

## Peruvian legal capacity reform (L. Decree 1384)

### Intro

- Adopted the 4th Sept. 2018 - major reform
- Civil law country - Civil Code is the main piece of legislation after the Constitution
- Praised by the CRPD Committee, OHCHR, the Inter-American Commission on Human Rights and the SR disability

### What has been achieved?

- Legislative decree reforming the Civil Code, Civil Procedural Code and the Notary Act
- Recognition of full legal capacity (capacity to act)
- Abolishment of guardianship based on impairment or disability
- Elimination of restrictions to legal capacity (marry, make a will, access to justice, etc)
- Placement into an institution by judge or third persons was abolished
- Recognition of the obligation to provide reasonable accommodation for the exercise of legal capacity
- Supported decision making regimes: advance planning, support agreements and, exceptionally, judicial determination of support (for those whose will cannot be determined)
- Support must be based on the will and preferences of the person concerned and, exceptionally, the best interpretation of will and preferences

### What are the limitations?

- Curatorship remain for certain groups, such as drug users, prodigals, bad administrators, prisoners, people in coma (last case: support measures)
- Peru doesn't have a standing alone mental health law, but it has provisions regarding mental health in its general health act
- While civil society achieved to abolish the provision on "involuntary hospitalization and treatment" from the health act in 2012, the act still provides that treatment can be provided without the informed consent of the person concerned in case of "emergencies" (not only in the case of mental health). The general exception of emergencies is being interpreted as including mental health emergencies, namely, risk to self or others.

## What was the process leading to the law reform?

- Long-term strategy: 10 years of advocacy
- Cumulative process:
  - adoption of new disability legislative framework
  - multi-stakeholder Committee at Congress
  - multi-party law proposal
  - intervention of the Executive
- Multi-level strategy:
  - law reform
  - training to the Judiciary
  - engagement with academia and notaries
  - mobilization of DPOs
  - awareness raising (families/media)
  - demonstration projects: peer support & supported decision making

## Key success factors?

- existence of an organized and diverse civil society
  - umbrella organization - Confenadip
  - coalition of DPOs
  - emerging voices: persons with psychosocial and intellectual disabilities
- having a shared agenda: CRPD
  - Previous experience: International Year of the Disabled 80's
- leadership with systemic vision
  - many people but some same people
  - strategic thinking
- strategic alliances (within and beyond the disability community)
  - human rights organizations
  - academia
  - media
  - political parties
- successful use of windows of opportunities
  - political campaigns
  - revolving door
- funding opportunities: DRF & OSF

## What are the remaining challenges?

- No vacatio legis (there is no period between the formal enactment of the law and its coming into force)
- Systems are not prepared: Judiciary, notaries, civil servants (resistance v inertia)
- Systemic cultural shift needed (from awareness to implementation)
- Structural aspects: poverty, illiteracy, rights illiteracy, no support schemes, lack of services, etc.
- But also opportunities: demand for training & new services / mental health reform / strengthening of the disability movement / new narrative of success