDRI) and Pro Human Rights Association (APRODEH) carried out a research between October 2002 and February 2003 on the situation of mental health in Peru<sup>92</sup>. They found several serious violations to the human rights of persons with mental disabilities; among them, inhuman and degrading treatment within institutions, discrimination when providing social and health services, failure to comply with the informed consent, and violations of the right to community integration.

The research mentioned above points out that families can play an important role in achieving community integration; however, without appropriate services and support, families will be unable to facilitate real community integration of their relatives with disabilities.

Finally, it is important to point out that the "Report submitted by Mr. Paul Hunt, Special Rapporteur on the right of every person to enjoy the highest level possible of mental and physical health, Adición, Misión al Perú" (E/CN.4/2005/51/Add.3)<sup>93</sup>, regarding Mental Health in our country, accuses important disparities between official objectives and national and international obligations of our country in terms of human rights on one hand, and on the other, the reality of health services offered to persons with mental disabilities. Likewise, it observed that the provision of mental health services is very centralized, making it inaccessible for a big part of the population. They are provided, generally, in big psychiatric institutions, which refuse the right of persons with mental disabilities to be treated and seen in the community where they live, as well as living and working in it, as much as possible.

The Special Rapporteur was also concerned for the vulnerability of users of psychiatric services; particularly the ones who are hospitalized in big psychiatric hospitals, whose human rights are violated when being attended in them. The Rapporteur visited Victor Larco Herrera Hospital and witnessed some of these problems. Likewise, he was given information on practices and conditions in other institutions that, apparently, are incompatible with the right to health and other human rights.

## **2.16 Freedom of Movement and Nationality (CRPD, article 18)**

Subsection 1) of article 2 of the Peruvian Constitution acknowledges the right for all human beings to identity; subsection 11 of the same article, the right to "choose a place to live, to walk freely in any part of the country as well as to leave and go back, except for limitations due to health or court order or the application of the Immigration Law"; and subsection 21, the right to nationality, adding that "Nobody's nationality can be relinquished. Likewise, nobody can be deprived of the right to obtain or renew their passport in or out of the country."

Article 18 of the Convention on the Rights of Persons with Disabilities, on its part, acknowledges the right of persons with disabilities to the freedom of circulating and choosing a place to live as well as to having a nationality. To guarantee this right, States must take legislative or administrative measures to assure the right of persons with disabilities to get a nationality and not to be deprived of it; as well as their right to enter and leave the country as they wish; to make sure that all newborn children with disabilities are registered immediately after their birth and are given a name and a nationality.

The Peruvian government, along with the National Registry of Identification and Civil Records (RENIEC), stipulated the free issuance of ID Cards (DNI), as well as all Registry procedures planned on the Complete Text of the General Law of Administrative Procedures (Law N° 27444), related to the issuance of ID Cards, that appeal for persons with disabilities, taking into consideration Administrative

<sup>92</sup> See [http://aprodeh.org.pe/public/biblioteca\\_virtual.htm](http://aprodeh.org.pe/public/biblioteca_virtual.htm)

<sup>93</sup> See <http://www.ohchr.org/SP/countries/LACRegion/Pages/PEIndex.aspx>



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Decree N° 599-2004-JEF/RENIEC published on the official gazette on October 2<sup>nd</sup>, 2004, specified later by Administrative Decree N° 183-2006-JEF/RENIEC published on the same gazette on March 29<sup>TH</sup>, 2006.

With that purpose, persons with disabilities must prove their condition with a Certificate of Disability, certified copy of the Registry Decree in CONADIS, a document issued by the School of Special Education or Certificate of Disability.

Civil records does not have any restriction in registering, giving a name or a nationality to newborn children, including newborn children with limitations. Nevertheless, since those records do not have a field to write the type of disability that the registered child has, it is not possible to get additional information regarding the prevalence of disabilities in our society. In addition, it should be noted that persons with intellectual disability are not part of the voter registration list without setting apart persons with minor disabilities.

Regarding migrations, persons with disabilities do not formally have any restriction to move from one place to another, as long as they have all the necessary documents. In addition, there is not any type of restriction to acquire Peruvian nationality; or barriers to enter or leave the country.

Nevertheless, the main limitations to freedom of movement that persons with disabilities suffer, come from several existing barriers in terms of accessibility in the urban, architectural and transport fields. Moreover, as it has been previously stated, there are still many persons with disabilities that cannot walk freely around the streets or enter public or private offices, cultural or religious institutions.

The movement of PWDs in means of interprovincial and local transport is extremely complex given that there is a lack of appropriate vehicles or simply urban carriers do not take PWDs; ramps, when they exist, are rare and inappropriate; sensorial traffic lights are also rare. Likewise, PWDs and their families are usually forced to move away from home to get access to essential public services.

It should be noted as well, that the Immigration Law (Legislative Decree N° 703) imposes discriminatory requirements that affect persons with disabilities. For instance, article 28 of Legislative Decree N° 703 establishes that "Foreigners who suffer from insanity, paralysis, blindness, deaf-muteness, that cannot take care of themselves, will only enter the country accompanied or received by people who can look after them (...)".<sup>94</sup> Also, article 20.d of the Regulations of the Law of Nationality, on its part, stipulates that in order to acquire Peruvian nationality through marriage, executing the right of choice, it is crucial, among other requirements, "[...] Not to have infectious diseases and to be able to fully use their mental abilities."<sup>95</sup>

## **2.17 The right to live independently and to be included in community (CRPD, article 19)**

Article 19 of the Convention acknowledges the right of persons with disabilities to live independently and to participate in community. To guarantee this right, States must promote the existence of independent life systems, including the possibility to count with a personal assistant, when needed; the existence of home support services allowing persons with disabilities to live in community; the existence and diversity of options in terms of residential services that allow different lifestyles, including shared and protected houses that take disability into consideration; and the promotion of maximum accessibility for persons with disabilities to community services and facilities that the population in general has at their disposal.

Nevertheless, due to their socio-economical conditions, the biggest part of persons with disabilities in Peru do not have access to the basic services they need in equal conditions as the rest of persons without disabilities, which increases the precariousness of their life quality.

<sup>94</sup> See <http://www.congreso.gob.pe/comisiones/1997/turismo/d703.htm>

<sup>95</sup> See [http://www.cajpe.org.pe/gep/images/stories/d.\\_s.\\_n%C2%BA\\_004-97-in.pdf](http://www.cajpe.org.pe/gep/images/stories/d._s._n%C2%BA_004-97-in.pdf)



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An example to illustrate what has been mentioned above was shown in the information found in “Statistical Report of Disability in Peru 1999 – 2000”, MINSA, in April 2003<sup>96</sup>. It showed how existing services regarding the health of persons with disabilities are insufficient, which also means their exclusion to access these services. Furthermore, these services are of institutionalized nature, and they have a medical and individual focus, opposed to modern social focus and promotion of their social inclusion. The limited nature of this type of attention can be noticed in the registry of 951 persons with mental disabilities institutionalized that Ombudsman’s Office recorded in its Ombudsman’s Report No 140 on Mental Health<sup>97</sup>.

Unfortunately, community programs for personalized and at home attention allowing persons with disabilities include themselves in their own communities are not designed nor massively implemented. As a consequence, these persons are not seen within their own communities, and their participation in the arranged development of the local development is not promoted.

Community based rehabilitation is a strategy of community development directed to rehabilitation, promotion of equal opportunities and social integration of all persons with disabilities. It has been applied in our country thanks to the joint efforts of persons with disabilities, their families, organizations and communities, as well as – when it occurs – the appropriate governmental and non-governmental services that carry out their operations in the fields of health, education, social work, among others.

However, this community strategy could be one of the alternatives to be applied in order to fulfil the Convention since its objectives include assuring that persons with disabilities can develop their physical and mental capacities to the fullest, that they have access to services and common opportunities, and that they can be active contributors within the community and society in general. Likewise, it could allow encouraging communities to promote and protect the rights of persons with disabilities through changes in itself, for instance, getting rid of barriers for participation.

In the core of the State, especially through the National Institute of Rehabilitation of the Ministry of Health as well as ESSALUD, some community based rehabilitation programs are carried out and they represent a service for persons with disabilities. These are not necessarily developed in accordance with the characteristics of the community based rehabilitation model, which include training and capacity transferences to community promoters: empowerment and participation of persons with disabilities and their relatives when conducting and assessing activities, among others.

The organizations of persons with disabilities have been emphatic in pointing out that the right of PWDs to having an independent life is not guaranteed in general: for example, many public and private institutions lack ramps and other means of access; PWDs have almost no access to the labor market and, as a consequence, they can’t obtain access to housing on the base of their income because they do not fulfil the requirements that are usually needed. At home health services are only provided to the insured, which excludes many persons with disabilities that were not able to access insurance.

Among the reasons to support this, it has been said that in the cases where we can talk about certain independence, it has only been partial because it depends on the disability and the available economical resource of the interested part. Likewise, in many cases most PWDs depend on the support of their close relatives who, usually, lack enough economical resources to hire an assistant for them. And in the case of PWDs that consume medicines, they are often times bought by their relatives; in this way, a condition of economic dependence is strengthened.

## **2.18 Freedom of Speech and Opinion and Information Access (CRPD, Article 21)**

Numbers 4 and 5 of Article 2 of the Peruvian Constitution protect the freedom of information, opinion, speech, and thought, as well as the every person’s right, including persons with disabilities, to request

<sup>96</sup> See <http://www.minsa.gob.pe/portada/estadistica/publicaciones.htm#>

<sup>97</sup> See Ombudsman’s Office, Ombudsman’s Report 140, on Mental Health, Chart No 3, page 24, in <http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-defensorial-140-vf.pdf>



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without stating a cause the information that he/she requires and to receive it from any public entity, in the legal term, with the due cost.

On its part, Article 21 of the CRPD acknowledges the persons with disabilities' right to freedom of speech and opinion, including the freedom of claiming, receiving and facilitating information and ideas through any means of communication that they choose. In order to ensure this right, the Member States must adopt legislative measures and of other nature to guarantee that the information aimed to the general public is accessible to persons with disabilities in due time and without an additional cost, as well as that, in all the official interactions and to have access to information, persons with disabilities could use their favorite means of communication, for example, the sign language, Braille, augmentative and alternative ways of communication and other accessible formats.

The States must ensure that the private entities and the ways of diffusion provide information and services in accessible formats for persons with disabilities avoiding the private sector to block or restrict access to information in alternative formats; as well as the accessibility degree of the ways of diffusion and the public websites that carry out the regulations of the Web Accessibility Initiative (WAI). They must, also, adopt legislative measures and of other nature in accordance with the official acknowledgment of the sign languages.

The Peruvian State has made an important progress towards this direction. For example, through the approval of Law No 274715 of June 5<sup>th</sup>, 2001, Law of Additional Visual Means in Cable Television Programs and Public Service for Persons with Disabilities for Hearing Deficiency, whereby it was stipulated that the educative and cultural informative Programs of national production, transmitted by National Radio and Television Institute of Peru (IRTP), incorporate additional visual means of communication in which the sign or manual language and texts are used, for the communication and reading of persons with disabilities with hearing deficiency. It stated, likewise, that the informative, educative and cultural programs of national production, transmitted through radio, television and cable public service, will add in an optional and progressive way the usage of additional visual means.

Through Law No 28530 (Promotion of Access to Internet for PWDs and space adaptation in public internet booth), on May 24<sup>th</sup>, 2005, it was stated as social interest the promotion of the access to internet and information technologies usage to persons with disabilities and the progressive elimination of technological and physical barriers that prevent their integration to the Information Society and their reintegration to the labor market, and the National Board of University Presidents (ANR), the National Council of Persons with Disabilities (CONADIS) and the local governments, are in charge, in a coordinate way, of training and teaching persons with disabilities in matters and activities related to the internet access and usage.

Such regulation stated that the public entities and universities will add in their websites or internet portals options of access so that persons with disabilities can have access to the information; and that physical or private legal people, who provide information services to the consumer and other services through websites or internet portals, add in them access options for persons with visual disabilities.

The Ministry of Housing, Construction and Sanitation is in charge of adapting the technical regulations NTE U. 190 "Urban development Adaptation for persons with disabilities" and NTE A.060 "Architectural Adaptation for persons with disabilities", to Article 43 and 44 of the Law No 27050, General Persons with Disabilities Act, adding the progressive adaptation measures of the physical space that must be fulfilled by the providers of internet access service, whether physical or legal people, for the access of persons with disabilities. This established adaption would be progressive and proportional according to the economical possibilities of the providers.

Articles 5 and 6 of the regulation above mentioned, stated, also, that the National Telecommunications Research and Training Institute – INICTEL, along with CONADIS and other public or private entities, will be in charge of training persons with disabilities, as well as the people in charge of managing public internet booths in the special programs and software usage; and, also, that the Ministry of Education, with CONADIS, in order that students with disabilities of the different education levels have a universal access, promote the institutional agreements with public or private entities to encourage the development of favorable policies that facilitate their universal access to internet.



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A guideline was approved through the Ministerial Resolution No 126-2009-PCM of the Office of the President of the Council of Ministers. It was regarding the PWDs' access to websites and mobile phone applications for public institutions of the National Informatics System.

On May 21<sup>st</sup>, 2010, the Law No 29535 was added to the Peruvian Legislation, with which the Peruvian sign language for persons with hearing disabilities was acknowledged in an official and regular way. This legislative initiative will facilitate the sign language learning and the linguistic identity promotion of deaf people.

Through Law No 29524, of May 9<sup>th</sup>, 2010, the deaf-blindness was acknowledged as a unique and regular disability and provisions were established for its treatment nationwide. It is important to point out that with the approval of this law, the companies that hire deaf-blind people will be benefited by Supreme Decree No 001-2003-TR, (Creation of Promotional Companies' Registries for Persons with Disabilities) and the General Persons with Disabilities Act and its regulation in Supreme Decree No 003-2000-PROMUDEH.

Despite these efforts, the State is failing in its duty of promoting an extension of these advances in the private entities that are submitted to its jurisdiction; for example, in the airports, where there is not any optional means of communication that allow the PWDs to have access to the information that allow them to use the airport services in a proper way or to travel alone.

The organizations of persons with disabilities say that the public information is not spread in optional languages; that the Law No 29535 is not implemented and that the information requests by the PWDs to the public institutions are ignored.

## **2.19 Respect to Privacy (CRPD, Article 22)**

Subsection 7 of Article 2 of Peruvian Constitution acknowledges the right of every person to obtain honor and good reputation, private and family life as well as to have their own voice and image. The Convention, on its part, acknowledges on its Article 22 the right of all persons with disabilities to protection of their private life, honor and reputation. Taking this provision into consideration, States must take measures in order to protect confidentiality of personal and medical information related to the rehabilitation of persons with disabilities, as well as for them not to be hidden with the excuse of defending their privacy. Nevertheless, this right faces many limitations, as it can be observed in the great deal of information included in the Ombudsman's report 140 on Mental Health written by the Ombudsman's Office<sup>98</sup>.

## **2.20 Respect to House and Family (CRPD, Article 23)**

Article 23 of the Convention acknowledges the right of all persons with disabilities to get married and have a family, as well as to freely decide the number of children they would like to have and to keep their fertility under the same conditions as other people. In order to guarantee this right, States must take measures to make sure that persons with disabilities are able to exercise their right to get married and to have a family based on full and free consent; that persons with disabilities have access to family planning, assisted reproduction and adoption programs or acceptance of children in guard; that parents with disabilities that require so can be provided with appropriate assistance for the fulfillment of their duties in raising a child, assuring the relationship parent-child; that the child will not be separated from one or both of their parents due to the child's disability; to support parents and families of children with disabilities in order to avoid the hiding, abandonment, carelessness or segregation of children with disabilities; to avoid the institutionalization of children with disabilities whose parents are not capable of taking care of them and to make sure they are provided with alternative assistance in the extended family, and if that is not possible, in the community part of a family environment; and to avoid the forced sterilization of persons with disabilities, especially women and girls.

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<sup>98</sup> See in Ombudsman's Office, Ombudsman's Report 140, on Mental Health, Chart No 3, page 24, in <http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-defensorial-140-vf.pdf>



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Peruvian Constitution stipulates on Article 4 that “the community and the Government offer special protection to the child, adolescent, mother and elderly in abandonment. They also offer protection to family and promote marriage. They acknowledge these last points as natural and fundamental institutes of society.” Nevertheless, there are many persons with disabilities who face difficulties to make effective such an important right as the right to be part of a family.

The Peruvian Civil Code in force, for example, limits the exercise of civil rights of PWDs when it points out absolute disability (art. 43)<sup>99</sup> or relative disability (art. 44)<sup>100</sup>; the former includes the deaf-mute, blind-deaf and blind-mute that are deprived from the free expression of willingness, and the latter includes mentally retarded or persons who suffer from mental illnesses. Such classification, through restrictive legal interpretations, brings about, for instance, the rejection to exercise the right for these people to get married. Regarding so, nevertheless, it should be noted that these people have other ways to express their willingness. For instance, through Braille system (the blind) or through sign language (the deaf-mute).

Moreover, regarding Absolute Physical Handicaps that affect the possibility to get married, article 241 of the Civil Code mentions “People who cannot get married: [...] 3. People who chronically suffer from mental illness cannot get married, even if they have lucid moments and 4. The deaf-mute, the blind-deaf and the blind-mute who are not capable of expressing their willingness in a concrete way.

The Ombudsman’s Office has filed, on its part, cases of sterilization and separation of children from mothers with mental illnesses on its Ombudsman’s Report 102<sup>101</sup>.

The Peruvian Government has not planned measures in our country of persons with disabilities to have access to family planning, assisted reproduction and/or adoption programs or the acceptance of children in guard. Also, there are not measures for parents with disabilities that require so can be provided with appropriate assistance for the fulfillment of their duties in raising a child, assuring the relationship parent-child; or measures to make sure that children will not be separated from one or both of their parents due to a disability, among others.

The representatives of the organizations of persons with disabilities who were asked regarding this matter pointed out that the respect to persons with disabilities’ house and family is relative, in the sense that, even though they have formal autonomy to have a family, this capacity is limited given that consultancy for planning and the taking care/raising of children is not enough, as well as the rare protection measures towards the separation parent-child.

## 2.21 Right to Health (CRPD, article 25)

Article 25 of the Convention on the Rights of Persons with Disabilities acknowledges that they have the right to enjoy the highest level possible of health and stipulates that the access of persons with disabilities will be assured to health services that take gender issues into consideration, including health rehabilitation, in their community and for free. To make this right effective, States must adopt legislative measures, as well as measures of other nature, that protect persons with disabilities against discrimination, assuring that they access quality health services on equal terms, even in the field of sexual and reproductive health. They must adopt measures so that persons with disabilities can access health rehabilitation in their community, without any restrictions and for free; and count with health services and programs of early detection and intervention, depending on the case, that contribute to avoid and reduce, as much as possible, the appearance of new disabilities, paying attention to children, women and the elderly, especially in rural zones.

<sup>99</sup> Civil Code, article 43.2 (Absolute disability): “The absolutely disabled are: [...] 2. Persons who, for any reason, are deprived of discernment; 3. Deaf-mutes, blind deaf and blind mutes that cannot express their will indubitably.”

<sup>100</sup> Civil Code, article 44 (Relative disability): “The relatively disabled are: [...] 2. The mentally disabled; 3. Persons who suffer from a mental deterioration that hampers them expressing their free will.

<sup>101</sup> Ombudsman’s Office, Ombudsman’s Report 102. See <http://www.defensoria.gob.pe/inform-defensoriales.php>



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Likewise, they are obliged to adopt legislative measures, as well as measures of other nature, to make sure that public health campaigns are accessible to persons with disabilities; to inform doctors and other health professionals on the rights of persons with disabilities, even in rural zones; to assure the free and informed consent of persons with disabilities during the administration of any treatment; to assure the protection of persons with disabilities against discrimination for the access to health insurance and other types of insurance, when they are mandatory by law; to guarantee that sanitation services do not only exist but they should also be fully accessible; and to improve the awareness and information in different accessible formats, including Braille, regarding prevention of HIV/AIDS and malaria.

Article 7 of the Peruvian Political Constitution establishes that “everybody has the right to protect their health, their home environment and community, as well as the duty to contribute with its promotion and defense”, and adds that “Persons with disabilities, in order to watch over themselves because of a physical or mental deficiency, have the right to the respect of their dignity and to a legal regime of protection, attention, readjustment and safety.” On the other hand, articles 9 and 11 point out that the State determines the national health policy and guarantees the free access to health services.

In accordance with the information of article VII of the Preliminary Title of Law No. 26842, General Health Act, the State must promote the universal and progressive insurance of the population, including the population with disabilities, for the protection against the eventualities that could affect their health. It also guarantees the free choice of a social security system, without being affected by a system mandatorily imposed by the State so that nobody is unprotected.

The research on the quantity of health professionals carried out by the Ministry of Health (MINSA) in 2007 showed that there was a gap in this matter that ranged between 8,446 and 15,363 doctors according to classic standards<sup>102</sup>. Likewise, it showed that a strong centralism persists in the distribution of health professionals. The biggest part of them is concentrated in Lima and in the urban coast of the country, which leaves the health of the rest of the country’s population unprotected.

Until recently, in the case of physicians, Lima had a physician rate per 10,000 inhabitants 5.4 times bigger than Huancavelica (17.7 versus 3.3) and almost double the national average that was 11,5. Apart from Lima, only Arequipa, Tacna and Ica reached or exceeded the rate of 10 physicians per 10,000 inhabitants.

From the total existing physicians in Peru, Lima has 53.19% of them. Regarding nurses, eight departments have a rate of 10,000 inhabitants above the national average, showing a higher concentration of them in the urban coast, however they had important presence in some departments of higher poverty. From the total existing nurses in the country, 40,23% of them are in Lima.

In the case of rehabilitation medicine, the situation is worse because there are few professionals specialized in rehabilitation and in the specialties related to disabilities, and its distribution is even more centralized. From the total of 243 registered neurologists in the Medical Association, 160 are located in Lima; from the 468 registered psychiatrists, 381 are in Lima; from the 223 registered specialists in physical medicine and rehabilitation, 150 are in Lima. There are 8 regions of the Medical Association that have no specialized doctors in physical medicine and rehabilitation and neurology, 7 regions without psychiatrists and 19 without geriatricians.<sup>103</sup>

The following chart displays the health attention conditions for persons with disabilities in Peru:

## MINISTRY OF HEALTH

### MINSVA INVESTMENT ON REHABILITATION – 2010

<sup>102</sup> MINSA. Research of the staff of health professionals in establishments of the Ministry of Health. MINSA, October 2007. Quoted by Juan Arroyo in *Research of Human Resources in Health in Peru as of 2010 (Estudio de Los Recursos Humanos en Salud en Perú al 2010)* by Juan Arroyo.

<sup>103</sup> PERUVIAN MEDICAL SCHOOL. Reports on doctors registered by specialized areas by Regions. Lima: CMP, August 23th, 2004. Quoted by Juan Arroyo in the Study on Human Resources en Health in Peru.



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Ministry of Health	2010	%
TOTAL Budget MINSA	3,672,534,167	100
NATIONAL INSTITUTE OF REHABILITATION	76,776,906	2.1
INSTITUTE OF MENTAL HEALTH	26,092,882	0.71
LARCO HERRERA MENTAL HEALTH HOSPITAL	39,001,416	1.06

Source: Chart based on the website of Economic Transparency, Ministry of Economy and Finances<sup>104</sup>

Only 5% of persons with disabilities receive specialized attention. The Ministry of Health provides it through the National Institute of Rehabilitation (INR), located in El Callao, and the Peruvian Social Security (ESSALUD) through the Professional Rehabilitation Centres; according to the attention charts of INR and ESSALUD.

The most serious issue is that rehabilitation – scarce already – could be reduced to zero, as a consequence of two regulations issued by the Ministry of Health and ESSALUD. We are talking about Ministerial Resolution 616-2003-SA/DM,<sup>105</sup> that failed to include rehabilitation medicine as a line organ in the organic structure of health establishments; and Resolution of the Executive President's Office No 258-PE-ESSALUD-2003,<sup>106</sup> that suppressed the Assistant Management of Professional Rehabilitation from the Regulations on the Organisation and Functions of the ESSALUD Service Division.

In addition, preventive programs are not developed in the country. For example, in an interview carried out in the Commission of Studies on Disabilities of the Peruvian Congress, the Executive President of ESSALUD pointed out that “(...) Currently we have identified 25 thousand companies, obliged to pay the Complementary Insurance of Risky Jobs (...) which is a type of insurance that can be given by ESSALUD and (...) Companies that Provide Health Services (EPS). In summary, between ESSALUD and EPS, out of 25 thousand companies there are only 6 thousand that pay for this insurance, which means that there are 19 thousand companies that are not paying; and that is simply a failure to comply with a legal obligation (...). We are talking about construction companies (...) especially the electricity sector ones, where there is a high probability of accidents, mainly.”<sup>107</sup>

There is a notorious lack of infrastructure and equipment in rehabilitation services. The national rehabilitation services network hardly comprises 75 establishments with specialized services, from which 38 correspond to MINSA, 26 to ESSALUD and 7 to health premises of the Armed Forces and the police.

As the following chart shows, the biggest lack of these services is concentrated in hospitals of the Health Sector and ESSALUD. From 485 existing hospitals, roughly 75 count with rehabilitation services<sup>108</sup>.

DISA I - West Lima	Arequipa Sub Region
National Rehabilitation Institute	Honorio Delgado Regional Hospital
Daniel A. Carrión National Hospital	AP LAO Hospital (Goyeneche)
Rehabilitation Recreation Center	National Hospital of South Arequipa
Alberto Sabogal Sologuren Clinic	II Yanahuara Hospital
Naval Medical Center	Hospital of Mollendo
Pasteur Infant Rehabilitation Institute	XI PNP Hospital
DISA II – South Lima	Chavin Region: Huaraz, Chimbote
María Auxiliadora Hospital	Victor Ramos Guardia – H Hospital

<sup>104</sup> See: <http://ofi.mef.gob.pe/transparencia/mensual/default.aspx?y=2004&ap=ActProy>

<sup>105</sup> See: <http://www.anmms.org/anmms-normaslegales.html>

<sup>106</sup> See: [www.essalud.gob.pe/transparencia/pdf/rof/5rof\\_odn\\_feb2007.pdf](http://www.essalud.gob.pe/transparencia/pdf/rof/5rof_odn_feb2007.pdf)

<sup>107</sup> See: [www.congreso.gob.pe/comisiones/2002/discapacidad/.../030207.pdf](http://www.congreso.gob.pe/comisiones/2002/discapacidad/.../030207.pdf), page 13.

<sup>108</sup> ARROYO, Juan. The right to health of persons with disabilities: Condition of the issue. See: [www.congreso.gob.pe/.../2002/discapacidad/.../Estudio-Salud.pdf](http://www.congreso.gob.pe/.../2002/discapacidad/.../Estudio-Salud.pdf), page 54.





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Villa María del Triunfo Hospital	La Caleta de Chimbote Hospital
<b>DISA III – North Lima</b>	Eleazar Aguinaga Regional Hospital
Huacho Teaching Hospital	H-III Chimbote – Ancash Management EsSALUD
Hospital of Huaral	Sanidad PNP Polyclinic
Sergio Bernales National Hospital	<b>Health I Region – Piura</b>
Cayetano Heredia Hospital	Cayetano Heredia Hospital
Delgado – Nogushi Mental Health Institute	Piura Specialized Center for Professional Rehabilitation EsSALUD
Infant Maternal Center (Canto Grande)	<b>Health II Region – Lambayeque</b>
Hospital of Huacho – EsSALUD	Las Mercedes Teaching Regional Hospital
P.N.P. Hospital – Augusto B. Leguía	“Almanzor Aguinaga” National Hospital
<b>DISA IV – East Lima</b>	Belén Lambayeque Teaching Provincial Hospital
Hermilio Valdizán	<b>Health IV Region – Cajamarca</b>
Hipólito Unanue National Hospital	Regional Hospital of Cajamarca
Rehabilitation Center of Chosica	Victor Lazarte Echegaray Hospital
Vitarte Clinic	<b>Health Region – Ica</b>
<b>DISA V – Lima City</b>	Ica Department Support Hospital
National Children’s Health Institute	“Felix Torrealva Gutierrez” III Hospital
Institute of Neurological Sciences	<b>Health Region – Cuzco</b>
Arzobispo Loayza National Hospital	Cusco Regional Department Support Hospital
San Bartolomé Child Mother National Hospital	III Hospital - Cusco
Dos de Mayo National Hospital	<b>Tacna Region</b>
Santa Rosa Hospital	Hipólito Unanue Support Hospital
Víctor Larco Herrera Hospital	IPSS Tacna
Edgardo Rebagliati M. National Hospital	<b>Other DISAs (Regions)</b>
Gullermo Almenara Hospital	Hospital of Bagua (JAEN)
La Victoria Specialized Center for Professional Rehabilitation – EsSALUD	Hospital of Huamanga (AYACUCHO)
Ramón Castilla Polyclinic – EsSALUD	Hospital of Iquitos (LORETO)
Grau Clinic	Carlos Monge Medrano Hospital (PUNO)
Angamos Clinic	JAMO Support Hospital (TUMBES)
Central Military Hospital	Hospital of Huanuco (HUANUCO)
Police Central Hospital	Hospital of Huancayo (JUNIN)
FAP Central Hospital	Hospital of Moquegua (MOQUEGUA)
San Judas Tadeo Medical Center	Hospital of Tarapoto (SAN MARTIN)

Source: MINSA

### The previous list includes MINSA and EsSALUD establishments

In the following chart, the number of doctors and specialties are displayed distributed by regions. Unfortunately, the information regarding the existing number of rehabilitation doctors could not be accessed.



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Source: Ministry of Health – General Office for Statistics and Information



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## PERSONNEL OF THE MINISTRY OF HEALTH BY OCCUPATIONAL GROUPS PERU - YEAR 2007

CITY	TOTAL	DOCTORS	NURSES	ODONTOLOGISTS	OBSTRETIAN	PSYCHOLOGIST	NUTRITIONIST	PHARMACEUTICAL CHEMIST	OTHER HEALTH	PROF
TOTAL	87,588	12,087	11,826	1,898	6,379	634	622	652	3,066	
AMAZONAS	1,143	153	124	31	139	6	6	3	22	
ANCASH	3,762	450	482	62	322	18	49	33	72	
APURIMAC	1,719	185	309	56	173	6	6	13	26	
AREQUIPA	3,789	664	801	136	319	27	35	54	91	
AYACUCHO	2,661	272	410	66	303	10	14	28	107	
CAJAMARCA	3,142	328	540	47	378	5	18	22	76	
CALLAO	3,675	579	408	73	146	57	20	23	271	
CUSCO	3,517	539	663	82	341	14	13	25	101	
HUANCAVELICA	1,796	327	296	102	294	39	7	4	23	
HUANUCO	2,438	317	450	50	359	10	12	8	99	
ICA	2,947	481	422	106	173	10	8	92	19	
JUNIN	3,830	338	627	63	231	8	13	21	198	
LA LIBERTAD	3,771	670	495	51	260	24	69	53	133	
LAMBAYEQUE	2,558	380	365	58	314	14	24	6	67	
LIMA	30,306	4,615	3,445	582	1,302	328	158	201	1,366	
LORETO	2,680	259	316	43	180	5	36	13	77	
MADRE DE DIOS	622	72	79	25	49	5	1	2	12	
MOQUEGUA	933	119	159	44	94	12	10	5	21	
PASCO	493	45	75	9	43	2	2	2	20	
PIURA	3,382	394	232	46	246	8	94	7	26	
PUNO	3,478	324	511	51	224	8	9	18	133	
SAN MARTIN	2,249	221	187	37	227	7	4	11	30	
TACNA	728	99	147	39	91	2	1	1	17	
TUMBES	663	92	79	17	59	7	6	1	37	
UCAYALI	1,306	164	204	22	112	2	7	6	22	



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Regarding attention through Comprehensive Health Insurance (SIS), which is a public type of insurance for people with limited income, through Supreme Decree No 004-2007-SA it was stipulated that the cover provided by the service would only include detection and recovery of disorders concerning visual perception and blindness in children (only related to squint and cataracts); and surgical attention and rehabilitation sessions exclusively in the health facilities of first level. The maximum limit for annual investment per person is of S/ 12,000.00.

The regulation previously mentioned stipulates on its chapter called "Specific Exclusions" that focuses on the several damages affecting persons with disabilities; for instance, cerebral palsy and other paralytic syndromes, traumatism effects, poisoning and other consequences due to external causes, as well as self-inflicted lesions (typical and resulting from Psychosocial disabilities.)

It should be noted, regarding this matter, the importance of centralism in terms of distribution of more complex institutions in Lima and Callao and in some capitals of the city, and that is why 50% of available hospitals are located mainly in four cities (Lima, Lambayeque, Junin, and La Libertad)

Lima holds 35.3% of hospitals and 34.9% of health centers. But concerning services specialized in rehabilitation, this number, which expresses centralism, increases: Lima holds 50.6% of hospitals and only 18 regions have these services, while the rest of the country does not.

On the other hand, the Peruvian government has not still implemented a community approach for the rehabilitation of persons with disabilities. They have a project for that purpose elaborated by the INR, but it does Not have the basic community characteristics, which involve the participation of persons with disabilities in both management and execution of such projects; training in attention of communal and voluntary promoters, and the approach of social and comprehensive approach, acknowledging the rights of persons with disabilities, which means supporting their social, economic, organizational empowering in order to be visualized by the creators of politics so as to generate real achievements towards effective and real social inclusion.

Given that the approach to attention is not properly implemented, the few services of health, education and accessibility existing are offered only in some sectors and without intersectoral coordination that allows, by improving the available resources, to make possible the exercise of the right of PWDs to participate and enjoy the social and economic development of the country, and its own cities.

Regarding Mental Health, persons with mental illnesses hospitalized in mental health centers, face a situation where they encounter themselves helpless because they are exposed to the vulnerability of their rights. Therefore, due to their high level of dependence towards people who offer them treatment and care; the lack of importance to their words and the rare possibilities to access regular mechanisms of protection of their rights create such difficult situation for them.

In the year 2001, the Interamerican Commission of Human Rights (CIDH) issued a general recommendation on promoting and protecting the rights of persons with mental disability<sup>109</sup>. There are also some recommendations for the States that, like Peru, are part of the Interamerican system, such as:

- a) To change the existing laws in the matter of mental health or disability in general.
- b) To take measures of different kinds, such as: legislative, judicial, administrative, educational and other matter to spread, through appropriate and dynamic measures, the international standards and conventional rules of human rights that protect the fundamental liberties and the rights of persons with mental disability.
- c) To promote and implement, through legislation and national plans of mental health, the organization of community services of mental health whose objectives are the full integration and participation of persons with mental disabilities in our society.

<sup>109</sup> Recommendation of the Interamerican Commission of Human Rights on the Promotion and Protection of the Rights of Persons with Mental Disability. Approved by the Commission on its 111th extraordinary period of sessions, on April 4<sup>th</sup>, 2001.



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d) To promote, through the Ombudsman's Office and population in general, the creation of specific initiatives for the defense of human rights of persons with mental disability

CIDH's recommendation pointed out the protection of the rights of persons who have a special type of disability, as it is the case of mental disability, because such persons are especially vulnerable due to the continuous violations of their human rights in psychiatric hospitals and confinement centers. That is the reason why States are reminded of the need to take measures in order to achieve appropriate respect of the rights of persons with mental disability and their integration to society.

Bearing this recommendation into account, the Peruvian Ombudsman's Office supervised institutions of mental health in the year 2004; such supervision was focused on determining the situation of persons with psychosocial disability, hospitalized in the mental health centers. Such supervision took place in six health centers of the Ministry of Health and in two centers of the Social Health Security (ESSALUD) and it produced Ombudsman's Report No 102<sup>110</sup>. That same year, the Ministry of Health (MINSA) also approved the guidelines for action in Mental Health<sup>111</sup>.

The Peruvian Congress did not succeed. However, many projects of law presented in favor of amendments to the General Law of Health; especially to produce the incorporation of several articles related to attention of mental health. That is the case of Projects of Law No 12669 of March 30<sup>th</sup>, 2005 and the Project of Law No 11885/2004-CR of November 8<sup>th</sup>, 2004. Also, the approval of a Project of Law is still in process. Such project refers specifically to the field of Mental Health, the Project of Law 2465/2007.

In the Ombudsman's Report, it is mentioned the issue regarding general hospitals; only few of them offer the possibility of hospitalization for treatment of a Mental Health. In addition, general hospitals which have psychiatrists usually send the patients who require hospitalization to specialized centers or fourth level. Moreover, most registered beds for psychiatry are located in hospitals specialized in Mental Health in Lima.

On May 8<sup>th</sup>, 2002, Law No 27751 was issued in order to eliminate discrimination due to age limit for persons with physical and mental disabilities in the programs of health and food of the government. Also, on July 27<sup>th</sup>, 2004, by Resolution of the Ministry of Health No 771-2004/MINSA, the Strategy of National Sanitary of Mental Health and Peace Culture was set up, along with 9 other strategies to achieve functional objectives such as health culture for the physical, mental and social development of the population; healthy environment for the population; protection and recovery of health and rehabilitation of the capacities of persons in equal conditions and full accessibility. A year later, the National Strategic Operational Plan of Mental Health was implemented; it took into account the following lines of action: (i) strengthening of the guiding capacity of the Ministry of Health; (ii) the integration of mental health in the comprehensive attention of health; (iii) the reorientation of services of mental health assuring the access to attention and prioritizing the participation of the community; as well as (iv) fostering measures of promotion and prevention of mental health encouraging the participation of citizens and intersectoral coordination.

Despite this effort, the proposal of services of MINSA is still inadequate to cover the demand of attention in Mental Health nationwide. It does not even guarantee the rights of persons with disabilities to receive sanitary and social attention corresponding to their health needs and to be treated in an environment that is as comfortable as possible, and also in their community.

The Ministry of Health has 472 hospitals and only 10 offer attention in Mental Health. See the following chart.

<sup>110</sup> Ombudsman's Report No 102 – Situation of the rights of persons hospitalized in establishments of mental health - 2004

<sup>111</sup> See: [www.congreso.gob.pe/.../salud.../Lineamiento-Salud-Mental.pdf](http://www.congreso.gob.pe/.../salud.../Lineamiento-Salud-Mental.pdf)



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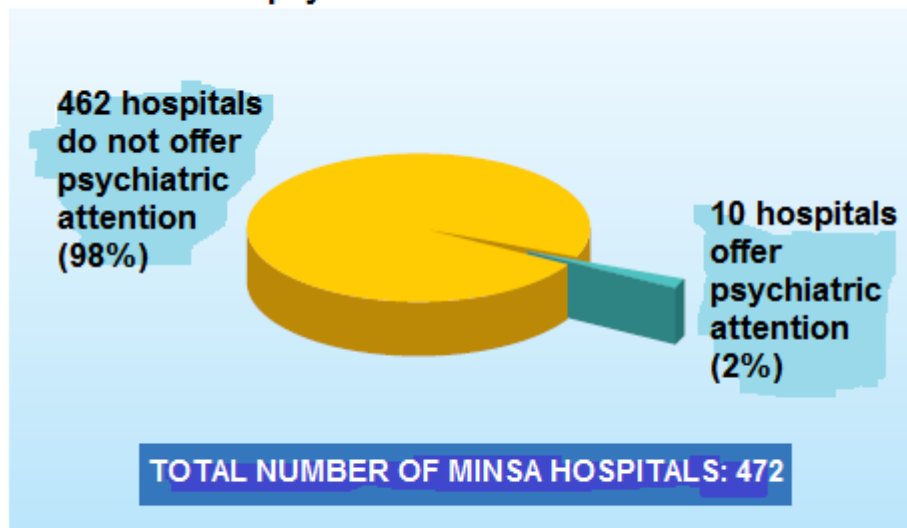


## MINSAs Establishments that provide the service of hospitalization due to mental health

	MINSAs ESTABLISHMENTS	LOCATION	POPULATION
1	Hospital Víctor Larco Herrera	Lima	522
2	Hospital Hermilio Valdizán	Lima	243
3	Instituto Nacional de Salud Mental "Honorio Delgado – Hideyo Noguchi"	Lima	98
4	Centro de Rehabilitación del Enfermo Mental de Iquitos – CREMI	Loreto	66
5	Hospital Honorio Delgado	Arequipa	29
6	Hospital Hipólito Unánue	Tacna	25
7	Hospital de Apoyo Domingo Olavegoya	Junín	12
8	Hospital Regional de Loreto	Loreto	10
9	Hospital Regional de Trujillo	La Libertad	8
10	Hospital Regional de Ica	Ica	6
<b>TOTAL</b>			<b>1,019</b>

Source: Ministry of Health  
Elaboration: Ombudsman's Office

## Percentage of hospitals that do not offer psychiatric attention



Source: Guidelines for action on Mental Health  
Elaboration: Ombudsman's Office

3 out of the 10 MINSAs establishments that offer psychiatric attention are located in Lima,, 2 of the them are located in Iquitos (Loreto) and the rest are located in the cities of Arequipa, Ica, Jauja (Junin), Tacna and Trujillo (La Libertad). 863 out of the 1019 persons with mental illnesses (85%) who are hospitalized in MINSAs establishments are located in hospitals in Lima.

Due to the few establishments that offer services on mental health, it is common for them to offer attention to patients coming from different regions from where they are located. For instance, the



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Hermilio Valdizan Hospital (Lima) has patients in the cities of Apurimac, Ayacucho, Huanuco, Huancavelica, Pasco and the highlands from Lima. At the Hipolito Unanue Hospital, attention is offered to patients from Moquegua and Puno, and at the Iquitos Mental Rehabilitation Center (CREMI) we can see patients coming from Arequipa, Lima, Piura, San Martin and Ucayali. People who are hospitalized in these hospitals do not receive visits from their relatives or friends given that they are far away from their hometown, which increases their feeling of loneliness, isolation and family warmth.

Such situation opposite to the links that the Committee of Economic, Social and Cultural Rights (CESCR) of the United Nations included in their General Observation No 14 (related to the rights of persons with disabilities) through which it was pointed out that ‘‘the establishments, goods and health services must be geographically available to all sectors of the population, especially vulnerable or discriminated groups, such as (...) persons with disabilities<sup>112</sup>; which means that the treatment for a particular disability must be preferably provided at a community level without any kind of discrimination.

The States must guarantee full effectiveness of the use of the right to health by creating conditions for all persons to receive medical assistance and care in case of suffering from any mental disorder. However, mental health attention in Peru is not often covered as it should be by health insurance companies, without taking into account the high economic expenses that the cost of treatments for most of the population can bring about<sup>113</sup>.

## EsSalud Establishments that bring hospitalization services for mental health

	ESSALUD ESTABLISHMENT	Location	Population
1	Huariaca Hospital I	Pasco	93
2	Edgardo Rebagliati Martins National Hospital	Lima	62
3	Cañete Hospital II	Lima	20
4	Guillermo Almenara National Hospital	Lima	18
5	Resurrección Clinic	Lima	66
6	Hermilio Valdizán Clinic	Lima	60
<b>Total</b>			<b>319</b>

Source: Health Insurance Institute (ESSALUD)

Creation: Ombudsman's Office

Through the Ombudsman's Report 140, the Ombudsman's Office said that the mental health strategies in our country are marginally placed in the Ministry of Health organizational hierarchy and relegated in its plans and programs. As a consequence, there is not any policy that controls running and development of the system; and there is not the necessary information for that.

In that way, the Health Situation Analysis (ASIS) in the country, not only nationwide but also region-wide, does not consider the gathering and analysis of the information related to mental health. Likewise, there is no system that centralizes analyses and creates epidemiological information (such as the prevalence or impact rates) of these illnesses.

On its part, the mental health problem treatment by ESSALUD is not that different. This institution does not have an organization that supervises and organizes its different mental health services; nor an authority that centralizes its information. Likewise, the mental health topics have also a marginal placement in this institution plans and programs.

<sup>112</sup> Committee of Economic, Social and Cultural Rights, General Observation No 14, April-May/2004. Paragraph 12.

<sup>113</sup> HUNT, Paul. Document E/CN.4/2005/51. Op. Quote. Paragraphs 7, 45 and 46. Document quoted by the Ombudsman's Report No 140, page 132.



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There is also a great problem in the access to medicine for psychiatric disorder treatment because of its high costs and the treatment chronic; factors that are added to the poverty in which people with this illness live, due to their disability and the social and work marginalization.

The average cost of the atypical nerve medication is twice or three times higher than the basic salary in Peru; meanwhile the generic medicine are approximately US\$ 12 Dollars per month.

The price difference between the atypical and generic medicine is also created by an import tax of 18%, besides the government rates, which comprises a 20-30% of the general cost of the medicine in the moment the user receives them.

The psychoactive medicine quality also varies considerably. A well-known psychiatrist that works in one of the Social Security hospitals, Dr. José Cabrejos, said that there are many Fluxetine brands, but these vary dramatically due to their cost and effectiveness. Dr. Cabrejos explained, also, that he had to prescribe three or four times the quantity of the cheapest medicine to achieve the same effectiveness as the expensive ones. The cheapest medicines have also more marked side effects that weaken the patient and to fight against them, the doctor has to prescribe another medicine. As a result, there is only a slight difference between the atypical medicines final cost and the cheaper generic medicines'.

The Health Ministry has not included the mental disorders within the Comprehensive Health Insurance (SIS), and even when the Peruvian Congress approved Law No 28588 on July 21<sup>st</sup>, 2005, stating the implementation of the mental health component in the SIS as a "priority", the progress is not remarkable. For example, Supreme Decree No 004-2007-SA of March 17<sup>th</sup>, 2007, which was established by the Prioritized List of Health Interventions of Compulsory Application for all the establishments that will be funded by SIS, regarding mental health said that in this system only the "Detection of mental health problems" will be carried out.

The mental health services in the country prevalently work in an intramural or ultra institutionalized attention model. This model restricts the attention of the psychic problems in an isolated way from the social and environmental part. It is a medical model, it is not social, and that is why it is a contrary model to the approach of the persons with psychosocial disabilities' rights because it tries to rehabilitate but isolating the person from their family and communal environment.

Unfortunately, currently, there is not any political will to have disposal of extra hospital optional resources that are inserted in the community, so they can be the base to implement the community rehabilitation model.

The human rights organization Mental Disability Rights International (MDRI) and the Association For Human Rights (APRODEH) carried out, from October 2002 to February 2003, an investigation about the situation of the mental health that reported many serious violations to the human rights of persons with mental disabilities; one of them was the inhuman and degrading treatment in the institutions; discrimination in the provision of the social and health services; non-fulfillment of the informed consent and violations of the community integration right.

The mentioned investigation stated that families can play a critical role to achieve the community integration; however, without the proper services and support, they will not be able to facilitate the real community integration of their relatives with disabilities.

The General Persons with Disabilities Act comprises a set of supports for the families of the persons with disabilities. In that way, for example, Article 4 of that law acknowledges that family plays an essential role to achieve the law purposes, and states that the State must offer, to family members, an integrated training in education, sports, health and in the incorporation of the family members that have disabilities to the labor force. Yet, the families of persons with disabilities receive little or no State support. If it exists, not only the families could be benefited from a training that facilitates the rehabilitation and the attention of the family members with disabilities, but also they will take provisions to enable the "substitute care" that allows the relatives to rest from their role and spend time in other activities and services, as it is stated in the Convention.

As this right's situation is reviewed in Peru, the UN Special Speaker of the Health Situation, Dr. Paul Hunt, stated as follows:





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- a. That the civil society, and especially persons with mental disabilities and their families, participate in all the elaboration phases and mental health strategies, programs, laws and policies application;
- b. That the Government adopts the corresponding measures to apply the new Ministry of Health mental health policies, supervising it to have enough resources;
- c. That the Government tries to bring a proper attention of mental health, as it is provided for the general health services or in the community itself, rehabilitation services and support to the family. Likewise, it must be accessible to persons with mental disabilities and psychosocial problems in the whole country, including rural zones;
- d. That prison population has access to proper mental health services;
- e. That the human rights of the persons with mental disabilities are fully respected in health services and centers; for which all the professionals that usually work with the mental health system should be trained in human rights. Moreover, to set in motion independent mechanisms of supervision and responsibility in the mental health services, such as accessible, transparent and effective complaint mechanisms for patients. An examination board should regularly inspect the mental health services, as well as interview the patients. Likewise, and as another supervision mechanism, an independent, periodic and systematic revision should be established of the unwanted admission or treatment that should be submitted, also, to strict procedural safeguards and, finally,
- f. That the donors fund the applications of the Integral Reparation Plan (PIR) recommended by the Truth and Reconciliation Commission (CVR) in the inclusive mental health area, and provide technical assistance.

Most of the recommendations, as it is noticeable in the content of this report, are not implemented yet, as the permanent requests of the Ombudsman's Office can show, expressing the need of a law that guarantees the mental health right, as well as the respect of the person's rights in the medical interventions aimed to the mental health attention. That is why the Peruvian Congress is suggested to approve a law for that purpose.

It is proven also by the shameful prevalence of road accidents and other events that are perfectly preventable that every year cause almost 700 deaths because of accidents in the national road system and more than 4 000 hurt people. This figure has turned into a cold statistic data registered in a daily basis by the means of communication that do not have greater implications in the government field.

The dramatic side of this situation lies on, not only the person's death, temporal or permanent disability, but also his/her health affectation, that they mean severe damages that do not only make victims the affected passengers due to the lack of measures that prevent these accidents, but also their families and the community in general. In our country, the injuries caused by road accidents lead to severe problems of inequality and affect the poverty in a disproportionate way. With the road accidents and the number of victims, it is evident that the most road accidents take place in the inter-province roads within the country. This inequality is moved to the health attention field of the victims, because the populations within Peru, due to their greater exposure to poverty, have less access to attention in the health sector.

It is important to point out that the Ombudsman's Office has been in charge of this problem in many occasions, through the investigation and its results were written in the Ombudsman's Report No 108 of October, 2006 and, subsequently, the one that was carried out on November, 2008 and created the Report No 137.

Through their investigations, the Ombudsman's Office has been closely monitoring this phenomenon and could prove the great lack of attention of the safety in the inter-province transport by everyone; especially, and for its duties with a view to the population's human rights guarantee and the State.

In its Ombudsman's Report No 137, the Ombudsman's Office pointed out the non-existence of a urban public transport system in Peru that is properly regulated, rational, organized and has high quality.

### Number of Road Accidents in the National Road System

Year	Number of Accidents
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2002	2 459
2003	1 834
2004	1 198
2005	1 145

Source: Peruvian National Police, Division of Road Protection

During 2007, of a total of 79 972 accidents in the whole country, 47 941 took place in Lima, representing 59,9% of the total, with 653 dead people and 24 730 injured people, who became persons with disabilities. The figure doubles the one registered in 2003, when the figure of injured people rose to 13 511 people.

In general, regarding the health issue, most of the organizations of person with disabilities coincide in pointing out, as it is stated in the poll attached, that there are not any egalitarian access measures for health. Likewise, that the authorities do not intervene in the improper or bad treatment problems that exist towards people with mental limitations. On the other hand, the majority thinks that women have difficulties in the sexual and reproductive health field, which is caused by lack of information/orientation.

Also, it is noticeable that most of the PWDs do not have free access to the rehabilitation facilities in their own community; that there are not prevention policies towards new disabilities, which, in the same time, must be related to the State non-prevention policy in general. And this situation is getting worse with the attention centralized in coast zones and the capital, taking aside rural zones.

Finally, even though the PWDs have access to health campaigns, the health professionals often do not know the PWDs' rights, which explains the bad treatment to this kind of patients; and this is worsen due to the execution of such campaigns without special languages usage. As a consequence, the right to health of the PWDs is strongly affected because of the serious deficiencies not only in its coverage but also its quality; beyond the campaigns implementation that often do not fit in with the PWDs' reality.

## 2.22 Right to education (CRPD, article 24)

The right to education represents an essential aspect for the development of a human being. Although the Peruvian Constitution does not expressly acknowledge education as a right, it is pointed out in its article 13 that the education's objective is the complete development of a human being, it acknowledges and guarantees freedom of education and that parents have the duty of educating their children and the right to choose the education establishments and to participate in the educational process. It is pointed out in its article 15 that "the student has the right to an education that respects his or her dignity, as well as good psychological and physical treatment," and in its article 16 that "it is the State's duty to assure that nobody is stopped from receiving the proper education for economical reasons or mental or physical limitations."

Article 24 of the Convention on the Rights of Persons with Disabilities acknowledges the right of persons with disabilities to education based on equal opportunities with an inclusive education system on every level, making the access to education available throughout life. To make this right effective, States must adopt measures to assure that every child with disabilities has access to an early education and to elementary, high and superior mandatory education; that boys and girls with disabilities are included in early education programs; that there are not significant differences in the education of boys and girls in the different education levels, and if there is, they must adopt policies and legislation to eliminate those differences; that schools and materials are accessible and that individualized reasonable adjustments and required support are given to persons with disabilities to assure an effective education and full inclusion.

States must guarantee the availability of training services on Braille, sign language, augmentative and alternative ways of communicating, mobility and other aspects for children, adults or teachers that require them; promote the linguistic identity of deaf people; assure that the education is provided in the most appropriate languages, ways, means of communication and environments for everyone; assure that



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education system professionals are properly trained on disability issues, and assure measures to incorporate persons with disabilities in the educational team. States must make sure that students with disabilities are not excluded from tertiary education; that there are reasonable adjustments and that other measures are adopted in order to guarantee their access to education throughout their lives. They also have to make sure that persons with disabilities are identified early and that their educational needs are determined.

According to the criteria defined by the United Nations Committee on Economic, Social and Cultural Rights, in terms of education, the right to access public institutions and education programs without any discrimination must be included<sup>114</sup>. This criterion, developed by the Uniform Standards, points out in its 6<sup>th</sup> article that “*States must acknowledge the principle of equal opportunities on elementary, high and superior education for children, young people and adults with disabilities in integrated environments, and they must make sure that the education of persons with disabilities represents an integral part of the education system.*”

In 2003, the Ministry of Education adopted a Strategic Plan for Special Education 2003 – 2007 that considers, among others, the establishment of the National Directorate for Special Education (DNEE), for the attention of students with special educational needs associated to talent and disability. It also motivated the development of inclusive education policies that regulate the learning process of students with special educational needs from all levels and categories of the system. Likewise, it was adopted to guarantee the quality of educational attention for children and young people with special educational needs due to disabilities, on every level and category, through the strengthening of special education processes and services at urban and rural range.

However, the importance of these regulations and initiatives and the distance between them and reality still seems to be very important. An example of this is the fact that the Ministry of Education has not publicly reported yet figures about school inclusion, or, as said preliminarily, that the National Population Census (2007) does not allow observing the characteristics of the population with disabilities existing in Peru because the applied survey was focused on the registry of “households” and not people. The non-existence of information, or the ignorance of details that report the characteristics of this population sector hinder the possibility to formulate adequate public policies and implement the mandates of the Convention in an effective way with them.

According to the National Institute for Information and Statistics (INEI), persons with disabilities in Peru represent 8.9% of the general population. From them, 325,471 (12.9%) are between 6 and 18 years old, which means that they are in school age. In this respect, taking in consideration that in 2006 42,132 persons with disabilities were registered in different education system categories and levels, there would be 87.1% of boys, girls and young people in school age that would not be in the system. Likewise, the number of registered students with disabilities in the different special education levels is still higher than the number of students included in the other system categories<sup>115</sup>.

The Ministry of Education, in accordance with the principle of inclusion found in the General Education Act<sup>116</sup>, has declared the “Decade of Inclusive Education 2003 – 2012” and, within this context, it has committed to carry out pilot plans, programs, projects and agreements that guarantee the execution of actions to fulfil the right to inclusive education of students with special educational needs.

On the other hand, the Equal Opportunities Plan for Persons with Disabilities PIO 2003 – 2007<sup>117</sup>, approved on May 2003 with the aim of organizing and consolidating public policies on disability issues,

<sup>114</sup> CDESC, General Observation No 13 related to the right to education, paragraphs 31 to 37. See: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/aela0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/aela0b126d068e868025683c003c8b3b?Opendocument)

<sup>115</sup> Ombudsman’s Report No 11 – page 65

<sup>116</sup> General Education Act, Law No 28044 of July 17<sup>th</sup>, 2003, article 8 Article 8 (Principles of Education): “Peruvian Education considers the person as the center and main agent of the educational process. It is based on the following principles: [...] c) Inclusion, which incorporates persons with disabilities, excluded, discriminated and vulnerable social groups, especially in rural areas, without any ethnic, religious, sex or other type of discrimination; therefore, contributing to eliminating poverty, exclusion and inequalities.

<sup>117</sup> See: <http://www.congreso.gob.pe/comisiones/2002/discapacidad/PIO-2003-2007-pdf>



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established as its specific objective in regards to education “guaranteeing its accessibility, quality and that it is free in a context of inclusive nature.” Among the actions and measures proposed in the mentioned plan we can find the one of encouraging the development of inclusive education policies that regulates the learning process of students with special educational needs on all system levels and categories.

A Pilot Plan for Inclusive Education was designed for this, with geographic coverage, on its first phase, in four regions of the country: Junin, Lambayeque, Lima and Loreto. The Plan envisages the participation of 632 institutions of all education system levels and categories, located in said regions. On the other hand, according to what was envisaged in the consolidation phase, the coverage of the Pilot Plan must be extended to six other regions between years 2007 and 2008<sup>118</sup>.

In 2007, the Ombudsman’s Office carried out supervision in 82 regular public educational institutions of elementary level in all of the country’s departments. The aim of said supervision was to assess the implementation of the inclusive education policy for boys and girls with disabilities. It was designed by the Ministry of Education in order to determine the degree of fulfilment by the Peruvian State of the obligations in regards of guaranteeing the fulfilment of their right to inclusive education in public regular schools.

Based on the research made, the Ombudsman’s Office submitted the Ombudsman’s Report No 127<sup>119</sup> observing the almost non-existent progress of the Pilot Plan for Inclusive Education, proposing recommendations for its implementation. Among other problematic situations, the Ombudsman’s Office found out that the supervised educational institutions do not fulfil the physical accessibility (urban and architectural) regulations for persons with disabilities, preventing students with disabilities from accessing and enjoying the facilities and services provided in them.

According to the Ministry of Education, the execution of the Pilot Plan required a budget of S/.14’747,000. However, the Ministry has reported that the Plan has been carried out charged to the opening institutional budget of the National Directorate for Basic Education of the Ministry of Special Education (DINEBE), which amounts to S/.2’683,800<sup>120</sup>. On the other hand, the State does not assign enough resources to guarantee that inclusive educational institutions count with accessible infrastructure and furniture, properly qualified teachers, support equipment for the teacher and adequate educational books and material.

In the great majority of educational institutions supervised by the Ombudsman’s Office, the educational inclusion process has been limited to a mere integration of students with disabilities in regular schools. And the educational inclusion of students with disabilities has been carried out without a sufficient number of properly qualified teachers, whose training corresponds to the Regional Directorates for Education (DRE) and its respective Attention services for special needs (SAANEE). Only 10 more Resource Centres for special needs (CRANES) have been implemented, which must be at teachers’ disposal, with the consistent problem that the distribution of teaching and learning material has not been guaranteed in most of the supervised institutions<sup>121</sup>.

Regarding the levels of investment that the State assigns for the education of boys, girls and young people with disabilities, as seen in the following chart, for this year 2010 it has only amounted to S/.2’104,648, which roughly represents 0.005% of the total invested budget in the Education sector.

## MINISTRY OF EDUCATION

### MINEDU’S INVESTMENT ON SPECIAL BASIC EDUCATION – 2010

MINISTRY OF	BUDGET	%
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<sup>118</sup> Pilot Plan for progressive inclusion of children and adolescents with disabilities – Ministry of Education – See: [portal.perueduca.edu.pe/basicoespecial/.../planpiloto\\_inclusion.doc](http://portal.perueduca.edu.pe/basicoespecial/.../planpiloto_inclusion.doc)

<sup>119</sup> Ombudsman’s Report 127 – See <http://www.defensoria.gob.pe/inform-defensoriales-php>

<sup>120</sup> Idem. Page 48

<sup>121</sup> Idem. Page 98-103



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EDUCATION		
TOTAL	4,111,262,739	100
SPECIAL BASIC EDUCATION	2,104,648	0.05

Source: Chart based on the information found on the website of Economic Transparency, Ministry of Economy and Finances (MEF)<sup>122</sup>

There are no figures for inclusive education activities in the National Budget for year 2010; S/. 2,104,648.00 was assigned for special education schools, which represents 0.05% of the Ministry of Education's total budget, amounting to S/. 4,111,262,739.00. The little investment on the education of children and young people with disabilities shows specifically the exclusion of the education system.

## 2.23 Right to Work (CDPD, Article 24)

The right to work is one of the rights that require the highest demand of fulfillment promoted by persons with disabilities in our country. In effect, it can be clearly seen in the different surveys, interviews and polls carried out<sup>123</sup>.

Article 22 of the Peruvian Constitution acknowledges work as a duty and as a right, base for social wellbeing and means of fulfillment of a human being. Its article 23, on its part, states that work, and the ways it is presented, is object of main attention of the Government, because it especially protects mothers, children and persons with disabilities who work; that the government promotes conditions for social and economical development, especially through promotion politics of productive work and education for labor; and that no work relation can limit the exercise of constitutional rights or ignore or diminish employees' dignity. Other constitutional articles, such as 24 to 29 refer to the acknowledgement of rights, liberties and guaranties that, at a constitutional level, are considered fundamental.

Article 24 of the Convention on the Rights of Persons with Disabilities is even wider and more considerate regarding the acknowledgement of rights and liberties that must include persons with disabilities in the workplace. This article mainly acknowledges the right of persons with disabilities to work and make a living in an open, inclusive and accessible labor market and a workplace, even for persons who acquire a disability while they perform their job duties.

To make this right effective, the States that are part of this Convention must adopt legislatives measures to protect persons with disabilities against discrimination at all work stages and all kinds of jobs and to acknowledge the rights of persons with disabilities to work under equal conditions like other people, particularly the right to equal salary for work of the same value, to implement special programs and work policies that aim to the recruitment of persons with disabilities who are left out due to privatization, improvements to the economic fall and restructuration of public and private companies, to assure the availability of technical and financial assistance in order to offer reasonable adjustments, which includes promoting the creation of cooperatives and companies created to foster managerial skills, to implement affirmative and effective action measures to prevent the isolation of persons with disabilities in the workplace. It must assure the access of persons with disabilities to open employment and services of professional development, including the ones that encourage self-employment, to eliminate significant differences existing in the employment of men and women with disabilities and to make sure there are policies and legislation to eliminate such differences in order to promote the progress of women with disabilities. Among persons with disabilities, the most vulnerable groups must be identified; policies and legislatives measures must be taken to include them in the labor market. In addition, measures to promote union rights of persons with disabilities and to keep and recycle employees who, due to an accident at work, end up getting a disability that does not allow them to perform their regular duties as usual.

<sup>122</sup> <http://ofi.mef.gob.pe/transparencia/mensual/default.aspx?y=2004&ap=ActProy>

<sup>123</sup> See: [dpi.org/sp/resources/publications/.../NOTAINFORMATIVANo54.pdf](http://dpi.org/sp/resources/publications/.../NOTAINFORMATIVANo54.pdf)



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The States must protect the job that persons with disabilities have in the informal sector of the economy of the government and adopt measures to get out of that sector as well to have access to basic services and social protection. In addition, they must protect employees with disabilities from unfair downsizing and obligatory and necessary work; to make sure persons with disabilities who have professional knowledge and technical preparation are provided with the necessary support to enter the labor market as many times as possible, as well as to make sure students with disabilities have equal access to the ordinary labor market and to guarantee the existence of different kinds of jobs, such as work at a certain company, telecommuting (out of workplace or home), subcontracting and job opportunities that are offered by the new communication technologies.

Article 7 of Uniform Rules points out that “States must acknowledge the principle that persons with disabilities must be able to exercise their human rights, particularly regarding employment. There must be equal opportunities to get a productive and paid job in the labor market both in urban and rural areas.” In addition, the General Observation No 5 of the Committee of Economic, Social and Cultural Rights of the United Nations<sup>124</sup>, which mentions that the effective enjoyment of the right for persons with disabilities to work, requires the elimination of discrimination “crucial and persistent” as well as the material barriers that society has created in terms of transport, housing and job posting which are the reason why persons with disabilities are taken out of employment<sup>125</sup>.

Moreover, according to the regulations and standards set up to guarantee the human rights of persons with disabilities; it is not enough to fight against discrimination but also it is crucial to fight against other work barriers. Therefore, States must actively support the integration of persons with disabilities in the ordinary labor market and also develop policies that promote and control flexible work provisions and alternatives that allow to reasonably meet employees’ needs<sup>126</sup>.

However, the Ministry of Work and Promotion of Labor (MTPE), along with the Specialized Rehabilitation Centers (CER), has developed programs in our environment that aim to raise awareness regarding the reincorporation of persons with disabilities to the work system in order to make work officers, inspectors, supervisors, consultants, managers, mediators and administrative Personnel aware of the problems that persons with disabilities face. However, it does not relate directly with the comprehensive frame of public policies in this field which are necessary to deal with such problems. There are no policies and regulations interrelated between them to plan concrete strategies to promote respect of diversity and equality of opportunities for persons with disabilities in the workplace as it is stated in the “Uniform Rules regarding Equal Opportunities for Persons with Disabilities<sup>127</sup>.”

Just like it occurs with other issues regarding human development, in our country, there are no clear figures on statistics of working persons with disabilities. In addition, even though it is common knowledge that one of the main characteristics of persons with disabilities is poverty and extreme poverty, public programs responsible for promoting employment for the sector are extremely poor or simply symbolic.

The General Persons with Disabilities Act of Law No 27050 establishes on its article 33 (modified by Law No 28164) that “the Executive Branch, its independent and decentralized body, its constitutionally autonomous institutions, public companies, regional governments and Municipalities are obliged to hire persons with disabilities who have the necessary requirements for the job, which would have to represent at least 3% of the total personnel.” In addition, even though there are many institutions that are effectively complying with such duty according to the provisions of law, there are also other institutions

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<sup>124</sup> General Observations (GO) of the Committee of Economic, Social and Cultural Rights (CESCR) have the object to appreciate more seriously the type of measures that the States can adopt in order to promote the effective fulfillment of each of the rights included in the International Pact of Economic, Social and Cultural Rights (PIDESC). General Observation No 5 (related to the rights of persons with disabilities) was adopted by the CESCR on its 11<sup>th</sup> ordinary period of sessions carried out in 1994.

<sup>125</sup> Committee of Economic, Social and Cultural Rights. General Observation No 5. 9/12/1994, paragraph 22.

<sup>126</sup> Ibid, paragraph 24.

<sup>127</sup> The Uniform Rules on Equality of Opportunities for Persons with Disabilities were approved by the General Assembly of the United Nations, on its 48<sup>th</sup> period of sessions, through Resolution 46/96, December 20<sup>th</sup>, 1993 (published on the document A/RES/48/96, of 4/3/94).



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that are not complying and are sanctioned for this behavior as it is expressly stated in Law No 29392<sup>128</sup> (Infractions and Sanctions due to non-fulfillment of certain articles of the General Persons with Disabilities Act). To make matters worse, the government does not have crossed program or plan aiming at the work inclusion of persons with disabilities.

According to the research on Work and Disability that led to the Special Commission of Studies on Disabilities in the Peruvian Congress in the year 2005<sup>129</sup>, the conditions for persons with disabilities to have access to the labor market are particularly limited. In effect, about 76% of PWDs are in an idle state and when they participate in the labor market they face an unemployment rate that, for persons with disabilities, is 70% higher.

In addition, in this context, gender differences are particularly evident; the gap in terms of the participation rate in the population with or without disabilities is about 50% in the case of men and 34% in the case of women with disabilities in the year 2002. By 2003, such gap was 44% and 38% respectively. Also, the unemployment rate for women with disabilities is by far higher than for women without disabilities, 17% for the year 2002 and 28% for the year 2003. Such rates are 7% and 26% higher than for women without disabilities in those same years.

Regarding employment conditions, article 31 of the General Persons with Disabilities Act establishes that the person with disabilities will make use of all benefits and rights stipulated by the work legislation for employees and nobody can be discriminated for being a person with disabilities, adding that 'it is an null act, based on discriminatory reasons, to limit the access, continuance and/or in general affecting the conditions of employment of persons with disabilities.

Nevertheless, apart from the fact that this protection is not always real, judicial authorities lack uniform criteria when applying the law, which increases even more the levels of uncertainty and insecurity that persons with disabilities must suffer concerning enjoyment (and protection) of their rights. This occurs given that, regarding the right to work, our Courts act in opposite ways. For instance, the case of Vilma Palma Calle<sup>130</sup>, through which – in a positive way – the act of denying a person the chance of getting a job due to his/her disability was sanctioned. Vilma Palma Calle was a person with disabilities who was majoring in Food Industries and started working in the institution labs. However, teachers opposed to appoint her for that job, pointing out that her disability (driving and speaking skills) did not make her capable to occupy such position. The expressed sentence resulted historic, given that it was the first case in which a person with disabilities was judged through discrimination at work. Those teachers were sentenced to 3 years imprisonment and punished with a 10 thousand soles payment in favor of the victim.

On the other hand, an unfortunate case shows us that Peruvian judges lack uniform interpretative criteria, according to the standards in terms of human rights of persons with disabilities, which was the case of Carlos Guerrero Quiroz<sup>131</sup>, who took action on the compliance of the right to be granted a job position according to his capabilities and needs required by the Municipality, as it is stipulated by law.

Despite the existence of a legal frame – always insufficient – that aims to promote and protect the right of persons with disabilities to have access to employment in appropriate and decent conditions, the reality, as we have discussed before, still needs to show such improvements of regulations in practice. In addition, everything occurs in a context in which the non-fulfillment of laws that benefit PWDs seems to respond both to the existence of limitations in the regulations and to the approach defaults in their implementation. For example, the policies for work promotion for persons with disabilities do not even cover 1% of this work group.

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<sup>128</sup> Law No 29392, Law that establishes infractions and sanctions for non-fulfillment of the General Law of the Person with Disability and their regulations, which has the object to establish administrative infractions and the correspondent sanctions for the non-fulfillment of the provisions included in the regulations previously mentioned. According to Article 30, the competent institution for the application of such Law is the Ministry of Women and Social Development.

<sup>129</sup> MALDONADO, Stanislao. Work and Disabilities in Peru: Work Market, Public Policies and Social Inclusion of Persons with Disabilities, Editorial Fund of the Congress of the Republic, Lima 2005.

<sup>130</sup> Case whose sentence was issued on June 12<sup>th</sup>, 2010 in the 7<sup>th</sup> Criminal Court of the Superior Court in North Lima.

<sup>131</sup> File No 01234-2008-PC.



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A recently conducted research on the year 2010 by the Trust Foundation for the Americas and the Center of Rights and Development (CEDAL)<sup>132</sup> on the work situation for persons with disabilities in Peru states that there is still a lot to work on in order to make sure that public policies assure both in practice and in their regulations that all persons with disabilities can exercise the right to work and make a living in a labor market and an open, inclusive and accessible labor market, as it is stated on article 27 of the Convention on the Rights of Persons with Disabilities.

There are several barriers for physical and mobility accessibility, especially regarding transportation, but also in work establishments that limit free circulation of persons with disabilities and, therefore, they restrict in a severe way their access to job positions and to job opportunities from which they could normally benefit.

There is an evident lack of a seriously structured and coordinated policy, in and out of the government, which can include a series of activities to promote employment and generation of income from other sources such as promoting business and other kinds of companies, that design a coordination and communication policy in order to raise awareness on the private sector regarding work inclusion; or that comes up with ways to promote physical and transport accessibility in a way that it makes mobility to work easier. In addition, public institutions do not comply with the requirement of including at least 3% of persons with disabilities in their payrolls; which does not bring about a positive environment to encourage the private sector to do likewise.

Regarding the vulnerabilities that threaten the existence of PWDs in the labor market, around half of the institutions of persons with disabilities who participated in the validation of this report, pointed out that all persons with disabilities are vulnerable, which means, there is not a particular group of PWDs more vulnerable than the other in relation to work. Nevertheless, another group, equally meaningful of these organizations expressed that there are groups who suffer from a differential vulnerability. Their opinion is divided into the following percentages: 17.1% considers persons with psychosocial disabilities more vulnerable<sup>133</sup>, 10.8% the deaf-blind; 4.1% children and elderly with disabilities; 1.4% women<sup>134</sup>, 0.9% wheelchair users and 0.5% schizophrenics (See Appendix 1).

In general, regarding PWDs and their relation with the labor market, the organizations of persons with disabilities mainly believe that there is a lack of protection against discrimination at work towards PWDs. In addition, the salaries they receive for performing their job are not equal to the salaries their colleagues without disabilities receive. Moreover, it should be noted that there is a lack of measures and/or public programs that promote full and productive employment of PWDs in a systematic and adequate way, including an increase in their recruitment.

On the other hand, according to most responses given in the survey applied to the representative people of the organizations of persons with disabilities, the application of insufficient precautions existing to save 3% of the public payroll for PWDs is poor. However it is pointed out that not only is there a lack of facilities, technical and/or financial assistance for employees to promote the recruitment of PWDs, but also, there is no promotion of creation of cooperatives and companies among PWDs.

Most surveyed people believe, in the same way, that Unions do not defend their rights properly, which creates a public lack of protection. Likewise, most people who suffer an accident at work and end up getting a disability are laid off, without providing PWDs with protection measures for their work stability. There is also a need to implement measures for PWDs to get out of informality, and to promote PWDs' work through new information and communication technologies.

It all makes it difficult for PWDs to fully exercise their right to have a job and to assure themselves a higher frame of social and economical equality. Job stability is as unprotected as other fields of social life, and not only are they discriminated, but they also lack support to defend their rights. That is one of the

<sup>132</sup> Next Release. Result of the Work Situation of Persons with Disabilities in Peru – Trust for the Americas – BID-FOMIN-Poet-Cedal Page 51.

<sup>133</sup> This term refers to persons who have any kind of mental limitation.

<sup>134</sup> This makes reference to gender vulnerability.





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reasons why most working PWDs are immersed in the informal sector of economy in poor, low-recognized, badly-paid and null-socially protected jobs.

## 2.24 Habilitation and Rehabilitation (CRPD, Article 26)

Rehabilitation is one of the main concepts of any public policy on disability. For this reason, States must ensure the rehabilitation services for persons with disabilities in order to make them achieve and keep an ideal autonomy and mobility level. Especially, elaborate national rehabilitation programs based on their real needs and full participation and equality principles.

As it is stated in the Standard Rules of Equal Opportunities for Persons with Disabilities, those programs must include a wide range of activities, as the basic training aimed to improve an affected function or compensate it, the advising to persons with disabilities and their families, the promoting of the autonomy and the occasional services provision such as evaluation and orientation. And persons with disabilities and their families must have the proper conditions to participate in the conception and organization of the rehabilitation services that concern them; these must be established in the local community where persons with disabilities live.

In accordance with Article 26 of the Convention, all persons with disabilities have the right to achieve and keep the maximum independence, full physical, mental, social and vocational ability, and the full inclusion and participation in all aspects of life, through general habilitation and rehabilitation programs, in health, work and education fields and social services.

In order to fulfill these duties, States must implement general habilitation and rehabilitation programs for persons with disabilities, in health, work and education fields and social services, including the early intervention, and the availability of these services and programs in rural zones; ensure that the participation in habilitation and rehabilitation services and programs is voluntary; promote the initial and continuous training of professionals and personnel that work in habilitation and rehabilitation programs; ensure the availability, knowledge and usage of support devices and technologies designed for persons with disabilities, in habilitation and rehabilitation activities; and adopt measures to promote the international cooperation in the support technologies exchange, especially with third world countries, as our.

However, contrary to these duties, in our country the habilitation and rehabilitation attention services are poor and they are highly centralized in Lima and in capital cities within the country, which exclude a great number of persons with disabilities that live in the furthest or poorest zones.

In our country, an institutional rehabilitation concept and methodologies prevail and, as a consequence, these services are rendered within institutions, so the poor population that live in the country cannot have access to those services because of the lack of resources for transportation to rehabilitation centers. One of the reasons for this situation is that a rehabilitation strategy based on the community (RBC) has not been officially assumed, which would allow the coordination of all the existing public and private services in the localities themselves where the persons with disabilities are.

Against expensive rehabilitation services, with poor capacity and lack of equity in their distribution nationwide, and even region-wide, it is compulsory to develop alternatives that complement the traditional rehabilitation developed in professional centers and to allow persons with disabilities that live marginalized in urban, marginal and rural areas to have access to rehabilitation services that they need and they do not have. An alternative based on the limits of the Rehabilitation Based on the Community (RBC), promoted by the World Health Organization (WHO).

The implementation of habilitation and rehabilitation measures requires that persons with disabilities count on simplified processes and within reach of them in order to have access to these services. In Peru there are regulations, but they are not fulfilled. For example, Ministerial Resolution No 298-2004/MINSA establishes the obligation of issuing Certificates of Disability free of charge in different health establishments that count with health services. Or measures comprised in different articles of Law No 27050, such as article 15 that states that “regarding the tertiary prevention, (Ministry of Health, in coordination with CONADIS) executes and promotes the extension of the attention coverage of persons with disabilities aiming themselves to the effective rehabilitation”; according to its article 18, “The prosthesis, orthopedic appliance, medicines, drugs and all the compensatory help for the physical rehabilitation of persons with disabilities would be provided by the physical medicine services of the



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Ministry of Health, with the support and coordination of CONADIS”; or its article 20, which says “The State institutions in the health field, in coordination with CONADIS, provide attention in all of their specialties to persons with disabilities, in order to achieve their health recovery”.

Although in general terms it can be stated that the services provided by the National Rehabilitation Institute (INR) are appropriate, they are not enough to cover persons with disabilities nationwide; therefore they are insufficient.

It is the case of the services offered by ESSALUD, especially its Specialized Professional Rehabilitation Centers that, working as operative units of different difficulty levels, try to achieve the social and work integration of persons with disabilities from 3 models: the Specialized Professional Rehabilitation Centers (CERP), the Basic Professional Rehabilitation Module (MBRP); and the Basic Professional Rehabilitation Units (UBARP). Even though the Specialized Professional Rehabilitation Centers of ESSALUD have been working since 1997, currently, in the whole country, thirteen years after, there are only four centers and, as it is noticeable in the website of the institution, it lacks any kind of statistics about the population that is seen by each one of these rehabilitation centers that allows to know if in these centers persons with disabilities’ demands in this field have been covered nationwide or in their respective regions.

According to the representatives of organizations of persons with disabilities that have validated this report, in general, it is noticeable that there is no protection for PWDs’ will to participate voluntarily in the rehabilitation programs; in other words, their freedom is also restricted in this field. This situation worsens when the first formation and the subsequent update of the professionals and personnel that work in habilitation and rehabilitation programs of persons with disabilities are not secure.

## **2.25 Adequate living standards and social protection (CRPD, article 28)**

Article 25 of the Universal Declaration of Human Rights (UDHR) establishes that every person has the right to adequate living standards that guarantee him or her, as well as his or her family, health and well-being, particularly food, clothing, housing and medical assistance and the required social services. Every person also has the right to insurance in case of unemployment, illness, disability, widowhood, old age and other cases in which the person lacks subsistence means due to independent circumstances to his or her will. Likewise, it stipulates that mothers and children have the right to special treatment and care; and that all children, born in or outside marriage, have the right to equal social protection.

On the other hand, article 28 of the Convention on the Rights of Persons with Disabilities acknowledges the right of persons with disabilities to adequate living standards and to social protection. To guarantee this right, States must adopt measures to assure the availability and access to drinking water, adequate nutrition, clothing and housing for persons with disabilities; assure the access to services, devices and other types of adequate assistance at affordable prices for persons with disabilities, including the availability of programs that cover additional expenses related to disabilities; assure the access of persons with disabilities, especially women, girls and older people, to social protection programs and poverty mitigation programs; offer public housing programs and assistance and retirement programs to persons with disabilities; and measures to acknowledge the relation between poverty and disability.

However, in Peru these orders are still far from becoming true. Even though Latin America has made progress in the last years regarding reduction of poverty and extreme poverty, the situation of persons with disabilities is still dramatic, and there are no official fees for persons with disabilities in poverty or extreme poverty situations.

Article 21 of the General Persons with Disabilities Act stipulates that the State must promote the admission of persons with disabilities to Social Security, through contribution regimes and regular or facultative affiliation; and CONADIS will coordinate a special regime for health services assumed by the State for persons with severe disabilities and in situation of extreme poverty, which should be fixed in the Regulations.



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The Ministry of Health, as mentioned when previously discussing the right to health, created the Comprehensive Health Insurance (SIS) to provide basic services to persons in a situation of extreme poverty; a program that can be accessed by PWDs from the different regions of Peru. However, there is no specific program aimed at PWDs that takes into consideration specifically services aimed at treating their disability situation in any stage of the person's life.

The Act does not foresee granting discretionary pensions to persons with severe disabilities in an extreme poverty situation. Likewise, the law has established an incompatibility between the perception of disability pensions and orphanhood due to disability, with paid income<sup>135</sup>, which particularly affects persons with intellectual disabilities that require entering or staying in the labor market.

## **2.26 Participation in political and public life (CRPD, article 29)**

There is no support to create and strengthen organizations of persons with disabilities and their participation at an international, national and regional level. Persons with disabilities do not have material possibilities to organize themselves solidly, and when they do it is due to the support of private social projects.

## **2.27 Participation in culture, recreational activities, leisure and sports (CRPD, article 30)**

Article 30 of the Convention acknowledges the right of persons with disabilities to participate in the cultural life, to develop and use their creative, artistic and intellectual potential, to get their cultural identity and special linguistics acknowledged and supported and to participate in creative, leisure and sport activities in equal conditions as all people. To make this happen, States must adopt measures to acknowledge and promote the right of persons with disabilities to participate in equal conditions as all people in cultural life, including opportunities to develop and use their creative, artistic and intellectual potential; assure that cultural, leisure, touristic and sports facilities are accessible to persons with disabilities, taking children with disabilities into consideration, even through the conditional use of public acquisition and public funding; make sure that intellectual property laws do not represent a barrier for the access of persons with disabilities to cultural material, including their participation in pertinent international activities; as well as measures to support the culture of deaf people. Likewise, they must adopt measures to support the participation of persons with disabilities in sports, including the elimination of discriminatory and different treatment to persons with disabilities in medal and prize awarding; and to assure that children with disabilities have access in equal conditions as other children to participate in game, recreational, leisure and sports facilities, including the ones that are part of the school system.

The General Persons with Disabilities Act stipulates that CONADIS, working directly with the Peruvian Institute of Sports (IPD), must promote the development of sports activities of persons with disabilities, arranging adequate experts, equipment and infrastructure for its practice (article 28). Said institution has been appointed by the same act to promote, working directly with the IPD, the creation of the corresponding Special Sports Federations that require the different disabilities, so that Peru can be included in the International Paralympics Committee and other bodies or international institutions for special sports. Likewise, it points out that sportsmen with disabilities that obtain Olympic and world victories in their respective disciplines will be acknowledged by the IPD and the Peruvian Olympics Committee, in the same way as winners without disabilities are acknowledged (article 29); and, also, that every person that has a proof of subscription at her or his disposal in the National Registry of Persons with Disabilities will have the right to a discount of up to 50 (fifty) percent on the value of tickets for cultural and sports shows organized and/or sponsored by the Culture National Institute (INC), the IPD and Municipalities (article 30).

On the other hand, law No 28036, General Act of Sports in Peru, establishes that the obligation of promoting physical activity among persons with disabilities, encouraging the development of their physical and mental skills and guaranteeing their access to sports in an organized way (article 5, item 7),

<sup>135</sup> Law 19990 (Law of the National System of Pensions), article 63 and the following ones. See: <http://www.educared.edu.pe/especial/doc/ley/DL19990.htm>



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as well as the implementation of infrastructure, access and adequate equipment for sports and recreational participation and physical education of persons with mental and physical disabilities (article 8, item 10).

Likewise, article 10 of the General Act of Sports points out that the IPD is managed by a Board of Directors in which a member in representation of sports organizations of persons with disabilities must be included. Additionally, the Law establishes Special Sports Federations (FDE) that are civil private right and Non-profit associations that develop, promote, organize and manage the sports, recreational and physical education practice of persons with disabilities, in their different disciplines and categories. Its by-laws, leaders and base organizations are registered in the Sports National Registry (article 47)

The IPD, working directly with CONADIS, must promote sports, recreational and physical education activity of persons with disabilities, as well as the constitution of Special Sports Federations; acknowledging and encouraging sportsmen that obtain Olympic and world victories in their respective disciplines in accordance with Law No 27050 and other related and complementary regulations.

Unfortunately, the State does not hold cultural promotion activities among groups of persons with disabilities even though a 50% discount on the price of public shows organized by state entities has been legally established. There is no accessibility either in museums or access to cultural patrimony monuments; neither cultural creativity nor sports activities are encouraged.

Persons with disabilities that took part in the validation of this report through the survey applied at national level, attentively follow the foundation of a National Federation for adapted sports. National Olympics of adapted sports are held annually, in which all regions participate in the disciplines of wheelchair basketball, wheelchair races, marathon, athletics, wheelchair tennis or target shooting; however these sports are different to the ones held for PWDs with Down's syndrome. The majority of the scarce support measures given in favour of the sports participation of PWDs comes from private companies.

## **CHAPTER III Special situation of children and women with disabilities**

### **3.1 Special situation of women with disabilities (CRPD, Article 6)**

According to Article 6 of the Convention, the aspects related to gender must be integrated in a systematic way in the application of all the Convention articles, when applicable, and States must adopt measures to ensure the full development, advance and empowerment of women with disabilities, in order to guarantee the exercise and enjoyment of their fundamental rights and freedom acknowledged in the Convention and the elimination of any kind of discrimination.

States, in their legislation and policies, must (i) acknowledge the gender inequality that affects women and girls with disabilities; (ii) guarantee that they enjoy their fundamental rights and freedom in the same conditions as boys and men with disabilities; and (iii) that they enjoy all their corresponding fundamental human rights and freedom in the same conditions as women and girls without disabilities.

However, women with disabilities in our country are affected in a systematic way by a double discrimination: originated by the fact that they are women and, also, their disability. They must face gender prejudices that prevail in our society, that affect women, and what is more, the prejudices because of their disabilities.

The social work and family violence specialist, Beatriz Oblitas Béjar, summarizes rightly this situation as follows:

“Women with disabilities have two disadvantages; they must not only fight against barriers that are in their most direct environment: home, community, but also against additional obstacles and difficulties, as well as the lack of opportunities due to their disabilities. They are more prone to be poor, to be unemployed, to depend on other people in a physical and economical way, to be sexually abused (...)”

There is neither a specific legislation, nor actions by the Peruvian State to ensure the protection of their rights and the promotion of their development. In fact, the General Persons with Disabilities Act does not point out the special attention to women with disabilities, despite their situation of worse exclusion and



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discrimination. And, even though almost 30% of women with disabilities support their families, they are left by their couples, and they are in charge of supporting their children and they do not have any alternative from the State that allows them to insert themselves in the labor and production market. Most of women work in small businesses; they are limited to work as sellers permanently and to carry out modest tasks out of the social security.

Women with disabilities have, also, more difficulties to exercise their right to political and civic participation, being forbidden, in general, by men with disabilities. What is more, there are economical limitations; the lack of accessibility and the survival of traditional and cultural concepts and practices that restrict the political participation of women with disabilities.

### 3.2.1 Representation of women with disabilities

The public participation and representation of women— and especially of women with disabilities – are an essential requirement for the difficulties, which they face every day as a consequence of the systematic discrimination that affect them, to be integrated in the public agenda and be faced in a sensitive way towards gender equality. However, there are only few activities of women with disabilities in Peru that can have an impact in the State's policies or programs. One of them, undoubtedly, was the First National Women with Disabilities Meeting that took place on April 28<sup>th</sup> and 29<sup>th</sup>, 2003, in which some proposals were taken to be subsequently considered in the PIO 2003-2007.

Apart from this event, the steps taken to bring continuity and systematicity to the expansion process of the representation of women with disabilities in the public space, and the development of initiatives that increase their capacities and opportunities to substantially modify their discrimination are still poor or unnoticeable.

### 3.2.2 Access and participation of women with disabilities

An example of the weakness of these actions is shown in the fact that the main actions carried out by the State in order to establish guidelines for the promotion of rights of persons with disabilities (Equal Opportunities Plan for Persons with Disabilities 2003 – 2007; Equal Opportunities Plan for Persons with Disabilities 2009 – 2018; and the National Registry of Persons with Disabilities) lack an approach that displays and establishes measures to overcome the inequality of gender that affects women and girls with disabilities. An essential requirement so that the State, as instructed by the Convention, can guarantee that women and girls with disabilities can enjoy all their rights and freedom in equal conditions as men and boys with disabilities, as well as in comparison to the rest of women and girls without disabilities.

The problem gets even more complicated when it is noticed, as in the paradigmatic case of PIO 2003 – 2007, that several of these initiatives lack goals and indicators essentially because the available statistical parameters, as mentioned previously, lack reliability.

This hinders any type of analysis or definition of policies on the situation of women with disabilities in Peru, given that they lack reliable information to be based on. An example of what has been previously mentioned can be found in the National Registry of Persons with Disabilities (RNPD), in charge of CONADIS. According to this Registry, out of the total persons with disabilities registered, 62% are men and only 38% are women. Because of the registry's voluntary nature, and the low figures of the number of registered women with disabilities in the RNPD (nonetheless, women's participation in the total population spectrum is higher than that of men), it could indicate a difficulty in this field of which consequence is the sub-representation of women in said registries. And its consequence is that, without a detailed registry of the location and economical, social and health situation of women with disabilities in Peru, the different social development programs proposed or implemented from the State lack pertinent foundations to encourage their participation or the appropriate treatment of their reality.

### 3.3.3 Access to Health services for women with disabilities

According to the Survey of Households in the City of Lima on Disabilities, only 37% of women with disabilities has social security (facing a male coverage of 39%), which makes evident the low degree of



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social protection that is at the disposal of women with disabilities in Peru, as well as the existence of an unbreakable barrier that prevents their rights to have access to medicines, treatments or rehabilitation to improve their health. According to the collected information in the same Survey, only 13% of women with disabilities are in conditions to follow therapy or rehabilitation.

The poor possibilities of women with disabilities to find a dependent and paid job, usually place them in lower socio-economic levels; which benefits the impossibility to have access to public or private health systems, especially because, both are contributory systems.

Population with Disabilities: Do they have Health Insurance? by gender						
Health Insurance	Total		Men		Women	
Total	426 441	100%	211 141	100%	215 300	100%
Yes	162 564	38%	82 945	39%	79 619	37%
No	263 877	62%	128 196	61%	135 681	63%

Source: INEI-CONADIS. Survey of Households in the City of Lima on Disabilities – 2005

In general, the situation of women with disabilities is very similar to men's regarding the health access. The outlook is described in a concise and proper way by health issues specialist Juan Arroyo when he states that "The access to health and social security have as a main obstacle the close link between poverty and disability. The low work access percentage of persons with disabilities has a direct impact in the low access percentage of the health system".

From the 29.5% of PWDs that state that they need help for their daily activities, 60% are women. And the daughter-in-law, grandchildren and people who do not belong to the health sector are the ones that take care of them.

### 3.3.4. Access of women with disabilities to Education

For most women with disabilities in our country, education is a right that has been evidently broken: 16% of women with disabilities do not have any educational degree, and only 5% reached a complete university degree according to the socio-demographic profile of PWDs that INEI and CONADIS elaborated based on a survey around households in Lima and Callao in 2005<sup>136</sup>.

Population with Disabilities - 3 years old and above: Last Academic Level achieved by Genre						
Educational Level	Total		Male		Female	
Total	452 332	100%	223 326	100%	229 006	100%
No level	57 516	13%	20 541	9%	36 975	16%
Kindergarden	10 102	2%	5 599	3%	4 503	2%
Incomplete Elementary School	77 007	17%	37 298	17%	39 709	17%
Complete Elementary School	83 503	18%	39 126	18%	44 377	19%
Incomplete High School	52 379	12%	28 306	13%	24 073	11%
Complete High School	105 378	23%	55 265	25%	50 113	22%
Incomplete Technical Degree	6 072	1%	2 886	1%	3 186	1%
Complete Technical Degree	22 008	5%	12 319	6%	9 689	4%
Incomplete University Degree	8 720	2%	5 448	2%	3 272	1%
Complete University Degree	26 774	6%	14 914	7%	11 860	5%
Master Degree / PHD	1 131	0%	709	0%	422	0%
Unknown	1 742	0%	915	0%	827	0%

Source: INEI-CONADIS. Survey in Houses of Metropolitan Lima on Disability - 2005.

<sup>136</sup> INEI – CONADIS (2006) "Metropolitan Lima: Social-Demographic Profile of the Population with Disabilities, 2005." Survey on Houses about Disabilities of Metropolitan Lima – EHODIS 2005. Research conducted in Metropolitan Lima and Callao.

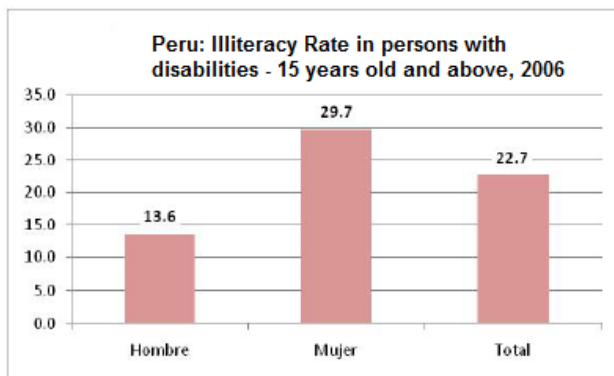


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According to the report on the right to education for PWDs in Peru, elaborated by the Special Commission on Studies in Disabilities of the Peruvian Congress (CEEDIS), among the factors that are the reason of exclusion of persons with disabilities in the educational field we can see on "the first place", the Non-fulfillment of regulations and laws that control the educational system; and on the second place, the low budget that does not cover the cost of essential material resources and even less for accessible infrastructure that make inclusion effective, and finally, on the third place, cultural resistance and ignorance of the problem<sup>137</sup>.

According to the same Survey in Households on Disabilities in the City of Lima (2005) previously mentioned, the number of illiterate women doubles the number of illiterate men. In addition, there are only few women who have learned to read or write through the Braille system, slate or stylus or special computer program<sup>138</sup>. This situation is similar to the results obtained on the ENCO (2006), which expresses that illiteracy in women with disabilities is double the number in the case of men<sup>139</sup>.



Source: INEI - ENCO Database, 2006. Personal Elaboration

The Peruvian School System includes about 1% of population with disabilities of school age according to estimates of the Ministry of Education<sup>140</sup>. Moreover, if we consider the figures provided by CEEDIS, it would cover around 3% of the population in this category; which means 97% and 99% of children and adolescents with disabilities are being left out of the system.

Registration in Special Schools in 2003							
School	School System		Total	Genre		Area	
	Traditional School	Non-Traditional School		Male	Female	Urban	Rural
Public	19,595	3,079	22,674	13,180	9,494	22,134	540
Private	5,077	39	5,116	2,904	2,212	5,044	72

<sup>137</sup> APRENDER VIDA. Education of Persons with Disabilities. CEEDIS. Lima, January 2005.

<sup>138</sup> INEI - CONADIS (2006), quote, page 72.

<sup>139</sup> INEI (2006) "National Census: X of Population and V of Housing 2005-2009" (National Progressive Survey 2006-ENCO). See: <http://www1.inei.gob.pe/web/Bibliolnei/ListaltemByTemaPalabra.asp?c=4&tt= Sociales>

<sup>140</sup> APRENDER Vida. Education of Persons with Disabilities - Teresa Tovar Samanez - Patricia Fernandez Castillo - Studies on Disabilities - Special Commission of Studies on Disabilities - CEEDIS-2005. See: [www.congreso.gob.pe/comisiones/...estudio/Estudio-Educa.pdf](http://www.congreso.gob.pe/comisiones/...estudio/Estudio-Educa.pdf)



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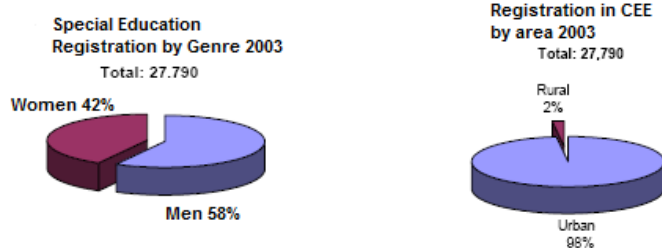


TOTAL	24,672	3,118	<b>27,790</b>	16,084	11,706	27,178	612
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Source: Figures on Education 1998-2003 MED. Personal Elaboration.

Quoted in: APRENDER Vida La Educación de las Personas con Discapacidad – Teresa Tovar Samanez – Patricia Fernández Castillo – Studies on Disabilities – Special Commission on Studies on Disabilities – CEEDIS - 2005

Regarding children with disabilities registered CEE (Special Education Centers) and discriminated by gender, around 60% are men and 40% are women. This difference can be interpreted in two levels: we can say that men are more prone to be born or acquire a disability or that men with disability have more access to educational centers than women.



Source: Figures on Education 1998-2003 MED. Personal Elaboration.

Source: APRENDER Vida La Educación de las Personas con Discapacidad – Teresa Tovar Samanez – Patricia Fernández Castillo – Studies on Disabilities – Special Commission on Studies on Disabilities – CEEDIS – 2005

The number of persons with disabilities registered in Occupational Educational Centers (CEOs) is shown on the following chart:

Persons with disabilities who have access to CEO nationwide 2003				
	Students	%	Genre	
			M	F
Persons with disabilities who have access to CEO	700*	0.03%	70%	30%
CEO students	252113	100%		

\* Approximate numbers according to specialists of the Special Education Unit – MED

Source: APRENDER Vida La Educación de las Personas con Discapacidad – Teresa Tovar Samanez – Patricia Fernández Castillo – Studies on Disabilities – Special Commission on Studies on Disabilities – CEEDIS – 2005

This chart provides another reason for the extremely dramatic educational situation for women with disabilities, only 30% of the total number of persons with disabilities registered in CEOs are women;





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which is highly serious considering that these 700 people only represent 0.03% of the total number of people registered in this kind of educational centers.

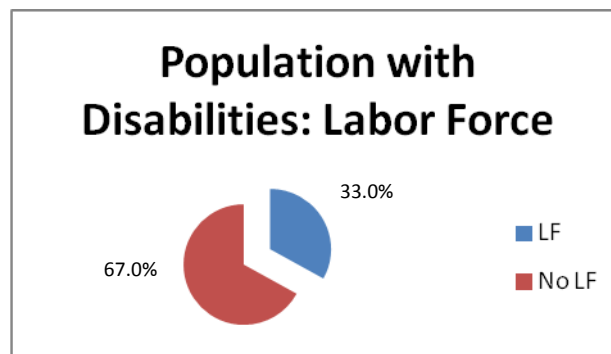
The report on access to education for persons with disabilities, elaborated by CEEDIS, points out that the principle of inclusive education fosters schools to significantly modify their structure, operation and pedagogical proposes in order to meet the diversity of educational needs for all children, including children with disabilities<sup>141</sup>. However, among the obstacles for integration and access of women in educational centers, we can specifically mention the rare number of educational centers with an inclusive approach.

Nevertheless, the difficulties and limitations have been taken into account. We should also point out the work carried out in this field by organizations of civil society, such as Foro Educativo, Save the Children, CEE Ann Sullivan, Fe y Alegría schools, the Peruvian Society of Down Syndrome or the Empowerment Center for Persons with Disabilities (CEMPDIS), which compose an integrated set of organizations who foster the approach to inclusive education and represent a new alternative of educational inclusion for women with disabilities in a way in which they make an effort to fight against the main factor affecting them, which is the cultural resistance towards the integration of women with an equal role in society.

### 3.3.5 Access of women with disabilities to the labor market

Regarding the access of women with disabilities to the Labor Market, it is important to point out that many employers see women with disabilities in a prejudiced and stereotyped way that identifies them as little efficient people; with lower productivity possibilities compared to other women without disabilities; or as people that generate more costs if they are hired, which lead to a lower labor demand rate.

It can be seen in the figures of the labor situation of women with disabilities in Peru; for both genders, 76% of PWDs are unemployed; a 67% of them state that they are not Labor Force (No LF), in other words, they do not have a job or are looking for a job.



LF: 33% (9,4% Unemployed – 90,4% Employed)

No LF: 67%

Source: INEI-CONADIS. Survey of Household in the City of Lima on Disabilities – 2005

Population with Disabilities: Labor Force by Gender						
Activity Condition	Total		Men		Women	
<b>Total</b>	<b>409 270</b>		<b>200 477</b>		<b>208 793</b>	
LF	134 870	100%	83 014	100%	51 856	100%

<sup>141</sup> See TOVAR Teresa y FERNANDEZ Patricia. ‘‘APRENDER Vida: Education of Persons with Disabilities.’’ CEEDIS. Lima, 2006.



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- Employed	122 250	91%	75 422	91%	46 828	90%
- Unemployed	12 620	9%	7 592	9%	5 028	10%
<b>No LF</b>	<b>274 400</b>		<b>117 463</b>		<b>156 937</b>	

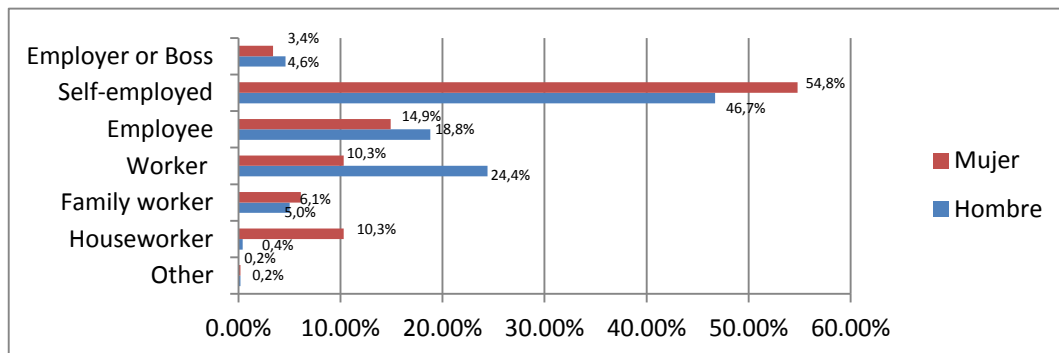
Source: INEI-CONADIS. Survey of Household in the City of Lima on Disabilities – 2005

Even though there is not a big gap between the unemployment rate of women and men with disabilities, the difference lies on the fact that a 75% of women state they are No LF, while only 59% of men state that they are No LF, which confirms the greater inactivity degree of women with disabilities.

By seeing the occupation by gender category, we can notice that the highest category for women with disabilities is self-employed; and one of the main reasons that explains this situation is the low education level they have access to, that is why most of them work as self-employed related to the handicrafts elaboration or to the management of little own businesses or to housework.

The previous idea stands by if it is seen that there is a high percentage of women with disabilities that state being No LF because they are doing housework or because they have more than one disability. And if they are LF and the bigger percentage have a job, it is because they are self-employed (by the occupation category 54.8% of women have been self-employed).

### Employed Population with Disabilities: Occupation by Gender Category



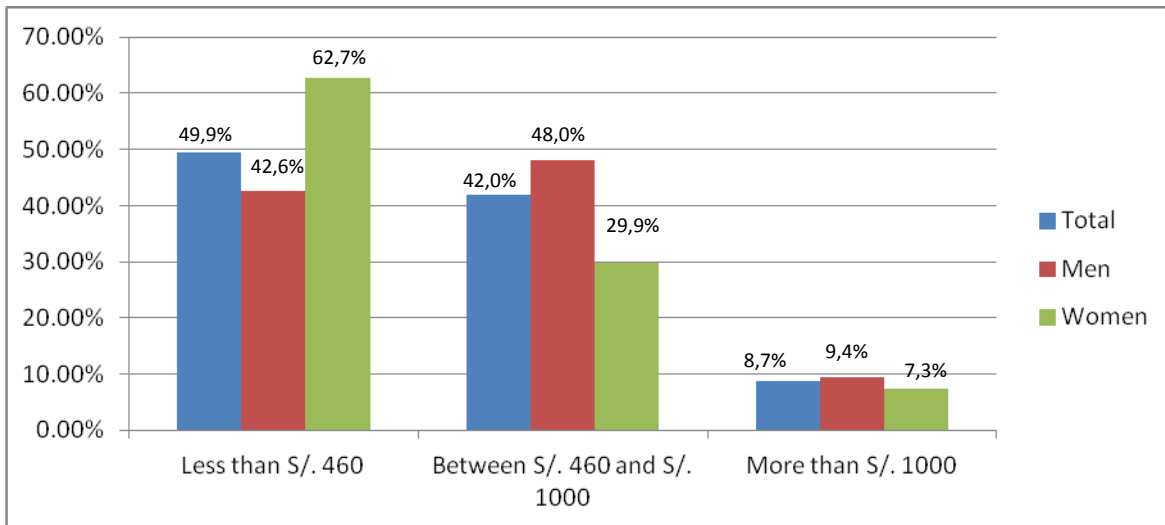
Source: INEI-CONADIS. Survey of Household in the City of Lima on Disabilities – 2005

Regarding the income they receive, only the 37% of women with disabilities that are part of the LF receive higher incomes than the Vital Minimum Wage (RMV), while the percentage of men is 54%.

### Employed Population with Disabilities: Employees, Workers or Houseworkers Income by Gender



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Source: INEI-CONADIS. Survey of Households in the City of Lima on Disabilities – 2005

When they are excluded from the access to a well paid job, due to their low education levels, women with disabilities mostly can neither cover their basic needs, nor have access to a quality health service. Additionally, it is stated by the ex President of the Special Disability Study Commission of the Peruvian Congress Javier Diez Canseco, “an evil circle between disability, exclusion and poverty is created”.

Furthermore, it is important to point out that most of persons with disabilities in Peru are assisted in their feeding, housing and health by their own families. And it is noticeable, above all, as it can be appreciated in the next chart, the great amount of women with disabilities that are household head (and only support):

PERU: HOUSEHOLD BY HOUSEHOLD HEAD, ACCORDING TO THE KIND OF DISABILITY OF ONE OF ITS MEMBERS. 2007			
(Percentage of the total of households)			
Kind of Disability	Total	Household Head	
		Men	Women
<b>Total</b>	<b>10,9</b>	<b>10,2</b>	<b>12,7</b>
<b>With one disability</b>			
Difficulty to see	4,5	4,3	5,2
Difficulty to hear	0,7	0,7	0,8
Difficulty to speak	0,7	0,6	0,8
Difficulty to use arms and hands/feet	1,6	1,5	1,8
Other difficulty or limitation 1/	2,4	2,1	2,9
<b>With 2 or more disabilities</b>	<b>1,0</b>	<b>0,9</b>	<b>1,2</b>

1/ includes mental disability

Source: INEI: National Census 2007: XI of Population and VI of Housing



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## 3.2 Situation of boys, girls and adolescents with disabilities (CRPD, article 7)

The Children and Adolescents Code, approved by Law No. 27337 on July 21<sup>st</sup>, 2000, points out some of the rights of children with disabilities. Some of them are the adoption of Rehabilitation Programs that allow their physical and mental recovery and that provide them specialized attention; specialized education and training; access to special education designed to integrate them in the regular education system and learning manual activities. However, it does not point out other rights mentioned in the Convention like the right to freely express their opinion on all issues affecting them. There are no public programs on other aspects like sports, access to culture, effective and real access to inclusive education, access to special education for boys and girls with severe disabilities.

The recent report, “Conditions of Indigenous Childhood in Peru”, submitted by UNICEF and the National Institute for Information and Statistics (INEI) in 2010, even though it does not mention specific information regarding children with disabilities, reveals the serious negligence in which indigenous boys and girls are because of the Peruvian State. According to the information that the report collects from the National Census 2007, *asháninka* boys and girls and of other native Amazon languages nationwide and 11% of young people between 18 and 20 years old lack a National Identity Card (DNI), and these percentages raise in indigenous young people of the Amazon, where more than 30% lack this document<sup>142</sup>.

It is possible that most of the indigenous young people with no identity papers within this sector have disabilities because of the negligence and marginalization situation they are in. In the education scope, the situation is worse, only 32% of the indigenous infant population from 3 to 5 years old attend school opposite to 55% of non-indigenous children.

The “Report on the application of the International Convention on the rights of boys, girls and adolescents in Peru” submitted in 2005 by the National Initiative Group (GIN), includes, among its Recommendations, “Guaranteeing the unrestricted application of protection rights and measures for children and adolescents exposed to risk situations, such as working children and adolescents, street children, children affected by political and domestic violence, children with disabilities, and offender adolescents, because they do not count with sustained and properly budgeted programs<sup>143</sup>”.

In Peru, we lack updated statistical information on children that have a disability and the latest related registered figures come from the Population National Census of 1993, where 64,500 Peruvians with disabilities in school age between the ages of 5 and 19 are registered.

A characteristic of this infant population with disabilities is that the education level they can have access to is low; in other words, the possibilities that they enroll into school is of 6% at public and private schools level. In the country, the situation is worse because in rural sectors only 2% can access them. Finally, the rest of children that have disability issues enter integrating schools, in other words, special education schools which represent the remaining 94% of possibilities.

According to the figures of said Census, the group of young people with disabilities – population that has between 15 and 29 years old according to the parameters established by article 2 of Law No 27802 (Youth National Council Law) –amounted then to 59,211 persons, which was equivalent to 20.52% of the total persons with disabilities registered. From this number, 31,571 were men and 27,640 women, which was equivalent to 21,56% and 19,44%, respectively, of the total persons with disabilities then registered.

Said census also revealed that the most frequent disability among young people was physical disability (23.3%). The second most frequent disability was mental retardation (21.61%), followed by visual disability (19.96%). Additionally, a 15.97% of registered young people with disabilities were deaf, and 11.78% suffered mental alterations.

<sup>142</sup> Condition of indigenous children in Peru, National Institute for Information and Statistics and United Nations Foundation of the Children (UNICEF), Lima, August, 2010. See: <http://www.unicef.org/peru/spanish/>

<sup>143</sup> See: <http://www.gin.org.pe/inform-35pp.htm>

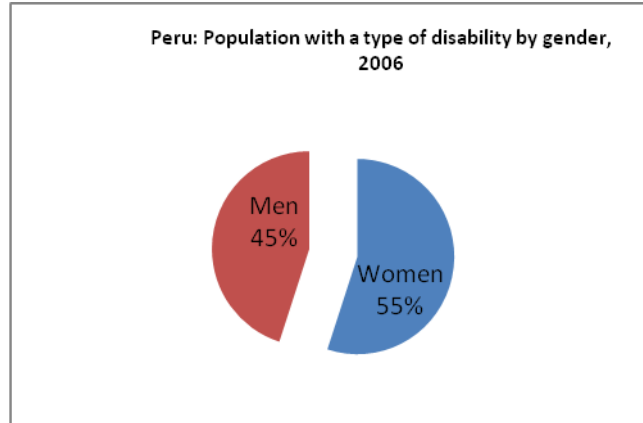


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Updated references on the composition, prevalence and participation of women in the condition of a woman as household head, according to type of disability of one of their members, can be seen in the following charts:

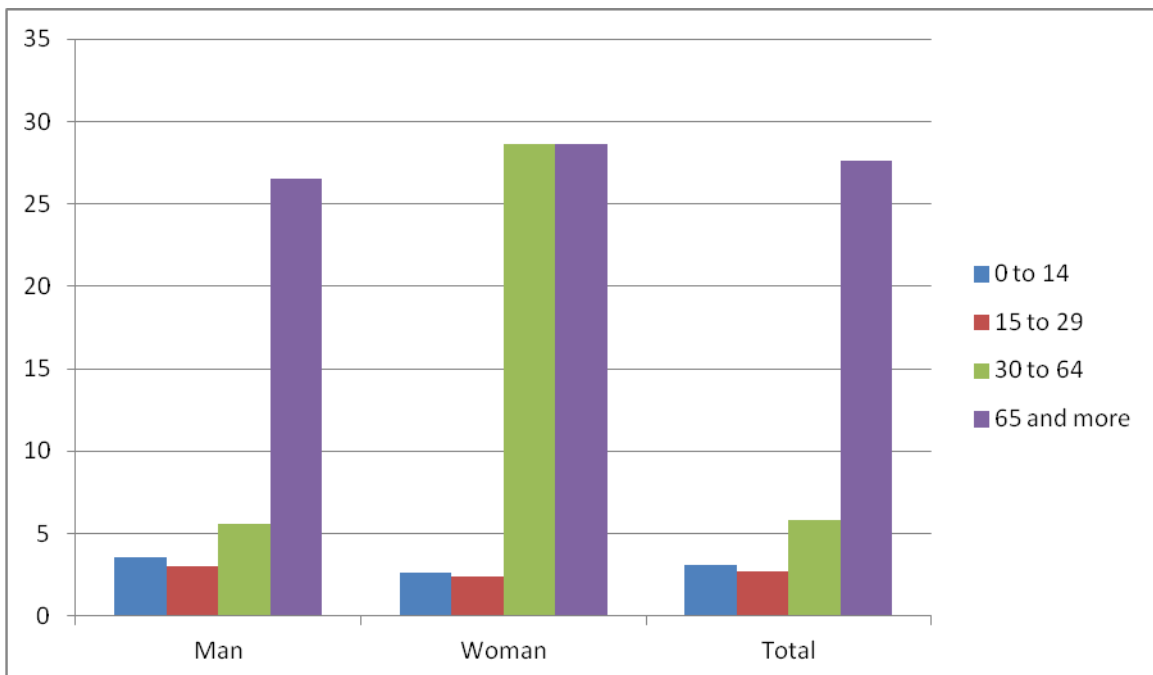
## ENCO 2006 RESULTS



Source: INEI, ENCO 2006 Results. Personal production.

## 2007 NATIONAL CENSUS RESULTS: XI POPULATION AND HOUSING.

### INEI



Source: INEI-CONADIS. Household Survey on Disability in the city of Lima – 2005.



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CHART No 2.25

## PERU: HOUSEHOLDS BY GENDER OF HOUSEHOLD HEAD, ACCORDING TO TYPE OF DISABILITY OF ANY OF ITS MEMBERS, 2007

(Percentage of the total of households)

Disability Type	Total	Household head	
		Man	Woman
<b>Total</b>	<b>10.9</b>	<b>10.2</b>	<b>12.7</b>
With 1 disability			
Difficulty to see	4.5	4.3	5.2
Difficulty to hear	0.7	0.7	0.8
Difficulty to speak	0.7	0.6	0.8
Difficulty to use arms and hands/feet	1.6	1.5	1.8
Other difficulty or limitation 1/	2.4	2.1	2.9
With 2 or more disabilities	1.0	0.9	1.2

1/ includes mental disability

Source: INEI – 2007 National Census: XI of Population and Housing.

## CHAPTER IV : CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

- i. This alternative report on the fulfillment of CDPD in our country has the object to reach acknowledgment and full exercise of the rights of persons with disabilities in Peru, aiming to consolidate progress, to reestablish the work methodologies in the design of public policies and pointing out any bad practices that remain in our country, despite the ratification of the Convention and its Facultative Protocol.
- ii. The validity of the Convention and its ratification by the Peruvian government created more awareness on the rights, the willingness for demand and guard to assure its fulfillment in the center of the organizations of persons with disabilities. Also, the public body has set the challenge of making a series of separated activities beneficial for the “population with disabilities” in public policies and programs that aim to comprehensive development and effective social inclusion. In order to do so, it is crucial to fight against bad practices of discrimination, disrespect to their dignity and inequality of opportunities that persist in Peru.
- iii. One of the main provisions of the Convention is the participation of such persons with disabilities and their organizations during the elaboration and application of legislation and policies to make the



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Convention effective and the corresponding monitoring of its compliance. The Peruvian government has not complied with this mandate, given that they did Not make us participate in the Ad-hoc Commission created, or in the elaboration of their official report, despite the several demands presented by the organizations and the organized civil society.

- iv. In addition, there is a lack of the necessary methodological tools for the creation, execution and evaluation of the progress of the Convention. There is No complete statistic data about the population with disabilities that allow the design. Moreover, there is No plan for precise budget allocation required to make effective all and each of the rights stipulated in the Convention.
- v. The official report of the Peruvian government presented on the registered improvements in our country to implement the Convention does not have a clear structure, interinstitutional plan or concrete information regarding budget execution for the fulfillment of the Convention.
- vi. That is the reason why we present, through the General Clerk of the United Nations Organization and the Committee on the Rights of Persons with Disabilities, some recommendations for a better fulfillment of the Convention by the Peruvian government.

## **RECOMMENDATIONS**

### **General recommendations**

1. Formally establish an independent permanent mechanism, in charge of promoting and supervising the application of the Convention, with the participation of the most representative nation-wide organizations of persons with disabilities, under the supervision of the Ombudsman's Office<sup>144</sup> and the collaboration of the National Coordinator on Human Rights (CNDDHH) of Peru<sup>145</sup>.
2. Take the required measures to allow the immediate participation of persons with disabilities and their organizations in the Permanent Multi-Sectorial Commission (CMP) responsible for the monitoring and proposal of measures for the implementation of the UN Convention on the Rights of Persons with Disabilities.
3. Ensure the approval of the proposal for the new Persons with Disabilities Act (LGPD) drafted and submitted to the Congress of the Republic with the support of tens of thousands of signatures through a citizen legislative initiative<sup>146</sup> to reconcile it with the mandates of the Convention.<sup>147</sup>
4. Review and reconcile with the mandates of the Convention the rest of the national legislation and plans and programmes related to persons with disabilities: labour, health, social security and housing laws, regional and local standards, the Code on Children and Adolescents and the Plan for Equal Opportunities between Men and Women, among others.

<sup>144</sup> The Ombudsman's Office is a constitutional and autonomous organization created by the Constitution of the year 1993 (articles 161 and the following). Its mission is to protect constitutional and fundamental rights of the person and community, supervise the fulfilment of duties of public administration and provide public services to citizens.

<sup>145</sup> The National Coordinator of Human Rights (CNDDHH) is a group of institutions of civil society that work for the defense, promotion, education and spread of human rights in Peru. CNDDHH has permanently worked since 1985 and has obtained national and international acknowledgment, representing a proof that shows that work as cooperation makes it easier to incorporate the issue and proposals of solutions into the public agenda in terms of human rights. In addition, it has a Special Consultant Status before the Economical and Social Council of the United Nations (ONU) and it is authorized to participate in activities of the Organization of the American States (OEA), the National Confederation of Persons with Disabilities (CONFENADIP) has been a member of the CNDDHH since 2010.

<sup>146</sup> In accordance with Section 107 of the Peruvian Constitution, citizens may exercise the right to legislative initiative through a procedure regulated by Law 26300 (the Citizen Participation Act).

<sup>147</sup> The law project submitted and pending for debate and approval in the Congress proposes the harmonisation of the laws in force in accordance with the mandates contained in the CRPD, for which purpose it proposes the amendment of a broad group of laws related to PWDs, such as the Civil Code, the General Health Act, the General Education Act, the University Act, the Radio and TV Act, and the Labour Productivity and Competitiveness Act, among others. It also includes various articles related to the duty of Non-Discrimination.



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5. Amend the 2009-2018 Plan for Equal Opportunities for Persons with Disabilities, as well as the National Registry of Persons with Disabilities, infusing them with an approach that raises awareness and establishes measures to overcome the gender inequality affecting women and girls with disabilities, guaranteeing their ability to enjoy all of their rights and liberties in equal conditions with boys and men with disabilities, as well as with other girls and women without disabilities.
6. Perform a Census of persons with disabilities that enables an adequate design of public policies and the drafting of baselines on the situation of health, education and access to employment of persons with disabilities, among other aspects, based on which it will be possible to define goals and measure the advances of the compliance with the Convention.
7. Draft a Strategic Plan for the compliance with the Convention, in harmony with the National Human Rights Plan (PNDH), which contains both specific and cross-cutting activities, indicators and the corresponding budget allocations, with a gender approach and special emphasis on attention to children and adolescents with disabilities.
8. Instruct the Peruvian International Cooperation Agency (APCI) to place priority on attention to persons with disabilities in the International Technical Cooperation plans, raising awareness through periodic reports and transparent practices regarding the destination of the funds raised through this source, as well as ensuring that international cooperation, including international development programmes, are inclusive and accessible for persons with disabilities.
9. Implement the recommendation of the UN Secretary General made in the General Assembly held on July 27, 2009, for “Realising the Millennium Development Goals for persons with disabilities through the application of the World Programme of Action for Persons with Disabilities and the Convention on the Rights of Persons with Disabilities.”
10. Carry out campaigns for the mass dissemination of the Convention through public and private communication media (radio, print, TV, etc.). In the case of private media, coordinated dissemination strategies should be emphasised. Considering the multicultural and plurilingual nature of the Peruvian population, the CRPD should be disseminated in Quechua, Aymara and the other languages corresponding to the group of indigenous nationalities living in the Amazon region of Peru.
11. Train officials from the three Branches of the State (Executive, Legislative and Judicial) regarding the mandates of the Convention.

## **Specific Recommendations**

12. Design, with the participation of organisations for persons with disabilities, focalised strategies aimed at reversing the main violations of the right to life of persons with disabilities that are directly associated with their low quality of life, or those related to the prevalence of cultural practices that expose persons with disabilities—even newborns—to the arbitrary deprivation of their lives.
13. Adopt measures to eradicate barriers that restrict the registration of persons with disabilities in the voter registry, preventing them from exercising their right to vote. Furthermore, provide for a comprehensive strategy of measures that allow PWDs to gain access to voting centres (including arriving at such centres, entering them and at the voting booths); prepare Braille voter rolls and cards for blind persons; establish mechanisms facilitating communication with persons with hearing disabilities; carry out voter education campaigns so that persons with disabilities exercise their right to vote; and allow access to the voting chamber of a trustworthy person who accompanies persons with ankylosed fingers, disability in the upper part of their bodies or quadriplegics, to assist them in casting their vote.





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14. Place more emphasis on the problem of gender-based violence against women with disabilities in national strategies for the fight against gender-based violence, guaranteeing their access to services and/or programmes for recovery, rehabilitation and social reintegration, in case they are victims of violence.
15. Adopt measures aimed at protecting women and men with the disability of forced sterilisation.
16. Implement support measures that allow parents with disabilities to adequately perform their responsibilities in the raising of their children, as well as preventing any child from being separated from his or her parents as a result of a disability, whether on the part of the child or one or both parents.
17. Amend Law 29392 on infractions and sanctions for the failure to comply with certain sections of the General Persons with Disabilities Act (Law 27050), making municipalities responsible for the application of the sanctions, and delegating to the Ministry of Women's Affairs and Social Development (MIMDES) and the National Council for the Integration of Persons with Disabilities (CONADIS) the tasks of supervision; while also strengthening the functions and resources of the Municipal Offices for Attention to Persons with Disabilities (OMAPEDs), allocating to them for the development of their functions those incomes collected from fines for inaccessibility established in Law 29392.
18. Establish standards for the compliance of municipalities with the submission of reports on the usage of the 0.5% of their budgets earmarked by law for the performance of works, repair or modifications aimed at improving or providing accessibility to urban infrastructure.
19. Take the relevant measures to effectively comply with the laws on the incorporation of access options on the websites of public entities, universities and other private organisations that provide services via Internet, so that persons with visual disabilities, senior citizens and, in general, all persons may gain access to the information contained in the websites of such institutions, without any limitation whatsoever.
20. Legislate and take measures so that all health campaigns (for the prevention of HIV/AIDS, STDs, dengue, malaria, etc.) are accessible to persons with disabilities, in accordance with the provisions established in Section 25 of the CRPD.
21. Amend the Civil Code in order to adequately guarantee the exercise of civil rights by deaf-mute, blind-deaf and blind-mute persons, as well as other persons affected by an intellectual or mental/psychosocial disability to put an end to the current disrespect to their dignity and the discriminatory treatment towards them.
22. Implement all reasonable adjustments required to the administration of justice—including the usage of adapted languages such as sign language or adapted communication for persons with intellectual disabilities, etc.—as well as preferential treatment and the measures necessary to speed up proceedings to which persons with disabilities are party.
23. Provide the availability of alternative outpatient resources, allocated with the corresponding budgets and inserted into the community, to act as a base for the implementation of the community rehabilitation model for persons with psychosocial disabilities. The communitisation process of the services shall be accompanied by a redesign of currently existing services, so that they not only meet the standards established by the CRPD—including the provision thereof with the prior informed consent of persons with mental/psychosocial disabilities, as set forth in Articles 17 and 25 of the Convention—but also prevent all deprivation of liberty based on disabilities, as provided in Article 14 of the Convention.



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24. In order to prevent cases of exploitation, violence and abuse to the detriment of persons with disabilities, it is necessary to ensure that all services and programmes in the service of such persons are supervised by an independent organism, made up of the Ombudsman's Office and national human rights entities. Among other aspects, such organism shall be responsible for constantly safeguarding the exercise of the rights of persons with psychosocial disabilities committed to hospital centres; providing, when applicable, the release of those persons who are kept in such institutions in violation of the guarantees recognised to such effect in the CRPD.
25. Create rehabilitation programmes based in the community in the different marginal urban and rural zones of the country, with the participation of persons with disabilities in the implementation and evaluation thereof.
26. To apply the budget resources and training of the Health Personnel in the CDPD content in order to effectively comply with the right of healthcare of persons with disabilities, ensuring that hospitalization and health centers are fully accessible to persons with disabilities, who must be informed and seen adequately. Moreover, to guarantee that all hospitals have rehabilitation centers for different disabilities.
27. To implement decentralized, low-cost mechanical aid banks, that allows all persons with disabilities, especially persons with low economical resources or persons who live in urban or rural areas of the country, to have personal mobility as independently as possible.
28. To allocate enough budget resources to achieve progress in the process of scholastic inclusion of children and adolescents with disabilities; the priority aspects to be taken into account in this regard shall be the promotion of the right of inclusive education of all children and adolescents with disabilities; technical training and raising of awareness among regular and special education teachers, particularly towards the treatment of students with disabilities and teaching procedures, as well as the appropriate adaptation of school curricula: development of a work education for teenagers with disabilities, in accordance with their abilities, vocation and job market demand.
29. To ensure the effective compliance with the coverage of 3% of the payroll of State institutions for persons with disabilities.
30. To create labor insertion programs and to promote productive projects in favor of PWDs.
31. To remove barriers that prevent or limit the accessibility of those persons with disabilities to their physical environment, transport, information and communications; including information and communications systems and technologies, and other public services and facilities, both in urban and rural areas.
32. To establish a non-contributory pension in favor of persons with severe disabilities living in extreme poverty.
33. To order CONADIS to create support mechanisms for the creation and strengthening of organizations of persons with disabilities and ensure their full participation on a national, regional and local level.
34. To guarantee full accessibility of persons with disabilities to all cultural and/or sport facilities, especially all those which receive public funds, which shall be fitted out according to accessibility plans.
35. To guarantee the dissemination by the State of this Alternative Report on the compliance with the Convention, as well as holding national, regional and local informational meetings and workshops on the progress made.

**MINUSES:**

**DISABILITY  
RIGHTS  
FUND**



# PERUVIAN NATIONAL CONFEDERATION OF PEOPLE WITH DISABILITIES CONFENADIP



This report has been elaborated by the National Confederation of Persons with Disabilities in Peru (CONFENADIP), thanks to the support of the Fund for the Rights of Persons with Disabilities (DRF).

On its elaboration there has been participation of persons with disabilities organized in different offices around the country. Moreover, there has been collaboration of specialists in human rights and students from the Pontificia Universidad Católica de Perú and from Universidad Nacional Mayor de San Marcos.

The formulation process of this Alternative Report was supervised by the Directive Committee of CONFENADIP, composed by:

- Wilfredo Guzmán Jara – President
- Sonia Malca – Vice – General Clerk
- Hugo León Ibáñez – EcoNomy Clerk
- Mónica HoNores – Organization Clerk
- Severo Salazar Torres – North Coordinator
- Luis Enrique Carpio – Center Coordinator
- Silvia Elena Aguilar – South Coordinator
- Janis Gómez – Orient Coordinator

And the Technical Team in charge of the final version of the report was composed by:

- Javier Mujica Petit, President of the Center of Public Policies on Human Rights – Peru EQUIDAD (Coordinator of the Writing Team)
- Luz Elena Calle
- María Isabel Farías
- Violeta EspiNoza
- Julia Jiménez
- Graciela Hajar
- Claudia Ávila
- Claudia Ballena
- Luis Ángel Briceño
- Edwin García

218 questionnaires were applied to the representant bodies of the organizations of persons with disabilities nationwide, of with tabs Mr. Vicente Velasquez was in charge.

We would also like to thank the generous participation of Sonia Povis and José Antonio Ysola.