

THE PERUVIAN LEGAL CAPACITY REFORM


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CONTEXT

- Republic of Peru
- Presidencial, democratic country
- Population: 30 million
- Disability Survey: 1.5 million
- General Law on Person with Disabilities (2012)
- Civil law tradition

PERU – DENIAL OF LEGAL CAPACITY

- Civil Code declared the incapacity of a range of people
 - Status-based approach to legal capacity
 - Guardianship
 - Access to justice denied during proceedings
 - Denial of other rights related (right to marry, right to vote, right to make a will)
 - ‘De facto’ deprivation of legal capacity
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“Legislative decree that recognise and regulates the legal capacity of persons with disabilities on equal basis”



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Congressional delegation of legislative powers to the Executive (Law No 30823)



Three normative bodies reformed:

Civil Code
Civil Procedure Code
Notary Act



Welcomed by OHCHR, IACHR, SR Disability, etc.

LEGISLATIVE DECREE NO 1384

WHAT DOES THE REFORM ACHIEVED?

- Full recognition of legal capacity for all adults with disabilities (arts. 3 y 42 CC)
- Recognition of the right to reasonable accommodation in the exercise of legal capacity (art. 45 CC)
- Establishment of different regimes to support the exercise of legal capacity (arts. 659-D, 659-E, 659-F CC)
- Establishment of a flexible system of safeguards (art. 659-G CC)
- Access to justice and to notaries on equal basis with others

FULL LEGAL CAPACITY FOR ALL ADULTS WITH DISABILITIES

- Guardianship on the basis of disability was abolished
- All persons with disabilities of legal age have the capacity to hold and act rights on equal basis with others
- The capacity to act includes all aspects of life: contracting, making a will, marriage, parental authority, etc.
- Supports are voluntary (659-A and 659-B). No one can be required to have support to exercise their legal capacity



RIGHT TO
REASONABLE
ACCOMMODATION
IN THE
EXERCISE OF
LEGAL
CAPACITY

- Previously contemplated in the General Law of Persons with Disabilities
- Modifications and adaptations necessary and appropriate to ensure the exercise of the legal capacity of a person with disabilities in a particular case
- They include measures of accessibility in the environment, communication or information; the use of informal supports and other modifications
- Denying these reasonable accommodations constitutes discrimination. Parties can deny accommodations that impose a disproportionate or undue burden

DIFFERENT REGIMES TO SUPPORT THE EXERCISE OF LEGAL CAPACITY

Unilateral designation of support (Article 659-D)	Notarial or judicial; with or without representation
Designation of support for the future (Article 659-F)	Notarial. Person indicates when it comes into effect
Exceptional judicial appointment (Article 659-E)	Only for people in a coma or those who cannot express their will

EXPECTED IMPACT


Type of measures	Expected impact
Reasonable accommodation	Low-level support needs
Advance directives	Progressive impairments
Support agreements	Low & middle-level support needs
Judicial appointment	So called 'hard cases'

CHARACTERISTICS OF THE SUPPORTS

- Forms of assistance to facilitate the exercise of legal capacity, including support in communication, in the understanding of legal acts and its consequences, and the manifestation and interpretation of the will
- For any person of legal age, not only people with disabilities
- Voluntary. Individual determines its form, scope, duration and number (except exceptional judicial designation)
- People can appoint one or more individuals or legal persons
- Representation powers not included (unless expressly stated)



SAFEGUARDS

- They seek to guarantee respect for the rights, will and preferences of the person; and prevent abuse and undue influence
 - Flexible and voluntary system. The judge decides them in the case of exceptional designation of support
 - Any support system, notarial or judicial, must include at least a review term
 - Criterion of the “best interpretation of the will”: life trajectory, previous manifestations of will in similar contexts, information from trustworthy persons, consideration of preferences and any other pertinent information for the specific case
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PROCEDURAL AND NOTARIAL ASPECTS

- Recognition of the right of persons with disabilities to have procedural accommodation in all judicial proceedings
- The judicial proceeding of designation of support is a non-contentious process
- The sentence should be written in easy-to-read format
- Notaries have the obligation to provide accessibility measures, reasonable accommodation and safeguards



LIMITATIONS

- Legislative technique (e.g. liability regime)
- Does not include other groups affected by guardianship: "addicts", "prodigals", "bad managers", "deprived of liberty"
- Regulation of "people in a coma" is contradictory
- People may need more guidance on the establishment of safeguards
- No "vacation legis" – systems are not prepared
- No clear link with other pieces of legislation (e.g. Health Act)



HOW DID PERU ACHIEVE THIS REFORM?

- A propoitive civil society & open authorities
- Long term strategy: 10 years of advocacy

CONTINUED:
HOW DID PERU
ACHIEVE THIS
REFORM?

- Cumulative process:
 - Proposal for new disability legislative framework (2009)
 - General Law of Persons with Disabilities (2012)
 - Multi-stakeholder Committee for the review of the Civil Code at Congress (2014)
 - Multi-party bill (2016)
 - Executive's legislative decree (2018)

Congress

Judicial System

Academia

Civil society

Pilot projects

Families

Media

International cooperation

MULTI- LEVEL STRATEGY

KEY SUCCESS FACTORS

- Existence of an organized and diverse civil society
- Having a shared agenda (CRPD)
- Leadership with systemic vision
- Strategic alliances, including with the government
- Successful use of windows of opportunities
- Funding opportunities





THANK YOU

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