**HUMAN RIGHTS WATCH**

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We understand the Commission on Health and Population and the Commission on Social Inclusion and Persons with Disabilities have opposing positions regarding Law Project 418/2011, which proposes to derogate Law No. 29737. We write to express our concern about Law No. 29737 and related provisions in Peruvian law that permit involuntary detention for treatment of people with psychosocial or mental disabilities and those who suffer from addiction, in circumstances that do not comply with international human rights law. Human Rights Watch believes that such laws threaten fundamental human rights protections against arbitrary detention and ill-treatment and for the right to health and are contrary to sound public health policy. We encourage you to support law reform efforts to promote access to addiction and mental health treatment that conforms to international standards, including expansion of voluntary, evidence-based treatment instead of involuntary treatment.

Law No. 29737 amended article 11 of the General Health Law, Law No. 26842 to permit involuntary detention for people with "mental health problems," defined to include people with psychosocial disabilities and those with drug or alcohol dependence. It also permits family members to authorize detention for those "who suffer some level of addiction and due to lack of consciousness of their illness, refuse to give informed consent." In such cases, involuntary detention is subject to periodic review by health professionals and by a judge.

Law No. 29737 adds to existing law permitting involuntary detention for treatment of psychosocial disabilities and for drug or alcohol dependence. Peru's Civil Code permits family members of people "deprived of discernment" (se encuentren privados de discernamiento) or who are dependent on drugs or alcohol -- and in some cases the government -- to seek their judicial interdiction. Legal guardians of those interdicted can "volunteer" their admission for

psychiatric, drug or alcohol treatment and rehabilitation without their consultation or consent.

Human Rights Watch believes that forcible detention may constitute arbitrary detention, in violation of international human rights standards, even if it has a lawful basis provided by Peruvian law. Art. 9(1) of the International Covenant on Civil and Political Rights (ICCPR) states that "No one shall be subjected to arbitrary arrest or detention [or] deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."[1]Under the ICCPR, detention may be "arbitrary" even if it is in accordance with the law, but is random, capricious or disproportionate, that is, not reasonable or necessary given the circumstances of the case.[2] The State party concerned has the burden to show that such factors exist in a particular case.[3]

Human Rights Watch is concerned that Law No. 29737 and its regulation, and related legal provisions described above, would permit involuntary detention of people with psychosocial disabilities or people who use drugs or alcohol for treatment in an overly broad set of circumstances that threatens rights to liberty and security.

Compulsory treatment for people who use drugs, that is treatment imposed on an individual without their informed consent, in order to comply with international human rights law, should only be considered in exceptional situations of medical necessity where a person is unable to give informed consent, as we further outline below.

The use of "lack of consciousness of one's illness" in Law No. 29737 as a basis to justify detention without consent for addiction treatment is imprecise and susceptible to abuse. It also contributes to the perception that people who use drugs generally lack capacity to consent to treatment and undermines relevant legal safeguards regarding competence to make treatment decisions, and widens the scope of potential abuse.

In the case of people who use drugs, drug dependence treatment is a form of medical care, and therefore should comply with the same standards as other forms of health care. Under international law, people dependent on drugs have the right to access medically appropriate, effective drug dependence treatment, tailored to their individual needs and the nature of their dependence. International human rights standards further require that drug dependence treatment be based on free and informed consent (which includes the right to refuse or withdraw from treatment), be scientifically and medically appropriate and of good quality, culturally and ethically acceptable, and respect fundamental rights to health, privacy and bodily integrity, liberty, and due process.

The UNODC and WHO in their guidelines to states, "Principles of Drug Dependence Treatment", state that "only in exceptional crisis situations of high risk to self or

others, compulsory treatment should be mandated for specific conditions and periods of time as specified by the law."[4] Compulsory treatment should also comply with the requirements that it be scientifically and medically appropriate, and with independent oversight.

According to the UN Special Rapporteur on Torture, compulsory treatment of an intrusive and irreversible nature, such as neuroleptic drugs and other mind-altering drugs, without the informed consent of the individual may constitute torture or ill-treatment if it lacks a therapeutic purpose, or is aimed at correcting or alleviating a disability.[5] Article 12 of the CRPD requires governments to "recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life," including the right to decide whether to accept medical treatment. The CRPD inscribes the presumption that persons with disabilities can act in their own best interests and that, when needed, they should be given support to do so. It also makes clear that persons with disabilities – including intellectual and psychosocial disabilities[6]-- enjoy an equal right to health care as others, explicitly recognizing that medical care must be provided on the basis of free and informed consent, and without discrimination based on disability (Art. 25). Mental disabilities do not justify the presumption that a person lacks the capacity to provide informed consent. Forced medical treatment can only be considered in exceptional cases when informed consent is not possible, and it is for the shortest possible time strictly for therapeutic purposes.

The process of judicial interdiction provided for in the Civil Code is also incompatible with the government's obligations under the CRPD to recognize legal capacity of persons with disabilities. The Organization of American States' Committee for the Elimination of all Forms of Discrimination against Persons with Disabilities has called on states parties to take urgent action to ensure the recognition of legal capacity of all persons, including all persons with disabilities, by taking immediate measures to replace interdiction and related practices with supported decision-making and to ensure that no new cases of interdiction are approved.[7]

The CRPD also provides further protection concerning deprivations of liberty to persons with disabilities.[8] It not only forbids arbitrary detention but also states "that the existence of a disability shall in no case justify a deprivation of liberty." [9]Thereshould therefore be some basis, one that does not discriminate based on disability, underlying the deprivation of liberty. For states that, like Peru, have ratified both the CRPD and ICCPR, Article 14 should be applied together with the safeguards against detention in the ICCPR, under the doctrine that the combined effect of any treaties or domestic norms should be interpreted so as to offer the greatest protection to the individual.[10] Additionally, Article 14, particularly when read in combination with Article 19 of the CRPD (the right to live in the community), provides a strong basis for the end of forced institutionalization on the grounds of disability.[11]

As noted above, there are exceptional circumstances when a person's drug dependency may create a crisis situation in which medical treatment is appropriate and that person's capacity to consent to such treatment has been temporarily compromised. In such, exceptional circumstances, where qualified healthcare professionals, subject to review by an independent authority, have determined that a person poses a serious and imminent risk to him or herself or to a third party, but lacks capacity to give informed consent to treatment, a temporary period of mandatory treatment without consent may be justified.

In such cases, treatment should not be imposed unless it is a medically appropriate, individually prescribed plan, subject to regular review, that comports with international standards. Treatment should not be longer than is strictly clinically necessary to return the person to a state of autonomy in which he or she can take decisions regarding his or her own welfare. The treatment should be subject to a statutorily defined time limit, which should be as short as possible, subject to review by an independent authority for its continued necessity. When the compulsory treatment is up for review, continued treatment without consent should not be permitted unless the authority seeking to administer the treatment establishes that the exceptional circumstances for continued treatment persist. The person subject to compulsory treatment (or his or her legal representative) should have the right to challenge the necessity of treatment before a court or the independent authority.

The tragedy at "Christ is Love" drug treatment center in January, in which residents trapped behind locked doors and barred windows were killed or critically injured when a fire swept through the facility, has drawn attention to the dearth of qualified drug treatment facilities in Peru. The Attorney General is investigating conditions at Christ is Love, and local governments, together with the attorney general and the Ministry of Health, are inspecting local facilities and have already ordered their closure in some cases.

These are important efforts. But Peru has legal obligations to ensure that an individual can only be subject to detention for forced treatment in the name of addiction or "mental health" treatment in circumstances that comply with international standards. Congress should either nullify Law. No. 29737 or modify it to fully comply with the CRPD. It should also reform the Civil Code and the General Law on Disability to fully comply with the CRPD. The government should also take immediate action to amend the Civil Code to reflect the international legal standard that all people with disabilities should have equal legal capacity as other citizens and replace judicial interdiction of people with disabilities and drug users with a system of supported decision-making so that they can make their own decisions about treatment.

We urge you to take prompt action to close forced drug rehabilitation facilities and establish voluntary, effective drug and mental health treatment options in their place.

We recommend that you consult with mental health and other experts, as well as people with psychosocial disabilities themselves, on alternative forms of support and care for people with psychosocial disabilities. We also urge you to speak publicly and strongly in support of the right to voluntary, effective treatment for all those who need it.

We look forward to your reply.

Sincerely,

Rebecca Schleifer
Advocacy Director
Health and Human Rights

Shantha Rau Barriga
Disability Rights Researcher and Advocate

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[1] These protections apply not only to those accused of crimes, but also "to all persons deprived of their liberty by arrest or detention" including those detained because of, "for example, mental health difficulties, vagrancy, drug addiction, immigration control, etc." UN Human Rights Committee, General Comment 8, Article 9, U.N. Doc HRI/GEN/1/Rev.1 at 8 (1994), para. 1.

[2] Communication No. 458/1991, A. W. Mukong v. Cameroon (Views adopted on 21 July 1994), in UN doc. GAOR, A/49/40 (vol. II), p. 181, para. 9.8.

[3] Communication No. 305/1988, H. van Alphen v. the Netherlands (Views adopted on 23 July 1990), in UN doc. GAOR, A/45/40 (vol. II), p. 115, para. 5.8.

[4] UNODC/WHO, "Principles of Drug Dependency Treatment," March 2008, p.9.

[5] UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development : report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, July 28 2008, A/63/175, see paras. 47 and 63:"The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment."

[6] Intellectual disability: An “intellectual disability” (such as Down Syndrome) is a disability which is characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills. American Association on Intellectual and Developmental Disabilities, "FAQ on Intellectual Disability," 2011, http://www.aamr.org/content_104.cfm (accessed February 23, 2012).

Psychosocial disability: The term “psychosocial disability” is the preferred term to describe persons with mental health problems such as depression, bipolar disorder and schizophrenia. “Psychosocial disability” relates to the interaction between psychological differences and social/cultural limits for behavior as well as the stigma that society attaches to persons with mental impairments. World Network of Users and Survivors of Psychiatry, "Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities,"http://www.chrusp.org/home/resources(accessed February 23, 2012), p. 9.

[7] OAS, General Observation of the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities on the need to interpret Article I.2(b) *in fine* of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities in the context of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities. OEA/ Ser.L/XXIV.3.1, CEDDIS/doc.12 (I-E/11) Rev.1, April 28, 2011; OEA/Ser.L/ XXIV.3.1, CEDDIS/RES.1 (I-E/11) ( Adopted at the fourth plenary session, held on May 4, 2011); The OAs General Assembly, in turn, has requested the Secretary General to disseminate the Committee’s observations regarding Article 1.2(b) as widely as possible. AG/RES. 2663 (XLI-O/11),Support for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities and its Technical Secretariat, (Adopted at the fourth plenary session, held on June 7, 2011).

[8] CRPD, art. 14.

[9] Ibid.

[10] See Article 5(2) of the ICCPR. The so-called “savings clause” of the ICCPR sets out that the standards in the treaty cannot be used to undermine a higher standard or protection provided elsewhere in law (either international or domestic), and therefore represent only the minimum standard and may be improved.

[11] CRPD, art. 14, 19.