

ALTERNATIVE REPORT

TWO YEARS AFTER ENTRY INTO FORCE OF THE

CONVENTION ON THE RIGHTS

OF PERSONS WITH DISABILITIES

MEXICO, 2011

Signing Organizations:

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.; Disability Rights International; Documenta Análisis y Acción para la Justicia Social A.C.; Instituto Mexicano de Derechos Humanos y Democracia A.C.; Academia Hidalguense de Derechos Humanos A.C.; Aspane Nueva Era, A.C.; Centro de Educación y Rehabilitación para Personas con Parálisis Cerebral A.C. (CIRIAC); Centro de Rehabilitación Integral de Zimapan A.C.; Centro de Rehabilitación Multidisciplinaria para Personas con Discapacidad Tizayuca A.C.; Centro de Rehabilitación para Adultos y Niños Especiales A.C.; Centro de Servicios Municipales Heriberto Jara A.C.; Centro Internacional de Investigación Pro Derechos Humanos y Desarrollo Inclusivo A.C.; Ciegos Fundación Hidalguense A.C.; CIMTRA Ciudadanos por Municipios Transparentes A.C.; Club Arcoiris Tiempos de Convivir A.C.; Colectivo Chuhcan A.C.; Derribando Barreras A.C.; Derribando barreras por un mundo incluyente A.C.; Discapacitados Tulancingo A.C.; Escuela para Niñas Ciegas de Guadalajara A.C.; Espiral Siglo XXI A.C.; Formación y Habilitación Down's A.C.; Fundación Arturo Herrera Cabañas A.C.; Fundación La Aurora de un Nuevo Ser A.C.; Fundación Yuian para todos, A.C.; Grupo Valentín Haüy A.C.; Juntos por los Demás A.C.; La Voz de la Mujer Hidalguense A.C.; Los Niños Iluminan un Cielo A.C.; Misericordia a personas con capacidades diferentes A.C.; Nexos y Soluciones A.C.; Promotores en Desarrollo Competitivo A.C.; Psicología y Derechos Humanos A.C.; Red Hidalguense de Organizaciones de la Sociedad Civil A.C.; Red Michoacana para la Atención y Prevención de las Discapacidades I.A.P.; Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos" conformada por 75 organizaciones: Agenda LGBT, Asistencia Legal por los Derechos Humanos, A.C. (Distrito Federal); Asociación Jalisciense de Apoyo a los Grupos Indígenas, A.C. (Guadalajara, Jal.); Asociación para la Defensa de los Derechos Ciudadanos "Miguel Hidalgo", A.C. (Jacala, Hgo.); Casa del Migrante de Saltillo (Saltillo, Coahuila); Católicas por el Derecho a Decidir, A.C. (Distrito Federal); Centro "Fray Julián Garcés" Derechos Humanos y Desarrollo Local, A. C. (Tlaxcala, Tlax.); Centro de Apoyo al Trabajador, A.C. (Puebla,

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BRIEF HISTORICAL CONTEXT

1. Throughout history, the issue of disability has been at a disadvantage with respect to other issues and it is only recently that it begins to gain importance. During the seventies, disability was seen exclusively as a health problem; for this reason the Mexican government directed effort toward the development of policies related to health care and welfare via the Secretariat of Health and the Department of Special Education of the Secretariat of Public Education. At the same time, systems such as the Rehabilitation and Special Education Centers (CREE) were created in order to create doctors and health care professionals specializing in rehabilitation and experts in special education for Persons with Disabilities (hereafter referred to as PwD)¹.
2. During the eighties, the government transferred services unrelated to rehabilitation to the National Agency for Family Development (SN-DIF). In 1995, the Federal District Law on Persons with Disabilities was passed, which opened the doors for other states of the republic to discuss and pass similar legislation. Within this evolutionary framework of the issue of disability in Mexico, the Senate of the Republic and the Federal Executive ratified the 1983 Convention 159 of the International Labor Organization on Vocational Rehabilitation and Employment (Disabled Persons) and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, of November 22nd, 1999.
3. More recently and for the purpose of fulfilling the obligations acquired in the Convention on the Rights of Persons with Disabilities (hereafter referred to as the Convention or the CRPD), the Mexican State passed and published the General Law for the Inclusion of Persons with Disabilities (hereafter the General Law) on May 31st, 2011, which substituted the General Law on Persons with Disabilities.
4. In addition to the previously mentioned, there exists a still greater challenge at a national level with regards to legislation on the rights of PwD: overcoming the lack of understanding and social integration of this population group. Attention to disability as a dilemma that is ethical, socio-cultural, political, economic and lastly health-related, is a theoretical and practical exercise that is relatively innovative and is the cornerstone in the creation of public policy that guarantees the changes required by PwD.

LEGISLATIVE HARMONIZATION

5. International human rights treaties are governed by the Political Constitution of the United Mexican States (Constitution). According to what is set out in constitutional articles 1 through 133, international agreements and treaties signed and ratified by Mexico form part of our body of regulations and supersede federal and local legislation. In this, international human rights treaties, by forming part of domestic law and generating obligations for the Mexican State, make it necessary to harmonize federal and local laws with the standards and obligations acquired from said international treaties.
6. The previously mentioned is reinforced by the constitutional reform in the area of human rights, published June 9th, 2011, which represents a significant advance in the harmonization process of the regulatory framework with international human rights standards. This reform involves a progressive change toward a culture of human rights in Mexico and demands the

¹ Asatashvili, Aleksii, et. al. "La Situación de México frente a los Compromisos Internacionales", from *Panorama Actual de los Derechos Humanos de las Personas con Discapacidad*, CNDH, Mexico 2003, p.83.

implementation of far-reaching public policy and the institutional redesign of government agencies. Nonetheless, this reform faces the challenge of actually being implemented via the creation and design of laws and public policies that would reverse the impunity and discrimination faced by vulnerable population groups, with civil society participating in this process.

7. Though our country has a series of federal laws regarding services, non-discrimination, respect for human rights, social welfare, health, among others, the Mexican State has not yet dealt with legislative harmonization in the terms laid out by the CRPD. Proof of this is seen in the regulatory framework, as well as the obstacles and discriminatory practices faced by PwD, which will be discussed throughout this report.
8. On May 31st, 2011 the Federal Congress passed the General Law for the Inclusion of Persons with Disabilities. In theory, according to article 1, its provisions would have the objective of establishing the foundation for the complete integration of PwD, that is to say, this article regulates the obligation to harmonize legislation. Nonetheless, in the process of elaboration, contravening the CRPD, neither organizations of civil society, nor even PwD themselves, were included. The standards established in the new General Law are considered to be incompatible with those set out in the Convention².
9. None of the existing state laws on the issue of disability are in accord with the contents of the Convention; two of the states still have no related legislation at all³. It is worth mentioning that even when a state has specific laws, these lack accompanying regulations that would make them operative, and even worse, where these regulations exist, they do not promote social integration in any way.
10. Of the 31 states and the Federal District, only 18 specifically refer in their constitutions to PwD; only five states have regulations for the application of the law dealing specifically with the matter of disability; of 264 federal laws, only 41 regulate aspects that affect PwD.
11. Despite legislative advances, it is not enough. Some of the laws need to be updated as they are merely declaratory in nature and do not contain sanctions for non-fulfillment or they lack specific regulation that would allow for complete application. Federal instruments that relate to the topic of disability will be outlined in the following:

Federal Law to Prevent and Eliminate Discrimination

12. The Federal Law to Prevent and Eliminate Discrimination, in force since June of 2003, has as its objective the prevention and elimination of all types of discrimination, as well as the promotion of equality of opportunity and treatment. This law defines discrimination and includes disability as one of the grounds for discrimination.
13. Within the positive actions and compensatory measures to prevent and eradicate discrimination toward PwD, fundamental aspects such as “reasonable accommodation” have not been contemplated; that is to say, no measures for the creation of modifications and necessary adjustments were incorporated to insure that PwD could have access to all the rights set out in the Convention. In addition, by being a federal law, it is only binding for federal authorities.

² These worries were expressed in a public announcement signed by civil organizations on March 9th, 2011. Annex 1.

³ South Baja California and the state of Mexico still do not have a law on disability.

National Development Plan (PND) 2007-2012

14. The PND emphasizes in its national objectives the betterment of living conditions for all Mexicans, including equally all persons in situations of vulnerability.
15. PwD are considered only in strategies 17.1 and 17.6 of the PND. With regards to strategy 17.1, relative to the strengthening projects of social partnership between the government and civil society organizations dedicated to attending vulnerable groups, access to all rights is not guaranteed for PwD as these programs are for the most part focused on providing social welfare.
16. Strategy 17.6 refers to the obligation to carry out a population census for disability. It is worth questioning when this will happen and what will be the methodological criteria for a census that provides reliable data. Mexico does not have any real data. The last census, in 2010, presented inconsistencies and thus cannot be considered a reliable source of statistical data⁴.

National Program for the Development of Persons with Disabilities (PRONADDIS) 2009-2012

17. PRONADDIS is the Federal Public Administration's master document of policies and strategies for contribution to social integration and equality of opportunities for PwD. Said program was designed to comply with the PND and the Convention.
18. As with the PND, the PRONADDIS faces various risks in achieving the objectives, goals and strategies that were set out, above all considering that since 2010 there was a significant budgetary reduction for matters pertaining to disability. Likewise, the PRONADDIS does not have a strategy that would permit the homogenization of criteria at the three levels of government, in order to begin the process of creation, execution and revision of public policy benefiting PwD.
19. The PRONADDIS was presented three years late with relation to the beginning of the present federal administration. In practice, it has had very little impact as a master document on the public policy relating to disability, in addition to the fact that it has not been promoted and is non-binding for the states, which contributes to the states acting without uniformity. For this reason, it is essential that the next National Plan on Disability give continuity to the current one and also fulfill the new General Law. It is worth mentioning as well that the budget for 2010 was 250 million pesos, which resulted in an under spending by 70 million pesos and so was not renewed in the year 2011.

Local Disability Laws

20. The common denominator among these is the urgency with which they must be adapted in order to incorporate the standards of the Convention, especially with the change in paradigm from one of welfare to one of human rights and inclusion.
21. Nonetheless, among the deficiencies that the majority of the specific state laws present, there is minimal or no participation on the part of civil society; these laws lack a perspective that takes

⁴ According to the data from the National Institute of Statistics, Geography and Informatics (INEGI) in the most recent population census, carried out in 2010, there are **5,739,270** people with some kind of disability, which represents **5.1% of the total population**, in <http://cuentame.inegi.org.mx/poblacion/discapacidad.aspx?tema=P>

into account the ethnic differences of PwD in order to provide adequate attention; they are missing guidelines for the creation of public servants for the attention of PwD; there is a deficiency in terms of covering the needs of all types of disability. Similarly, the majority of these laws are limited in regulation and reach; they are oriented toward the implementation of measures related to physical accessibility, dealing only with motor disability, and public policy actions which contemplate these laws are also directed only towards attention of just a few disabilities and do not distinguish one from the other, omitting most glaringly intellectual and psychosocial disability.

RIGHTS PROTECTED BY THE CONVENTION

Article 4.- General obligations

Budget Discrimination

22. According to the PRONADDIS, the governance of public and private social welfare corresponds to the State, which prioritizes the providing of welfare services for the integral development of the family [...] and also to support [...] individuals with essential familial deficiencies that are autonomously insurmountable⁵.
23. At the federal level, the National Agency for Family Development (SN-DIF) is the coordinating authority charged with the promotion and support of actions in benefit of those that require specialized services for their protection and to assure their wellbeing. The link between social welfare and disability from the position of human rights involves the possibility of generating opportunities for the development, independence and social integration of PwD. This new focus presupposes direct support of PwD, earmarking budget to specific programs with to generate greater abilities and contributing to an increase in salaries and quality of life. In the same manner, it also implies action with a perspective of gender and ethnicity, as well as the promotion of the rights of women, children⁶, young adults and seniors with disabilities.
24. Nonetheless, the objectives for issues of disability expressed by the Mexican government cannot be achieved if they are not given sufficient funds to operate. One of the programs most affected by the budget cuts in 2010 was that of “Attention of persons with disabilities”, part of the SN-DIF, which was reduced by 92.9%, from 486.5 million pesos in 2009 to only 34.4 million pesos in 2010⁷.
25. Funding for the program “Education for persons with disabilities” was cut by 25%, from 100 million pesos in 2009 to 75 million in 2010. Some of these programs were no longer assigned any funding; for example, the Paralympics Center in Jalisco went from 300 million pesos in 2009 to zero in 2010⁸.

⁵ PRONADDIS, on <http://www.conadis.salud.gob.mx/descargas/pdf/PRONADDIS.pdf>, online.

⁶ We use the word “children” to refer to girls, boys and adolescents, to be understood as the population under 18 years of age.

⁷ Information provided by the SN-DIF via the System for Access to Public Information.

⁸ Torres Ruiz, Gladis. *En el abandono, las personas con discapacidad*, CIMAC Noticias, Mexico D.F., November 5th, 2009, from <http://www.cimacnoticias.com/site/09110501-PPEF-2010-en-el-ab.39866.0.html>, online.

26. At the state level, programs directed toward PwD not only fall to the state DIFs, but tend to also be operated by the State Secretariats of Development or other agencies charged with functions of development and social welfare.
27. The types of welfare support given to PwD vary in each state. The common denominator is medical assistance, which in some cases is supplemented by the provision of orthopedic and functional apparatuses.
28. In the majority of the states, budget destined to public policy for PwD is insufficient and does not have a human rights focus, but rather one of social welfare. For this reason, an increase in all resources is necessary, as well as application from the standpoint of human rights, so that a better and more effective protection of PwD can be assured, thus helping to eradicate the endemic discrimination against this population group.
29. Even though current programs oriented toward PwD in the different states satisfy in great part the needs of those benefited by them, it must be remembered that those beneficiaries are not all PwD, as there continue to be a considerable number of PwD that do not have access to these programs because the programs' objective do not reflect the needs of the different kinds of disabilities.
30. In order to attend to a greater number of PwD by means of public programs, those actors that influence their design and operation must consider all disabilities and the specific aspects of each one. If the programs have the objective of considerably benefiting a population group, in this case all PwD or more specifically a group with the same disability, then preparations should be made for actions that consider the needs of each one. In this way, understanding of the different disabilities will make apparent those that are being omitted, as occurs frequently with intellectual and psychosocial disabilities. In this way they can be considered and incorporated.
31. One challenge faced by the institutions charged with the application of public policies, and in particular those charged with programs for PwD, is without a doubt the lack of economic resources. In analyzing data regarding the number of inhabitants with disability, number and funding destined to social programs and number of beneficiaries of these programs, it becomes apparent that these programs offer insufficient coverage.
32. Budget assignation is perhaps one of the most sensitive issues. State poverty and population indicators must be considered in order to guarantee universal access to social programs and thus attend to one of the primary issues of human rights.
33. An insufficient budget translates into a lack of trained personnel, a shortage of supplies, inaccessible environments and a lack of programs for social integration and awareness, situations which make disabilities greater or even provoke the appearance of others.
34. Equally important in the budget assignation is education about disability. It is frequently made apparent that there exists an enormous lack of understanding about what disability is and the different types of disabilities and their individual features. This provokes, on the one hand, the previously mentioned problem relative to the limiting of social programs to only some of the disabilities and on the other, undue treatment and discrimination toward PwD.

Article 5.- Equality and non-discrimination

35. The origin of the conditions of exclusion, rejection and limitation of PwD throughout the country come from discriminatory actions and practices rooted in society. If these practices are visible everywhere, both in rural and urban zones, then they are the also the most apparent.
36. The obligation to prohibit all types of discrimination for reason of disability and guarantee equal and effective protection of PwD, demands that they be included in national and local legislation, in the spheres of both public and private life, as well as the generation of awareness and education programs for the population at large in order to transform attitudes of rejection and stigmatization of PwD.
37. Another difficulty that presents itself in the application of the convention is found in the lack of coordination between the three branches of government (legislative, executive and judicial) and the three levels of government (federal, state and municipal). Even though Mexico has prohibited discrimination in the Constitution⁹ and in the Federal Law for the Prevention and Elimination of Discrimination, disability has not been contemplated as a cause for discrimination in diverse laws and regulations.
38. It is also worth mentioning that the population with disabilities does not often make use of the non-judicial defense mechanisms against discrimination, which can be attributed to the fact that the institution does not fulfill its obligations of diffusion and promotion of its mission.
39. An example of the previously mentioned is found in the total number of complaints and claims motivated by disability, attended by the National Council for the Prevention of Discrimination (CONAPRED) in recent years. In 2008, this agency reported having attended a total of 250 complaints and 450 claims¹⁰. In 2009, there were 278 complaints and 306 claims¹¹. In 2010, 556 complaints and 436 claims were reported.
40. The lack of consistency between what is published in annual activity reports and the information provided to civil organizations by means of the system for access to public information must be analyzed.
41. In the reports published in 2008 and 2009, there are 111 files motivated by disability as the reason for discrimination, however via the system for access to public information it was reported that during the same period there are 236 files, that is to say, we of civil society were told there were more than double¹². This shows a lack of adequate consistency, coordination and systematization with regards to the information published that said institution is required to report.
42. For its part, the public report corresponding to 2010 reports 556 complaints and 436 claims, numbers that, despite practically doubling the amounts of previous years, only contain one case motivated by disability.

⁹ Political Constitution of the United Mexican States, article 1.

¹⁰ Complaints are those made by a private individual arguing discrimination committed by another private individual. Claims are those made by a private individual arguing discrimination committed by a public servant.

¹¹ Annual reports 2008, 2009 and 2010 of activities and budget spending. CONAPRED, from http://portaltransparencia.gob.mx/pot/informe/consultarInforme.do?method=consultarInforme&idInforme=5&_idDependencia=04410, <http://www.conapred.org.mx/IFAI/IA-2009.pdf> y <http://www.conapred.org.mx/IFAI/INFORME%20ANUAL%202010.pdf>, online.

¹² Response to public information request number 0441000004810. ANNEX 2.

43. Neither the Law to Eliminate all Types of Discrimination nor CONAPRED establish sanctions for those that break said law, and so the complaints and claims will never have the desired result: the protection and effective defense of a person's dignity, even less so if public servants have not been educated so that they know what they are obliged to do, or not do, in order to promote integration and development of PwD.

Article 8.- Awareness-raising

44. Mexico is a country made up of a large quantity of ethnic groups and rural and urban populations with different cultural practices based on their place of residence. In this context, the inaction of the Mexican State in its role maintaining and assuring access, conditions of equality and the rights of all individuals must be emphasized.

45. The discrimination experienced by PwD can be attributed in its origin to the lack of information and awareness about disability.

46. Even now, with legislative advances in matters of disability, information does not appropriately and adequately reach neither rural communities nor areas far from the capitals of the states that form the Mexican Republic. Proof of this is the testimony from civil organizations that work in diverse communities who affirm that in carrying out their work in identifying PwD, the family members do not understand the concept of disability and in some cases, PwD are even hidden or tied up by their family members¹³.

47. Other evidence of the lack of awareness about PwD is the inappropriate vocabulary used to refer to PwD. Frequently, people of all ages and professions, including public servants, use expressions such as: *disabled*, *differently-abled*, *special*, *incapable*, *invalid*, *handicapped*, among others, which are conceptually not as up-to-date or are culturally more discriminatory¹⁴.

48. Even more serious is that these expressions are also used in legal instruments, as is the case in various state Civil Codes¹⁵.

¹³ Testimony from civil organizations: CAMADDS, San Cristóbal de las Casas, Chiapas.

¹⁴ Watch at <http://www.youtube.com/watch?v=ObWkEVUMPxo> (min.2:00) and <http://youtube.com/watch?v=K4F1M1pQMog> (min. 1:03)

¹⁵ Civil Code of the State of Puebla, published in the Official Journal of the Federation (DOF) April 30th, 1985 article 639; Code of Civil Procedure for the State of Puebla, published in the DOF August 9th, 2004, article 721; Civil Code of the State of Nuevo Leon, published in the DOF on July 6th, 1935, article 450 (II) and (III); Federal Civil Code, published in the DOF on May 26th, July 14th and August 3rd and 31st, 1928, article 450 (II); Civil Code of the State of Mexico, published on June 7th, 2002, article 4.230 (II) and (III); and Civil Code of the State of Jalisco, published in the DOF on February 25th, 1995, sec. II, article 775.

Vocabulary of "incapable": Civil Code of the State of Puebla

Article 639. Are subject to guardianship: (...) II. Those of the age of majority that are incapable; (...)

Vocabulary of "insanity": Code of Civil Procedure for the State of Puebla

Article 721. Can be subjected to legal incapacity: I.- Those of majority age who are deprived of their intelligence for reasons of insanity (...)

Vocabulary of "deficient": Civil Code for the State of Nuevo Leon

Article 450. Have natural and legal incapacity: (...) II. Those of majority age, with incapacity or disability caused by illness or persistent deficiency of a physical, psychological or sensorial nature which impedes their ability to govern themselves or they cannot manifest their will by some means. (...)

Vocabulary of "intelligence": Federal Civil Code

49. Many public agencies that responded to information requests via the Systems of Transparency and Access to Public Information (InfoMex) also used the inappropriate vocabulary previously mentioned¹⁶.

Article 9.- Accessibility

50. In general in Mexico, normal transportation services, architecture and communications are inaccessible for the majority of PwD, even more so in rural zones and indigenous communities.

51. The Convention contemplates an ample concept of accessibility, which has not been taken into account. In Mexico, when speaking of accessibility, the concept is frequently limited to that of architectural adaptation and means of transportation. Nonetheless, the right of free movement in dignified and safe conditions implies that public institutions and private businesses must also insure accessibility in all ways required by each disability in basic infrastructure, installations and public spaces, as well as in public, air, land and maritime transportation, in mass media and judicial processes. The State has not acted to insure that these norms be obligatorily observed, neither in the public nor private sector. For example:

52. Accessibility is not considered in information services, including electronic and emergency services, nor in human or animal assistance and intermediaries, be they guides, readers or professional interpreters of Mexican Sign Language (LSM), in order to facilitate access to buildings and other installations open to the public. Also lacking are adequate means of assistance and support to insure access to information.

53. As related, in questions formulated by civil organizations through the Systems of Transparency and Access to Public Information, federal and state agencies responded that they had built ramps and installed traffic lights with sound and lighting. These adaptations are visible in avenues of some cities, but not in rural zones. They are also not measures of accessibility for all

Article 450. Have natural and legal incapacity: (...) II. Those of majority age who are diminished or disturbed in their intelligence, [...]; always due to the limitation or the alteration in intelligence (...)

Civil Code of the State of Mexico

Article 4.230. Have natural and legal incapacity: (...) II. Those of majority age who are diminished or disturbed in their intelligence due to mental illness, even when they have lucid intervals; (...)

Vocabulary of "disabled": Civil Code of the State of Jalisco.

Article 775. Will serve as the permanent link between all public, decentralized and private institutions that have as their objective the attention, custody, guardianship and welfare of children, of the disabled, (...)

"Discrimination": Civil Code for of the State of Nuevo Leon

Article 450. (...) III. The deaf-mute who can neither read nor write; (...)

Civil Code of the State of Mexico

Article 4.230. Have natural and legal incapacity: (...) III. The deaf-mute who can neither read nor write; (...)

Article 4.7. Are impediments to contracting marriage: (...) X. Mental illnesses even when there are moments of lucidity;

Article 4.90. Are causes for necessary divorce: (...) VIII Suffering from incurable mental illness.

Structure of the Organic Law of the Judicial Branch of the Federation.

Article 60. Cannot be sworn: (...) V. The blind, deaf and mute;

Vocabulary of "invalid": Law of Social Welfare of the State of Mexico. Article 11.

For the purpose of this regulation, basic services of social welfare are understood as the following:

II. The prevention of invalidity and rehabilitation of the invalid.

¹⁶ Annex 3.

types of disabilities, for example: they completely ignore the needs of people with autism, who often require pictorial signage

54. It is worth pointing out that the maintenance of these adaptations is not consistent (as is the case with wheelchair elevators in stairwells) or they do not fulfill the technical specifications of construction norms. In many cases, the historical value of buildings is used as a pretext for not making the necessary adaptations.

Article 12.- Equal recognition before the law

55. Mexican legislation and institutional practices regarding legal capacity of PwD – above all mental and intellectual¹⁷ – are not compatible with international human rights standards and violate Article 12 of the CRPD. The regulatory framework reflects a vision that is not just paternalistic, but also restrictive of rights as issues like guardianship and legal procedures like judicial interdiction do not guarantee the rights of PwD, but rather institutionalize the general belief that PwD are incapable of making any decision¹⁸, negating their enjoyment of legal capacity. Likewise, the few guarantees established in the Mexican legislation are ignored and violated by institutional practices that deny people their rights and their capacity to make decisions.
56. In the Mexican legal framework, the federal government does not have the power to regulate the judicial capacity or guardianship; these are considered local issues and each state has its own corresponding legislation¹⁹. In accordance with this framework, “judicial interdiction” in the states is the legal process to declare and assign a guardian to a PwD²⁰.
57. According to a legal study done by Rehabilitation International on the laws in the 32 states, in the majority, the trial of judicial interdiction only happens after the guardian has already been assigned and the person with a disability objects to the designation of a guardian²¹. In consequence, the designation of a guardian and the subsequent negation of rights do not follow a procedure consistent with due process but rather are done after the fact. Also, even if the person with a disability objects to the designation of the guardian and there is a formal trial of “judicial interdiction,” he is given little opportunity to participate in the process and at times is not even aware that he has been placed in guardianship²² or if it is appropriate²³.

¹⁷ As a principle, only persons with intellectual or psychosocial disability are subjected to guardianship, although those that cannot govern and express themselves or manifest their will by some means and derived from some other kind of disability are also considered, such as the *deaf-mute* (thus defined in the legislation) that do not know how to read or write, or people addicted to alcohol or drugs. See Civil Codes of Aguascalientes, Mexico State, Chihuahua, Guanajuato, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatán.

¹⁸ An example of this perception is represented in a case documented by the organization Nexos y Soluciones, A.C., in which the sister of a woman with an intellectual disability decided to take the woman’s youngest son, arguing that she did not have the capacity to take care of her children due to her disability. Though this action was made with the knowledge of the municipal DIF, the authority charged with safeguarding the rights of people in situations of vulnerability, this event legitimized the discriminatory practice of a private individual by confirming, without legal basis or procedure, that the child should stay with the aunt until a medical study was performed to determine if the PwD had the mental capacity to take care of him. ANNEX 4 (4.1, 4.2)

¹⁹ Rehabilitation International et al., *Legal Capacity and Guardianship of Persons with Disabilities in Mexico*, pg. 15.

²⁰ *Ibidem*, pg. 11.

²¹ *Ibidem*, pg. 21

²² *Ibidem*, pgs. 21-22.

²³ *Ibidem*, pg. 23.

58. This same study points out that when a person is under guardianship, “all legal acts carried out by the person with a disability are null and void” and “all judicial decisions must be made by the guardian”²⁴. In the majority of the state laws, “the guardian must ask permission of the court with jurisdiction to carry out certain judicial acts; however, the will of the person in question with a disability is neither consulted nor solicited at any time”²⁵.
59. The study also found that in Mexican laws and regulations, the definition of capacity varied from state to state²⁶, but the language used was generally “ambiguous and discriminatory”²⁷ and had the objective of limiting legal capacity²⁸. It is common to find offensive and discriminatory vocabulary in reference to – mental or intellectual – PwD as those of the age of majority deprived of their intelligence for insanity, idiocy or imbecility²⁹.
60. It is for all the above mentioned that with the existence of guardianship and the procedure for granting it – the trial of judicial interdiction – the Mexican State in no way fulfills its obligations to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity³⁰”. Neither does it imply in any way that these “provide for appropriate and effective safeguards to prevent abuse³¹”. As will be discussed in greater detail further on, both the legal reach of these measures, as well as the practice of internment of PwD in psychiatric institutions or shelters, lack an effective control “by a competent, independent and impartial authority or judicial body³²” that reviews all actions of proprietary rights made by the guardian, or even rights to freedom, are made in each situation respecting “the rights, will and preferences of the person³³”.
61. Interpretative declaration of the CRPD. When Mexico ratified the CRPD, it did so with an “interpretative declaration,” which established that *if the national legislation offered a greater protection of that demanded by international law, Mexican law would be the binding one*.³⁴ The Interpretative declaration has caused strong critics from civil society, who have pointed out that in reality however, the practice in Mexico is greatly below the standards of the CRPD and even Mexico’s own domestic law.
62. Based on what was discussed in the previous paragraphs, guardianship and the trial of judicial interdiction in Mexico not only do not fulfill the objective of guaranteeing the rights and interests of PwD in states of greater vulnerability, but rather themselves are the principal generators of human rights violations against PwD. Their very nature does not fulfill the fundamental principles set out in article 12 of the CRPD given that the effects of guardianship are generalized, permanent and irreversible.

²⁴ *Ibidem*, pg. 15.

²⁵ *Idem*, pg. 15.

²⁶ *Ibidem*, pgs. 11-12.

²⁷ *Ibidem*, pg. 11.

²⁸ *IDEM*, pg. 11.

²⁹ Civil Codes of Aguascalientes, Baja California, Campeche, Chihuahua, Guanajuato, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tabasco, Tlaxcala, Veracruz and Yucatán.

³⁰ Convention on the Rights of Persons with Disabilities, Article 12(3).

³¹ *Ibidem*, art. 12(4).

³² *Idem*.

³³ *Idem*.

³⁴ Enactment decree of the Convention on the Rights of Persons with Disabilities and Facultative Protocol. Published in the Official Journal of the Federation, May 2nd 2006.

http://dof.gob.mx/nota_detalle.php?codigo=5033826&fecha=02/05/2008

63. In other words, the “greater protection” referred to by the Mexican State in its interpretative declaration contravenes the very nature of the CRPD, by not changing the paradigm from a welfare system of protection to one of human rights, as this excessive protectionism translates into a restriction of rights and a nullification of the person.

Article 13.- Access to justice

64. The right of access to justice plays a fundamental role in the rights to legal capacity, to liberty and security as set out in the CRPD. The judicial system in Mexico, and as part of it the penitentiary system, presents deficiencies that place the rights of PwD at risk.

65. During the investigation begun for the documentation of this report, the existence of police, judicial and penitentiary personnel instructed in the giving of information, attention and services to people of all kinds of disability was investigated. Also investigated was the number of interpreters of Mexican Sign Language (LSM), the number of prisons with accessibility and the number of PwD in prison.

66. The answers provided by the Public Safety System allow one to see the lack of attention to the needs of PwD. For example:

67. Prisons that form part of the Federal Penitentiary System do not have penitentiary personnel trained to provide services to PwD, nor do they have sign language interpreters³⁵.

68. Of the 422 Federal Prisons, that house together a total of 13,661 PwD, only one (the Federal Social Correctional Center number 5 “East”, located in the state of Veracruz), has an area with ramps³⁶. From this response, one can infer that in addition to it being apparent that these prisons do not take actions to attend to the needs of PwD, the only one that has taken action has done so only for those with motor disability. Likewise, of the 422 prisons, only 4 have medical staff to attend PwD.

69. In many cases, the result of psychosocial disability translates into imprisonment in a psychiatric hospital, where there are documented human rights violations, without the possibility of access to justice whenever they are stripped of their legal capacity.

70. In the Mexico City penitentiary system, as of July 26th 2011, there were 796 people with some mental disability, 60 women and 736 men. According to the Sub-Secretariat of the Penitentiary System: 347 men are in the Psychosocial Correctional Center for Men and the rest are found in the North Preventative Prison, with 133 inmates of this group; the East Preventative Prison, with 172; the South Preventative Prison, with 53 and the centers for women (Santa Martha and Tepepan) with 60 inmates³⁷. The Federal Psychosocial Rehabilitation Center (CEFEREPSI) houses 187 imprisoned people.

71. The lack of official, reliable and itemized information about the situation of imprisoned persons that present some kind of disability at the time of their incarceration, or acquired one during their incarceration, is reprehensible.

³⁵ Response by the Secretariat of Public Safety to the public information request number 0002200033010. ANNEX 5.

³⁶ Ibid.

³⁷ Information collected from the response SG/SSP/AS/1047/2011, from the request number 0101000075311 via InfoMex made to the Sub Secretariat of the Federal District Penitentiary System.

72. Once incarcerated, the lives of those with mental disability become even more difficult because prisons are not equipped to give treatment. There are important advances within the Mexican legal framework with regards to the issue of people with disabilities, but there is nothing on people with mental disabilities that are incarcerated; there is no legal framework that guarantees the adequate treatment of those that are imprisoned.
73. The failure of the mental health system has led to what some have called the criminalization of people with some type of mental disability. The ideal mechanism to prevent people with mental illness from entering prison is the mental health system itself. Aside from mental health services, prisons habitually treat prisoners with some kind of mental disability with the same criteria as other prisoners. Officials house them in the same installations and expect them to follow the same rules and routines. Officials do not understand the nature of mental illnesses and their effect on behavior. They assume that bad behavior is voluntary or manipulative. Considerations for mental health must be incorporated in disciplinary procedures. *They can never benefit from early release because they never obey; they never obey because they are ill*³⁸.
74. In addition to the problem that some of prisoners with mental illness are in common prisons, there are cases of offenders who develop disorders during their incarceration, be it for drug use, age or more commonly for the problem of overcrowding and the adverse conditions that exist in prisons: "Specialized psychology speaks of the phenomenon of 'prisonization' and of confinement and overcrowding. Adding to that the inactivity during a large portion of the day, it becomes a Petri dish for aggressiveness, violence and high emotional stress, which sometimes makes relationships among so many people unmanageable"³⁹.
75. As recognized by the World Health Organization (WHO), confinement by its very nature tends to have an adverse effect on mental health. For this reason, the WHO suggests that incarceration be minimized as much as possible while still being consistent with the needs of the community in seeing crime effectively punished⁴⁰. The most effective means of assuring that the rights of those with some type of mental disability are protected is to try and maintain them outside of prison, but above all out of psychiatric hospitals, where they also suffer the effects of confinement and multiple abuses. In order to do this, community health services must be expanded and organized to improve the reintegration of people with mental disability into the community.
76. Reform of the penal regulation is necessary so that people with mental disabilities that have broken the laws and do not represent a risk to the victim or society be attended by health authorities and later given over to those who legally are responsible for taking care of them.
77. For those exceptional cases in which the penal justice system is involved, legislation should be created that guarantees a special procedure to those with civil immunity⁴¹, that completely respects the procedural rights of all persons accused of a crime, and in which the sentence given is determined by duration and motivated by the autonomous exercise of life within the community.

³⁸ Some of these ideas have been taken from: Summary of Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons: http://www.prisoncommission.org/pdfs/prison_commission_summary.pdf

³⁹ Jennifer Abate, Santiago, Investigaciones revelan graves efectos psicológicos de sobrepoblación penal, la tercera, December 9th, 2010.

⁴⁰ World Health Organization and World Bank, World Report on Disability, WHO, Geneva, 2011

⁴¹ In a special trial, a Valuation Committee must judge the level of responsibility of the person with a mental disability, taking into account various factors, such as, if he is taking medication or if he stopped taking it voluntarily or involuntarily, and if the guardian or primary caregiver allowed it or was not aware of the fact.

78. With regards to people with mental disabilities that have committed crimes and are considered a risk to the victim or society for presenting violent conduct, they should be imprisoned and attended in special establishments, or in their absence, in a psychiatric wing of the state prisons, which should be fully equipped to promote their reintegration into the community once they have been treated so that they can exercise their independence and autonomy.

Article 14.- Liberty and security of the person

79. The rights of liberty and security of the person are not contemplated specifically in Mexican legislation for PwD, but it is fundamental for this sector of the population.

80. Incarcerated PwD must be guaranteed due process under the same circumstances as for the rest of the population, but taking into consideration the needs specific to their disability.

81. Mexican legislation does not fulfill international human rights standards which are indispensable for protecting people from arbitrary detention. In the case of people with mental disabilities, in the absence of legal protection, all persons subject to involuntary hospitalization are subject to arbitrary detention.

82. Even though the CRPD provides neutral standards not linked to disability for hospitalization, previously existing procedural protections should be maintained to avoid arbitrary detention. According to international human rights regulations, this should include the right to be heard by an independent and impartial authority before a person is hospitalized and the right to present proof, such as a visit from an independent health care professional⁴².

83. The protections set out in article 12 must also be considered in psychiatric hospitalization. As previously mentioned, the CRPD compels the adoption of positive measures in order to lend support to PwD when needed for the exercise of their legal capacity.

84. On the other hand, “voluntary” hospitalization in many cases leads to arbitrary detention. Many of those whose hospitalization is considered “voluntary” are committed by members of their family.

85. The Official Mexican Standard 025-SSA2-1994 (NOM-25) regulates psychiatric hospitalization in the country⁴³; it does not however contemplate provisions related to the independent revision and supervision of the psychiatric hospitalization. As set out in NOM-025, involuntary hospitalization only requires approval in writing of a psychiatrist and a family member or guardian⁴⁴. NOM-025 does not require any sort of judicial supervision in the civil process of hospitalization; there is no mechanism for revision of the initial hospitalization and there is no periodic revision process during the hospitalization. Once the person is committed by the family and the psychiatrist, he can remain in an institution for life once abandoned by family members or if he does not have someone who will take charge of him.

⁴² *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, General Assembly of the United Nations, Resolution 46/119, Principles 16-17. In the case of Victor Rosario Congo, the Inter-American Commission found that the Principles of Mental Health are the authority for the fulfillment of requirements of the American Convention with respect to psychiatric obligations. Inter-American Commission on Human Rights. *Rosario Congo v. Ecuador*, Case 11.427, Report No. 63/99, April 13th 1999.

⁴³ Official Mexican Standard, *Para la prestación de servicios de salud en unidades de atención integral hospitalaria médico-psiquiátrica*, NOM 025-SSA2-1994, 1994 [from now on “NOM-025”].

⁴⁴ *Idem*, paragraph. 4.4.2.

86. If NOM-25 requires hospitals to inform the public prosecutor (MP) about the hospitalization and “evolution” of the case, it does not require that the MP evaluate or approve of the hospitalization⁴⁵. This mechanism does not guarantee that those hospitalized are supervised in order to guarantee a person’s rights. In fact, the authorities do not even know the purpose of this action as health institution personnel refer to the notification of the public prosecutor as being done in order to locate individuals who are suspected of committing a crime. On the other hand, they affirm that in practice, the health authorities do not give details about each case of hospitalization, much less informational updates to the MP, nor does the MP request additional information, nor question any commitment decision; in other words, this is simply a procedural formality⁴⁶.
87. NOM-25 requires that psychiatric institutions carry out periodic clinical reevaluations in each case⁴⁷. These revisions are not done by an independent authority as required by international law, but rather are medical in nature and do not require any risk assessment or other kind of standard relative to involuntary detention.
88. The failure to respect a person’s decision about commitment in a psychiatric hospital, as well as the acceptance of family consent for admission, creates enormous dangers for people with mental disabilities. Moreover, this generalized practice violates one of the fundamental principles of the Convention, the acknowledgment of the individual autonomy and independence of persons with disabilities in making their own decisions⁴⁸. One of the fundamental decisions that a person can make is to decide where to live and receive treatment, which is also linked to another fundamental provision, the “full and effective participation and inclusion in society”⁴⁹.

Article 15.- Freedom from torture or cruel, inhuman or degrading treatment or punishment

89. The PwD most frequently subjected to the acts referred to by this article are those with mental disabilities. While there is legislation that specifically addresses the matter of torture, there are no mechanisms which would ensure that prisons, psychiatric or migratory centers control and supervise conditions within: acts of torture are not investigated.
90. The CRPD does not change the existing definition of torture, nor of cruel, inhuman or degrading treatment, but it does clearly state that these protections apply to individuals with disabilities. With the ratification of the CRPD, governments are obliged to assure that PwD are guaranteed these protections, including when actions happen under the pretext of “medical treatment” or in an environment meant for their protection or medical attention. Given the “growing demands for protection of fundamental rights and liberties, treatment that in the past would not have been considered torture could be so considered today [...]”⁵⁰

⁴⁵ *Ibidem*.

⁴⁶ See Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Op. Cit.*, *supra* note 35, Chapter VI Violations of International Law (F).

⁴⁷ *Idem*, paragraph. 6.4.3.1.

⁴⁸ CRPD. Article 3 (a)

⁴⁹ CRPD. Article 3 (b)

⁵⁰ Inter-American Court of Human Rights. *Case Cantoral Benavides vs. Perú*. Sentenced on August 18th, 2000. Fund. Series C No. 69, paragraph 99. Citing Eur. Court HR, *Selmouni v. France*, App. No. 25803/94, ECHR 1999, paragraph. 101.

91. Thousands of individuals with disabilities in Mexican institutions are subjected to severe physical and emotional pain, which constitutes ill-treatment by virtue of international law⁵¹.
92. Cruel, inhuman or degrading treatment. – Common practices within psychiatric institutions and residences for PwD constitute ill-treatment⁵².
93. In different psychiatric institutions and of social welfare, PwD living in unsanitary conditions have been documented. They are exposed to the smells of the urine and feces seen on the floor⁵³, the use of a single cup to dispense medicine⁵⁴; the lack of water for personal hygiene and bathing⁵⁵; communal showers and bathrooms that lack any sort of privacy⁵⁶; lack of space for personal objects⁵⁷, as well as suffer from sexual abuse⁵⁸ and violence⁵⁹.
94. Being abandoned in a room for one's entire life in almost complete inactivity, without any kind of stimulation, without contact with the outside world and with no hope of being returned to the community also reaches the level of severity necessary to be considered cruel, inhuman or degrading treatment.

⁵¹For the documentation of the report, Abandoned and Disappeared, 20 institutions were visited in which more than 1,890 children and adults were segregated from society; nonetheless, this constitutes only a small number of the total population committed in Mexican institutions. See also: Disability Rights International and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Op. Cit., supra* note 35, Chapter II, Chapter VI Violations to International Law (B) and (E).

⁵² The Special Rapporteur on Torture has expressed “concerns about poor living conditions in psychiatric institutions and homes for persons with disabilities” as violations of the Convention against Torture. The “Poor conditions in institutions” that could violate the Convention against Torture include a failure on the part of the government to provide “food, water, medical care and clothing.” *Torture and other cruel, inhuman or degrading treatment or punishment, Note by the Secretary-General*, U.N. Doc. A/63/175, July 28th, 2008, by Manfred Nowak [from now on the Special Rapporteur on Torture], paragraphs 37-41, and the Committee on the Rights of the Child, Considerations of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Republic of Serbia, U.N. Doc CRC/C/SRB/CO/1, June 20th, 2008, paragraph 52.

⁵³ In the Hospital Samuel Ramírez, en the Batam and in CAIS Villa Mujeres, people sitting in, walking in and eating their own feces and urine were observed. A clear example of the unhygienic conditions in which people are found is the case of an elderly woman who was found tied to a wheelchair and sitting in a pool of her own urine in the Batam in Puebla. This situation was reported to the nursing staff, who did nothing to help her. The Director was also asked why no one had helped this woman. The Director explained that there was no budget for diapers. The woman remained sitting in her own filth. See Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Op. Cit., supra* note 35, Chapter II *Conditions in Institutions* (A)(1).

⁵⁴ In particular, in the CAISAME E.P. in Guadalajara, an entire pavilion of people lined up to take their medicine was observed. One by one, they received their pills from the nurses and they swallowed them with the same plastic cup shared by all. The risk of illness or infections was ignored. *Idem*, Chapter II *Conditions in Institutions* (A) (1)

⁵⁵ *Idem*, Chapter II *Conditions in Institutions*, Chapter II. (A) (1), (D) and Chapter VI. *Violations of International Law* (E) (1).

⁵⁶ In the majority of long-term care facilities that were visited, the bathrooms were open and exposed and people bathed in groups. Adults wandering around in open patios, half-naked, defecating in fields and remaining outdoors without assistance or reorientation from staff was observed. *Idem*, Chapter II.(A)(3) and Chapter VI. (E) (1).

⁵⁷ *Idem*, Chapter II.(A)(3).

⁵⁸ For example, in the CAIS Villa Mujeres, in Mexico City, there is no special care of orientation for women who allege that they have been victims of sexual abuse. A blind woman with a psychosocial disability alleges that she was raped in 2008 in this institution as well as frequently mistreated. *Idem*. Chapter II *Conditions in Institutions*, (A) (4)

⁵⁹ In the Hospital Adolfo M. Nieto in the state of Mexico, an incident of violence between patients due to the negligence of the staff was observed. In a small, isolated patio, a patient pushed another and she fell on her back. The woman fell and hit her head on the floor and immediately began to sob. None of the hospital staff moved to help her; after a time, the staff helped her move into the pavilion. No one evaluated the injuries to her head even though she had hit it with considerable force, nor did they check her arm, despite the fact that she moved it as if she were in pain. Likewise, in the CAISAME E.P. in Guadalajara, a young patient said that when the patients fought, the staff did nothing or just sedated them. *Idem*.

95. Physical restraints are frequently used at the convenience of the administration when adequate staff is not available to supervise patients. In many institutions, there are no procedures for monitoring the use of restraints. These practices expose people to unnecessary dangers and the loss of autonomy and should be considered, at the very least, ill treatment.
96. Long-term restraint can be considered an act of torture. In other words, when people are maintained in a prolonged condition of restraint, this practice can reach the level of torture⁶⁰.
97. So that a practice is considered torture, it must fulfill the following four defining elements: (1) it must inflict severe pain or suffering, be it physical or mental, (2) it must be intentionally inflicted, (3) it must be inflicted for a purpose, and (4) it must be inflicted by the State^{61,62}. Any act that does not fulfill one of these four elements could be considered ill-treatment.
98. In Mexican psychiatric and social welfare institutions, the use of physical restraints for long periods of time has been detected as a means to control behavior and treatment, which satisfies the four elements of the definition of torture. The Special Rapporteur on Torture has pointed out that a key factor in determining the existence of torture or ill-treatment is the defenselessness of the victim⁶³. Institutionalized children and adults with disabilities are extremely vulnerable to suffering abuse due to their defenselessness in being completely under the control of the institution.
99. Another factor to consider is whether the act is inflicted with the intention and purpose of committing torture. The United Nations Committee against Torture has established in General Comment 2 “that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances⁶⁴”. For this reason, the motivation to cause suffering is not needed. A practice that inflicts severe pain constitutes torture even though the medical staff that places the person in restraints has the intent to provide treatment. Putting a person in restraints for long periods of time satisfies the requirement of intentionality because the staff knowingly places the patient in this condition, as putting a patient in restraints must be done under a doctor or psychiatrist’s order.
100. Having one’s arms and legs tied to a wheelchair or to the corners of the bed impedes any control or basic bodily functions, including the ability to feed oneself or eliminate bodily waste.
101. In the Long-Term Mental Health and Care Center (CAISAME E.P.) in Guadalajara, Jalisco, a young man was found restrained to a wheelchair from head to toe, making it impossible to move

⁶⁰ The Special Rapporteur on Torture has said that “there can be no therapeutic justification for the prolonged use of restraints, which may amount to torture or ill-treatment.” *Op. Cit., supra* note 62, paragraphs. 37-41, and Committee on the Rights of the Child, Considerations of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Republic of Serbia, U.N. Doc CRC/C/SRB/CO/1, June 20th, 2008, paragraph 61.

⁶¹ General Assembly of the United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, December 10th, 1984, article 1. Available at <http://www2.ohchr.org/english/law/cat.htm>

⁶² Though there are differing opinions regarding acts considered torture by private individuals, for the effects of this report we only refer to acts of torture attributed to state authorities. Nonetheless, it is important to highlight the fact that ill-treatment or torture that can be attributed to family members of PwD must be investigated and sanctioned by the competent authorities.

⁶³ Nowak, Manfred and Elizabeth MacArthur, *The United Nations Convention Against Torture – A Commentary*, 2008, pg. 77.

⁶⁴ Committee against Torture, *General Comment 2, Implementation of Article 2 by States Parties*, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007)

his extremities. This man is the same that was seen as a child tied to a wheelchair in 1999⁶⁵. Another similar case is seen in a woman in the facility Sáyago in the state of Mexico, who lived in the same conditions 10 years earlier in the Psychiatric Hospital Ocaranza, in the state of Hidalgo⁶⁶.

Article 16.- Freedom from exploitation, violence and abuse

102. Despite what is set out in article 16, there is no systematic and independent supervision in existence for regulation of the psychiatric institutions or other social welfare institutions, nor are there monitoring bodies that protect PwD from exploitation, violence and abuse, of which mainly women and children are those most susceptible to being victims.
103. Abuse and trafficking in Mexico. In Mexico there are an estimated 20,000 child trafficking victims each year⁶⁷. The lack of support which would enable families to keep their children with disabilities at home can result in institutionalization, which creates a high risk for abuse and a greater vulnerability to trafficking. Children with disabilities have disappeared from public and private social welfare institutions⁶⁸; given the situation in Mexico, it is likely that they have fallen into a world of exploitation and abuse.
104. Though many children are placed in these institutions for reasons not related to a disability, it is certain that among this population, there is a high level of mental disability. Furthermore, institutionalized children, like those that are victim to exploitation, abuse and violence have a greater susceptibility to acquiring a mental disability.⁶⁹
105. The United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography has sent an urgent petition to the government of Mexico regarding the children that disappeared from institutions administered by the Iglesia Restaurada Cristiana (Restored Christian Church)⁷⁰ Children between the ages of 1 and 2 removed from their families were placed in institutions by the Mexican government⁷¹. When the families requested visits to the minors, the authorities did not know their whereabouts⁷².
106. In January of 2009, in two institutions⁷³ administered by the religious group “Los Elegidos de Dios” (God’s Chosen)⁷⁴, 126 children were rescued and 11 reported missing. Some of the infants rescued were relocated by the authorities at “La Casita del Sur” (The Little House in the

⁶⁵ Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Abandoned & Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities*, (November, 2010), Chapter II. *Conditions in Institutions* (B).

⁶⁶ *Ibidem*.

⁶⁷ United States Department of State, *Trafficking in Persons Report 2009 - Mexico*, June 16th, 2009. Available at: www.unhcr.org/refworld/docid/4a4214a32d.html (last visit, October 29th, 2010).

⁶⁸ Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Op. Cit.*, *supra* note 35, Chapter. IV *Disappearances, Exploitation and Trafficking*.

⁶⁹ *Idem*, Chapter III *Segregation of Children with Disabilities* (D).

⁷⁰ Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right To Development*, Mission to Mexico, A/HRC/7/8/Add.2, January 24th, 2008, by Juan Miguel Petit, [from now on Special Rapporteur on the sale of children], paragraph. 37.

⁷¹ *Idem*, paragraph. 43.

⁷² *Ibidem*.

⁷³ These institutions are located in San Pedro Mártir and in San Miguel Xicontécatl, in Tlapan. Tlapan. *Ib.*, paragraph 47.

⁷⁴ Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right To Development U.N. Doc. A/HRC/14/32/Add. 1 (May 31st, 2010) paragraph 47*.

South), an institution administered by the same religious order⁷⁵. Months later, in the same institution, authorities found children that had been beaten, left without food for days, locked in dark rooms or wardrobes for more than two days and not allowed see their parents⁷⁶. It was also discovered that the staff at the institution had been implicated in the disappearance and trafficking of 14 minors⁷⁷.

107. In 2010, the Mexican authorities identified another institution, the “Instituto de Rehabilitación de Alcohol y Drogadicción Hospital Santo Tomás, Los Elegidos de Dios,” (Hospital Saint Thomas Drug and Alcohol Addiction Rehabilitation Institute, God’s Chosen), in which women and children were subjected to sexual abuse and trafficking⁷⁸. In the children’s group home “Adulam” there have also been reports of assaults of institutionalized children of up to 18 years of age, as well as reports of a lack of action on the part of the authorities in response to this situation⁷⁹.
108. Based on the findings of sexual abuse and trafficking in the children’s group home “Adulam” and in the religious order “Los Elegidos de Dios”, an authority from the Federal District’s Human Rights Commission (CDHDF) reported that the current situation is still not such so that what happened in “La Casita del Sur” does not recur, as the recommendations about the case were made public in April of 2009 and in 2010 the cases of the children’s group home “Adulam” and the institute of “Los Eligidos de Dios” were made known. As a result of these cases, the government of Mexico City has adopted legislation to create a new Office for the Defense of the Rights of Boys and Girls of the Federal District; this office, however, is still not in operation. What is most important is that there are still no alternatives, community based, other than institutionalization. For children that face abuse at home or whose parents are simply unable to support them due to a lack of support for their disability, there is no other option aside from institutionalization⁸⁰. Without a doubt, the consequences of these cases show the serious lack of community-based alternatives that are not institutionalization.
109. Dangers from a lack of supervision. The situation in “La Casita del Sur” is proof of the deficiencies in the child welfare system. The network of small private institutions for children with disabilities make up the system that Mexico uses to give homes to children from the streets or any other child abandoned by his family. According to the CDHDF, the majority of children in these institutions have suffered psychological trauma from family abuse or in these very institutions⁸¹. In consequence, many of these children are potential aggressors.
110. According to the head of the Welfare and Social Integration Unit of the SN-DIF, this unit is responsible for monitoring the system of institutions for children. He affirmed, however, that in reality this does not occur as the law is not clear about which authority is responsible. Likewise, he stated that the SN-DIF depends on state authorities for information about institutions for

⁷⁵ *Ibidem*.

⁷⁶ *Ibidem*, paragraph 46.

⁷⁷ *Ibidem*, paragraph 50.

⁷⁸ “Descubren casa del horror en Iztapalapa; liberan a 107 personas”, in the newspaper *Proceso* (December 3rd, 2009).

⁷⁹ Network for the Rights of children in Mexico, La REDIM en México expresa su preocupación ante los distintos acontecimientos que muestran las fragilidades de las instituciones públicas para garantizar la protección de los derechos de niñas y niños sin cuidados parentales (August 9th, 2010). Available at www.derechosinfancia.org.mx/Especiales/pronunciamentodifcancun.html (last visit, November 15th, 2010).

⁸⁰ Abandoned and Disappeared, *supra* note 35, Chapter IV Disappearances, Exploitation and Trafficking, Section A Danger of Abuse and Trafficking.

⁸¹ See V. Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care. (Corinna Csáky, Chair of the Save the Children Child Protection Initiative Task Group on Appropriate Care, 2009)

children but they have no way of exacting it and many states simply do not respond to requests from the federal authorities.

111. There is a serious lack of information, particularly about children with disabilities. The SN-DIF informs that it does not have data about the institutionalization of children with “severe disabilities” because it is the jurisdiction of the Secretariat of Health. The head of Psychiatric Care Services of the Secretariat of Health stated that all information about children with disabilities is the responsibility of the SN-DIF. This reflects the lack of coordination and effective assignation of responsibilities among public institutions for the protection of children and even more so for those with a disability.

Article 19.- Living independently and being included in the community

112. Mexican legislation does not contemplate the protection of the right of PwD to live independently as set out in the Convention. The main reason for segregation of PwD in institutions in Mexico is that lack of community-based services so that they can receive support in their own community. According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), in order to fulfill the right to community integration, this right must: 1) *be legally recognized and enforceable*; 2) *be included in national policy and planning*; and 3) *be implemented by means of the creation of community-based services*⁸².

113. 1) *Legal Recognition of the Right to Community Integration*. Mexico has three regulatory provisions related to the integration of PwD in the community: (1) General Law for the Inclusion of Persons with Disabilities, (2) General Health Law and (3) Official Mexican Standard 025.

114. The new General Law for the Inclusion of Persons with Disabilities does not make any provision that establishes the creation of community services. On the contrary, it decrees that the Secretariat of Health and the Secretariat of Social Development have the obligation to open institutions for housing PwD. Instead of creating new opportunities for community integration, this new law reinforces already existing system of segregation for the care of PwD in Mexico.

115. The General Health law regulates institutionalization but does not take into consideration community services. It does not establish the right to community integration, nor does it state that the purpose of rehabilitation is social reintegration.

116. The right to community integration is established in the Official Mexican Standard 025⁸³, which includes regulatory provisions for the creation of community-based services; this standard is not enforceable however, nor does it create real obligations for the states.

117. 2) *The inclusion of the right to community integration in national policy or planning*. Mexico also fails in the fulfillment of this element. Exactly as indicated by the head of Psychiatric Care Services in 2009, the federal government of Mexico has not destined the funds necessary for

⁸² *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities*, 10th session, U.N. Doc.A/HRC/10/48 (January 26th, 2009). Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>, paragraphs. 50 and 51.

⁸³ NOM 025-SSA2-1994, *Op. cit.*, *supra* note 52.

the implementation of mental health services required for the right to community-based care⁸⁴. Mental health authorities informed that no part of the mental healthcare budget is specifically designated for community-based mental healthcare⁸⁵. In practice, the “Specific Action Program 2007-2012, Mental Healthcare Services” is no more than a declaration of values rather than a real public policy or plan. Despite government assertions, there is no real plan for the creation of community-based services for PwD.

118. 3) *Be implemented by means of the creation of community-based services.* In visits to twenty psychiatric and social welfare institutions⁸⁶, more than 1,890 children and adults segregated from society were found. This constitutes only a small number of the total population of people institutionalized in these institutions as, according to the Secretariat of Health, Mexico has 33 psychiatric and mental healthcare hospital units⁸⁷. The real number of people shut away in psychiatric and mental healthcare hospitals could be much greater as the system is decentralized and the federal government neither controls nor regulates many of these institutions that are run at a state level. As is the case with the SN-DIF, which does not know the total number of institutionalized children, the same occurs with the institutions run by the Secretariat of Health.
119. The head of the Federal Secretariat of Health Psychiatric Care Services explained that only 2% of the federal healthcare budget is assigned to mental healthcare services and of this, nothing is assigned to community-based services⁸⁸.
120. Institutionalization of children. Institutions for children are the doorway to a lifetime of institutionalization, especially for children with disabilities. Authorities have reported that once they are placed in institutions, it is expected that children with disabilities will remain there for life given the lack of programs for community integration⁸⁹. Individuals with disabilities that grow up in orphanages or children’s group homes frequently spent the rest of their lives in institutions for adults⁹⁰. In Mexico, there is no specific program for the adoption of children with disabilities, nor efforts to help them return to being cared for by their families.
121. Imprisonment in institutions for the lack of community-based services. Even when people have families that care for them, they are often obliged to institutionalize them due to a lack of medication or support in the community. Oftentimes, families place their relatives in the institution simply because they cannot pay the cost of medications in the community⁹¹.

⁸⁴ Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Abandoned and Disappeared: Mexico’s Segregation and Abuse of Children and Adults with Disabilities*, (2010). Chapter I *Segregation from Society of People with Disabilities*.

⁸⁵ Secretariat of Health, *Specific Action Program 2007-2012, Mental Healthcare Services*, Mexico, 2008, pg.5.7.

⁸⁶ Visits made by DRI and CMDPDH. *Op. Cit.*, *supra* note 35. See List of Mexican Institutions. ANNEX 6.

⁸⁷ Secretariat of Health, *Specific Action Program 2007-2012, Mental Healthcare Services*, Mexico, 2008, pg. 51.

⁸⁸ Interview in September, 2010.

⁸⁹ DRI CITAR Disability Rights International and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Abandoned and Disappeared: Mexico’s Segregation and Abuse of Children and Adults with Disabilities*, (2010). Chapter I *Segregation from Society of People with Disabilities*.

⁹⁰ DRI CITAR *Idem*, Chapter I *Segregation from Society of People with Disabilities (A)*.

⁹¹ Clear examples of the placing of individuals in institutions by their families due to the inability to pay for medications were found in the CAISAME E.P. Guadalajara where the authorities explained that “people live here, they do not have access to medications; if they have a crisis they have to come back”. Likewise, in the Hospital José Sáyo in the state of Mexico, a woman who despite being able to hold a job in the community was taken by her mother to the institution because it was the only place where her daughter could receive medication. *Idem*, Chapter I (B).

Article 24.- Education

122. Even though Mexico has had advances in education, these have been insufficient because there are still three great challenges to be faced: the achievement of equal coverage, quality in educational processes and levels of learning, and the integration and operation of the education system, especially in order to promote the inclusion of PwD.
123. With regards to equality, the unequal development in this country prohibits educational benefits from reaching the entire population, in particular groups that are more marginalized and vulnerable. According to the results of the XII General Population and Housing Census 2000⁹², though 91% of the population between the ages of 6 and 14 attends school, among the population of people with disabilities this number decreases to 63%, which reflects the inequality in access to the benefits of education.
124. Of young adults between the ages of 15 and 29 with disabilities, only 15.5% attend school. Almost 10% of the total population in Mexico 15 years or older can neither read nor write; in the population with disabilities this number is 32.9%. For every 100 PwD older than 15: 36 do not have any level of study, 46 have incomplete basic education (primary and secondary), 7 have complete basic education, 5 have completed some level of high school, and 4 have some higher education⁹³.
125. What also stands out is that the Secretariat of Public Education's (SEP) does not know the number of PwD enrolled in mid-level education in Mexico, nor the that of staff trained to provide services for them⁹⁴. The SEP also does not register information about the number of schools that have infrastructure that is accessible to PwD, the number and contents of materials printed in Braille, nor actions for raising awareness about disability in the student population⁹⁵.

With reference to points 2 and 4, of how many people with disabilities are enrolled in regular public schools of mid-level education, and how many staff members are trained to provide services to persons with disabilities in regular mid-level education, I inform you that the questionnaires (...) do not capture this information.

With respect to the request for information (...) referring to measures implemented for the specific protection of women and children with disabilities in the area of education, how many schools have infrastructure that is accessible to persons with disability; how many and what material has been printed as free Braille textbooks; how awareness is raised in the school population about disability, and what "reasonable adjustments" have been made for the purpose of insuring access to education for persons with disabilities from 2008 to this date, with regards to these aspects I inform you that the Area Office does not have the information.

⁹² The 2010 Census did not include questions that provided current information about education for people with disabilities and so the data used is from 2000.

⁹³ National Institute of Statistics and Geography. INEGI.

<http://cuentame.inegi.org.mx/impresion/poblacion/discapacidad.asp>

⁹⁴ Response to public information request number 0001100114910, provided by the SEP. ANNEX 7.

⁹⁵ Ibid.

126. The availability of libraries for people with visual disabilities is also worrisome. The authorities report that they know of 3 public libraries in Mexico City that offer services to people with visual disabilities⁹⁶.

Article 25.- Health

127. Though the right to health is a human right recognized by various human rights instruments, it has a special acknowledgment in the CRPD because of its relation to the specific needs of PwD. The CRPD provides a valuable guide for governments on the way in which a more ample right can guarantee that PwD enjoy “highest attainable standard of physical and mental health”.

128. A wide range of health risks have been documented in psychiatric institutions and those of long-term care in Mexico, including: (1) the lack of basic medicines and medical attention⁹⁷, (2) the excessive use and high dosages of psychotropic medication⁹⁸, (3) the lack of dental care, (4) the use of restraints for prolonged periods, both in beds and in wheelchairs⁹⁹, (5) the lack of psychical therapy, especially for people with cerebral palsy, (6) the unhygienic and unhealthy living conditions, and (7) the lack of emotional attention and social stimulation is especially dangerous for children and can lead to a “lack of growth” which is potentially fatal¹⁰⁰. The majority of these institutions do not meet in an integral manner the conditions required for the proportioning of medical attention as stipulated by the law. This means that both the deprivation of liberty of those people who have been abandoned as well as the inadequate conditions and state of inactivity in which they live, make rehabilitation which would improve their state of health impossible.

129. The previously mentioned reflects the deficiencies in healthcare services for a specific group of PwD. The bad conditions in healthcare, however, are visible in general. In requests for information about the number of PwD who receive care in the two public institutions that provide the majority of the healthcare services in Mexico, the Mexican Institute of Social Security (IMSS) and the Institute for Social Security and Services for State Workers (ISSSTE), the former states that the enrollment of those insured by IMSS does not classify by type of disability and, for this reason, the Office of Incorporation and Collection of the Institute does not have this information¹⁰¹.

130. The latter declared itself unable to respond to the request as it did not have any information.

⁹⁶ Information provided by the SEP in response to information request number 000110011510. ANNEX 8.

⁹⁷ For example, in the Hospital Cruz del Sur, in Oaxaca, a nurse in September of 2010 told that the institution lacked basic medicines, including those for cardiac arrest and other conditions that could be fatal. She indicated that in the evenings and at nights there were not even psychiatrists or doctors to administer the medicine that was available in the event that someone fell ill and that in some institutions there was no means to easily transport residents to a general hospital for physical healthcare. Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Op. Cit, supra* note 35, Chapter VI Violations to International Law (D).

⁹⁸ In all institutions visited, patients suffering from the excessive use and high dosages of psychotropic medications were found. Among these institutions, authorities reported that the psychotropic medications were used to control difficult behaviors instead of less invasive and more behavior-specific therapies. In the Samuel Ramírez Moreno, the sub-director stated that given the budgetary restraints, they had to use less-costly medications despite the increase in side-effects. *Ibidem*.

⁹⁹ Disability Rights International and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Abandoned and Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities*, (November 30th, 2010), Chapter VI *Violations of International Law* (D).

¹⁰⁰ Frank, Deborah A. et. al., *Organización Panamericana de la Salud, Evaluación de Servicios de Salud Mental en la República Mexicana*, 2004, pg.1545.

¹⁰¹ Response to the request for public information number 0064100567810 presented to the Mexican Institute of Social Security (IMSS) via InfoMex Federal Government. ANNEX 9.

Article 27.- Work and employment

131. The role that PwD play in the labor market is practically nonexistent. Job opportunities are limited, which is reflected on the one hand by a marked difference in opportunities, starting with education and on the other, a lack of willingness by the authorities to guarantee that the labor markets respond duly and positively to the specific needs of disability.
132. Even though there have been important advances in facilitating the access to employment of people in vulnerable conditions, including PwD, specific actions for PwD are still lacking.
133. The Federal Labor Law does not contemplate explicit situations relative to the work conditions of PwD. The articles that regulate the situation of “incapacity” or “invalidity” are relative to situations of work-related risk, conditions of suspension or termination of the labor relationship and reparations. Said articles are clearly of a medical and welfare approach. This approach is transcended by the CRPD in the establishment of a human rights approach, though it has not been incorporated into labor legislation.
134. Programs of the Secretariat of Labor and Social Welfare (STPS) are limited to quarterly reports about the actions taken by the networks of labor integration, reporting how many PwD were placed, their sex, age, type of disability; there is no follow-up however as to the safety conditions of the job, the permanence, training, and labor rights, fostering cases of labor rights violations.
135. The STPS, in its internal regulation, determines the job offers of the network of labor relations without allowing for the opinions and preferences of PwD. Work plans which deal with the policies of labor integration of PwD have not been updated either.
136. Despite the existence of a Commission for attention to PwD within IMSS, it has little effect.
137. It is also worth pointing out that the STPS does not have reliable information about the number of PwD that work in institutions of the public sector, nor of the type of work that they do, which leads one to doubt the objectivity of the labor programs and the statement that there are job offers for this sector of the population¹⁰².

Article 29.- Participation in political and public life

138. Frequently, PwD barely have a say in the democratic process in Mexico. Even when one hears them, they are not necessarily listened to. The lack of participation in the political debate gives way to the formulation of public policy without the active intervention of those groups that are more likely to be affected by its result. This can lead to isolation with respect to the democratic process and skepticism with regard to the possibility of justice being done in the application of the law.
139. The right to participate in elections and to vote is often explicitly denied to some PwD. Even though the right to vote is protected by law, in practice a great number of factors can revoke it. Among these are the lack of accessible voting booths, material (Braille, for example) and transportation to the voting booths.

¹⁰² The STPS was asked: *How many people with disabilities work in the public sector? What positions do they hold? Indicate the number of people in each public institution and their position.* The agency responded: “This Office is not competent with regards to the information solicited”. ANNEX 10.

140. Accessible electoral material is insufficient. The Electoral Institute of the Federal District (IEDF) is known to have a reduced number of Braille cards that allow persons with visual disabilities to exercise their right to vote. Nonetheless, in being the only electoral institution that has this system, other electoral institutions have asked for the cards on loan during their electoral processes. While this is one measure of accessibility, it does not cover the needs of the entire population with disabilities, nor the specific needs of all of the disabilities¹⁰³.

Article 33.- National implementation and monitoring

141. On February 21st, 2011, the CNDH and the 32 state human rights commission (CEDH) were officially designated as the framework charged with the Promotion, Protection and Supervision of the application of the Convention on the Rights of Persons with Disabilities. This decision caused discontent among organizations of civil society as they were not consulted in this extremely important appointment process, which constitutes a violation of paragraph 3 of article 33¹⁰⁴. Even the very CEDH questioned the appointment process.

142. Both for PwD as for civil society in general, the Convention provides a great opportunity to work together with the Mexican State in the applying, promoting, monitoring and evaluating public policy and programs established in the three levels of government.

143. For many years, civil society has demonstrated the need to be included in the design of public policy relating to human rights. It is in this sense that the creation of a framework which would see to the broadest needs of the population with disabilities and of civil society working in their benefit.

144. What is first required is the incorporation of civil human rights organizations, organizations that work in benefit of PwD, people with disabilities, specialists in issues related to disabilities, and the private sector, among others, into this framework. The guarantee must be established in the process to establish an advising organ, whose proposals would really be taken into account. In other words, civil society not only requires the voicing of their opinion, but also a vote so that their proposals, analyses and observations are incorporated into the design of mechanisms to be established, both at the federal and local level.

145. Without a doubt, the combination of knowledge and experiences will be of great value in the making of decisions that will impact public policy both at a federal and local level – above all because there is great disparity present. Currently, there are no uniform criteria to guarantee the rights of PwD; efforts made are insufficient and many of these efforts are subject to the discretion of politicians that distribute their budgets arbitrarily and without check, nor clear objectives that would favor growth for PwD. They do not comply with laws of transparency, nor accountability. This is one of the most worrisome points.

146. Autonomous human rights organizations must involve themselves so that civil society participates in the monitoring and evaluation of the mechanisms established by the Convention, which must be the bridge between local governments in order to design policies that comply. These criteria must be uniform, no matter the number of PwD or the type of disability predominant or the budget designated in each state. All PwD in all the states must have equal access to rights, be they small, medium or large states.

¹⁰³ Response to the request for public information provided by the IEDF. ANNEX 11.

¹⁰⁴ Which establishes that *civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.*

147. Human rights organizations and those that work in benefit of PwD need their participation in the framework guaranteed, as established in the Convention. The obligation to have autonomous organizations play a role must be taken seriously, not just as the liaison between civil society and various authorities but also in making proposals that would allow for public policies to include a perspective of human rights, especially the rights of PwD.

RECOMMENDATIONS FOR THE MEXICAN STATE

Regarding:

Article 4.- General obligations

Legislative Harmonization

148. *Recommendation 1.* Insure that the General Law for the Inclusion of Persons with Disability grants specific powers to each government agency so that they implement the necessary actions that correspond to their area of competency, thus guaranteeing integral and transversal care of the needs of PwD, as related to the full enjoyment and exercise of their rights, set out in the Convention.
149. *Recommendation 2.* Reform the General Law to establish and guarantee the right of PwD to live in the community by offering community-based services and in this way compel the State to prohibit the creation of more long-term care institutions.
150. *Recommendation 3.* Reform federal and local laws relating to disability, discrimination, education, employment and housing in order to establish actions that guarantee the integration, independence and participation of PwD in the community, as well as to prohibit discrimination.
151. *Recommendation 4.* Regulate coordination of the effective fulfillment of the Convention between the federal and local governments.
152. *Recommendation 5.* Completely revise judicial provisions for issues of health, psychiatric commitment procedures and access to justice in order to make these compatible with articles 12, 13, 14 and 19 of the CRPD.
153. *Recommendation 6.* Create a mechanism or give powers to existing agencies that would include the participation of the human rights commissions, organizations of civil society and PwD, that would supervise institutions under their charge or area of competence for PwD.
154. *Recommendation 7.* Strengthen legislation relating to the responsibilities of public servants in order to sanction discriminatory practices toward PwD, as well as abuses and violations committed within these institutions.
155. *Recommendation 8.* At a federal level and in all states, create mechanisms for sanctions and public and civil responsibilities with regards to acts of discrimination, abuses and violations of the rights of PwD, committed by private individuals.

Budget

156. *Recommendation 9.* Fix budget items for governmental agencies of social development and other competencies at the federal and local level in order to create community spaces for housing, rehabilitation and integration of PwD, particularly those with intellectual and psychosocial disability.

Administration

157. *Recommendation 10.* Public institutions must have staff that is trained and has a raised awareness in the attention of PwD, creating reasonable accommodation or support, specific to each kind of disability.

Public Policy

158. *Recommendation 11.* It is imperative that those involved in the design of public policy at a federal or state level be given time to carry out investigations to determine real needs, and not assumed ones, of all types of disability, as existing programs are almost completely directed at attending the needs of motor disability. This implies the implementation of means for consulting, evaluating, updating and monitoring of public policy and the institutions that carry execute this policy, as well as for transparency and accountability.
159. *Recommendation 12.* Regulate the oversight of publicly financed programs in benefit of PwD by implementing civil groups such as citizens' committees.
160. *Recommendation 13.* In order to strengthen the potential of people with mental disabilities to make significant, autonomous and independent decisions, programs should be implemented that provide support in decision making. This includes training for the three branches of State and at all levels of government, from those whose design related public policy to staff in institutions and community programs.
161. *Recommendation 14.* Assign sufficient funding to programs of social integration of PwD which would imply the gradual closing of long-term care institutions and would replace investment in infrastructure or construction of new institutions. This would be according to article 19 of the Convention.

Article 5.- Equality and non-discrimination

162. *Recommendation 15.* Guarantee, by means of a regulatory framework and the creation or modification of mechanisms for revision and sanction, that conditions are created that assure the inclusion of PwD without discrimination at all levels and in all areas of public and private services.

Article 6.- Women with disabilities

163. *Recommendation 16.* Conceive and execute, in partnership with women and local organizations, programs that are gender related, above all in rural areas.
164. *Recommendation 17.* Guarantee women access to information and to available services related to combat and prevention of violence against women
165. *Recommendation 18.* Establish action protocols related to gender in dependencies charged with prevention, attention, sanction and eradication of violence against women; there are women with disabilities that are the victims of violence and women that in being the victims of violence acquire a disability and there are currently no specific government programs for their special protection.
166. *Recommendation 19.* Include gender issues and disability in the regulatory instruments at a federal and local level.

167. *Recommendation 20.* Create awareness and deal clearly and promptly with the conditions of increased discrimination lived by women with disability (motivated by their gender, age, poverty, sexual preference, ethnic origin, prison status, among other conditions).

Article 8.- Awareness-raising

168. *Recommendation 21.* Design, implement and revise programs and permanent campaigns of dissemination, information and awareness-raising for the respect and social integration of people with disabilities, at all levels of government and directed and all sectors of society and government.

169. *Recommendation 22.* Design and implement support programs for family members of people with disabilities, from the moment they manifest.

170. *Recommendation 23.* Modify regulatory instruments in order to eliminate inadequate language referring to disability and change it to terminology consistent with that set out in the Convention.

Article 9.- Accessibility

171. *Recommendation 24.* Assure accessibility of all kinds as required by each kind of disability, in basic infrastructure, facilities and public spaces, as well as in transportation services, mass media and in the judicial process. This should be done in urban and most specifically rural zones, taking into consideration universal design and reasonable accommodations.

Article 12.- Equal recognition before the law

172. *Recommendation 25.* Carry out legal reforms that guarantee the right of PwD to make decisions, completely, autonomously and independently. We refer specifically to the need to eliminate the legal precept of judicial interdiction and the transformation of guardianship to a legal support mechanism to enable the exercise of legal capacity and decision making as set out by the Convention.

173. *Recommendation 26.* Review and modify legal provisions relating to health and procedures for psychiatric commitment in order to make them compatible with articles 12 and 14 of the CRPD and guarantee that people are not arbitrarily detained.

Article 13.- Access to justice

174. *Recommendation 27.* People with disabilities should receive individual support and legal representation that would guarantee their right to have access to justice and be accounted for as persons with full legal capacity. Both individual support in decision making and resources to provide legal defense and representation to individuals are essential to ensuring access to justice for institutionalized persons. In order to insure access to justice for persons with disabilities, the State could consider best practice models to guarantee this access.

175. *Recommendation 28.* Provide training to all public servants in the penal justice system on matters of disability, particularly mental disability, to guarantee due legal process, the provision of treatment that is dignified and non-discriminatory and to determine when possible, sanctions that are not imprisonment of the PwD.

176. *Recommendation 29.* Provide training to all public servants in the penal system on matters of disability, particularly mental disability, to guarantee a dignified treatment of PwD and the

correct implementation of attention, rehabilitation and social reintegration programs for PwD within the penal system.

177. *Recommendation 30.* Create within the penal process, resources or agencies to determine the support and reasonable adjustments necessary to guarantee that persons with mental disabilities have access to justice and due legal process, from the moment of their detention to the determination and execution of the imposed sanction.
178. *Recommendation 31.* Guarantee that individuals locked up in psychiatric institutions or in other non-penal institutions, enjoy and exercise their right to have their detention revised and sanctioned by a competent, independent and impartial judge.
179. *Recommendation 32.* Reinforce and implement in the law, non-imprisonment measures in order to keep people with mental disabilities who have committed a crime out of prisons and psychiatric institutions, establishing the necessary guarantees to ensure their reception of rehabilitation and community reintegration from the moment they are detained until their legal situation is determined.
180. *Recommendation 33.* Commitment to the attention of people with mental disabilities. Legislators, civil servants of the Executive Branch, including administrators of prisons and rehabilitation centers, must assign adequate resources to the identification and treatment of prisoners with mental disability and, simultaneously, gradually reduce the number of persons with mental disabilities in prison and any other institution until their use is completely eliminated. The challenge for these public institutions is the creation of an integral treatment that guarantees full social reintegration, which implies long-term investment.
181. *Recommendation 34.* Protect imprisoned persons with mental disability. Prisoners with mental disability are a particularly vulnerable population and thus, until prison is eliminated as a penal sanction, they must be placed in safe therapy units with integral programs of rehabilitation and social reintegration.
182. *Recommendation 35.* Prisons must have tools to carry out evaluations and rigorous medical check-ups, thus ensuring adequate treatment for prisoners with mental disabilities.

Article 14.- Liberty and security of the person

183. *Recommendation 36.* Demand independent supervision. Each state should create an agency to supervise the rights of imprisoned PwD.
184. *Recommendation 37.* Create opportunities so that citizens, in particular organized groups, prisoners, members of the media, as well as judges and legislators, visit facilities and have access to penitentiary information, under the obligation of transparency in public agencies.

Article 15.- Freedom from torture or cruel, inhuman or degrading treatment or punishment

185. *Recommendation 38.* Immediately eradicate abuse in the use of physical restraints as well as medications used for restraint and use restraint only as an extreme measure adopted under criteria that consider reason, need and duration. Staff should be trained in necessary treatment and care in order to avoid the use of physical restraint. This could imply the hiring of more staff in short-term institutions. People that have been suffered the torture of long-term physical restraint have the right to reparations by the terms set out in international law.

Article 16.- Freedom from exploitation, violence and abuse

186. *Recommendation 39.* Establish means for the protection and supervision of the rights of institutionalized children and adults or those that are the object of social welfare treatment. For this: a) a registry of children in institutions must be made. Likewise, a system that would follow-up on admissions, departures and transfers between institutions would be created so that children cannot disappear from society; b) monitoring and supervision systems must be operated independently from the social security system; c) organs for supervision must have the power to make regular visits without warning to institutions and programs; d) programs must be established that are specialized in gender and age and sensitive to the conditions specific to children and women with disabilities; e) the results of the reports must be made public; f) people with disabilities and the representative organizations must receive treatment and funds enabling them to participate in independent monitoring programs.

Article 19.- Living independently and being included in the community

187. *Recommendation 40.* Create a system of community attention that would allow PwD to make significant decisions and live in the community with the same options and everyone else. As set out in the CRPD, this law should require the implementation of these rights by federal and local governments.

188. *Recommendation 41.* Create integral plans so that PwD form part of their community. These reform plans in Mexico should be accompanied by actions, programming, budgeting and evaluation and should also identify the authorities responsible for their execution and supervision. The support programs should include: a) support for families with children with disabilities; b) adequate education in an environment that integrates children with disabilities; c) support so that adults can live independently, including housing for persons with disabilities; d) income support that would allow independent living that is humane and decent; e) mental healthcare services in the community; f) social and medical services that is community oriented; g) peer counseling, and h) protection of rights and community advocacy.

189. *Recommendation 42.* New cases of committing children to institutions must end. As a strategy for completely achieving the right to protection against segregation from society of all PwD, the recommendation is to give priority to children with disabilities. The Mexican State must adopt legislation that impedes the institutionalization of children with disabilities. Mexico must give the highest priority to the creation of family-based alternative instead of institutions.

Article 24.- Education

190. *Recommendation 43.* Raise awareness in education programs about PwD, directed at all sectors of the population (from primary, basic, secondary and higher education) and by training public servants, as is established in the Convention and the General Law.

191. *Recommendation 44.* Provide specialized training for education professionals, of all levels of education and with respect to all kinds of disability, both in the public as well as the private sector.

192. *Recommendation 45.* Evaluate needs, as well as create and update national, state and municipal action plans to satisfy basic needs as related to education for PwD.

Article 25.- Health

193. *Recommendation 46.* Create integral public policy for persons with mental disabilities that guarantee their rehabilitation and social reintegration by means of community-based programs, in order to eliminate institutionalization treatments.
194. *Recommendation 47.* Guarantee PwD access to adequate, quality and non-discriminatory health services, both in urban and rural zones and in the public and private sector.

Article 26.- Habilitation and rehabilitation

195. *Recommendation 48.* Guarantee a free and public supply of the latest medications and apparatuses for medical attention of disabilities.
196. *Recommendation 49.* Include in curriculum technical and professional training about disability, classes that inform and create highly qualified professionals for disability care.
197. *Recommendation 50.* Train all healthcare professionals about treatment and the scope of rights of PwD.

Article 27.- Work and employment

198. *Recommendation 51.* Regulate activity in the private sector to promote and supervise effective labor integration of PwD.
199. *Recommendation 52.* Modify the Federal Labor Law so that it regulates discrimination, training, reasonable accommodations, minimum quotas, positive actions, owner obligations, supervised employment, programs, penalties and compensations in a new labor integration plan for all people with disabilities.

Article 29.- Participation in political and public life

200. *Recommendation 53.* Guarantee the full participation of people with disabilities in the design, implementation and supervision of public policy, especially those dedicated to the development of PwD.
201. *Recommendation 54.* Guarantee that PwD have access to spaces of public debate and decision making about issues of public and political life.
202. *Recommendation 55.* Guarantee the exercise of political rights of PwD, particularly persons with mental disabilities.

Article 31.- Statistics and data collection

203. *Recommendation 56.* Create and update periodically and permanently an accessible statistical database with information separated by type of disability – permanent or temporary – age ranges, gender and with details about rights enjoyment, legal situation, employment, socioeconomic level, place of birth, language, both and a national and state level, in urban and rural zones.
204. *Recommendation 57.* Obtain real data about the number of people with disabilities and type so that the Population Census includes the necessary variants for this.

Article 33.- National implementation and monitoring

205. *Recommendation 58.* Guarantee the effectiveness of a national mechanism for the protection, promotion and supervision of the Convention and effective, full and plural participation of civil society and PwD.
206. *Recommendation 59.* Guarantee the participation of organizations that work in benefit of PwD, organizations for the defense and promotion of human rights, academia, independent experts, and in particular PwD, at all stages of the monitoring process and application of the Convention.
207. *Recommendation 60.* Guarantee that the CNDH assemble and design a monitoring process that will be the basis or validation of criteria to ensure that autonomous public human rights organizations employ this process, as well as local authorities in the monitoring, supervision and application of the Convention.

GENERAL RECOMMENDATIONS

208. *Recommendation 61.* Periodically elaborate and update a declarative list on a national level of disabilities, which is consistent with international instruments on the issue, in order to differentiate between types of disability and thus distinguish between individual needs and public policy to be implemented in benefit of people with disabilities.
209. *Recommendation 62.* Plan and implement affirmative and compensatory measures that are effective and specific, that promote non-discrimination toward people with disabilities in all aspects of their lives, directly relating these measures to civil, political, economic, social, cultural and environmental rights.
210. *Recommendation 63.* Establish effective sanctions and integral reparations for violation of all the rights of PwD established in the Convention.

ANNEXES

- Annex 1.- Public pronouncement signed by civil organizations on March 9th, 2011, with regard to the new General Law for the Inclusion of People with Disabilities.**
- Abstract:*
- We, people with disabilities and the organizations of civil society do not agree with this Law because it directly affects our lives and the way we are seen by the State; we, people with disabilities, are not ill, we are citizens and we must have access to our rights.*
- Annex 2.- Response to the public information request number 0441000004810 regarding discrimination motivated by disability.**
- Annex 3.- Examples of usage of inappropriate vocabulary in reference to persons with disabilities**
- 3.1**
- 3.2**
- Annex 4.- Illustrative case regarding restrictions on equal recognition as persons before the law.**
- Abstract*
- Case documented by the organization Nexos y Soluciones A.C., in which the sister of a woman with intellectual disability made the decision to take her youngest son, aged 11, arguing that the woman did not have the ability to care for her children due to her disability.*
- Annex 5.- Response to the public information request number 0002200033010 from the Secretariat of Public Safety, about services for persons with disabilities in prison.**
- Annex 6.- List of psychiatric care institutions visited by Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, for the documentation of Abandoned and Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities.**

- Annex 7.-** Response to the public information request number 0001100114910, regarding the Secretariat of Public Education's (SEP) lack of knowledge of the number of PwD enrolled in mid-level education in Mexico and the number of staff trained to attend to them.
- Annex 8.-** Response to the public information request number 000110011510, about the existence of only three public libraries with materials accessible for persons with visual disabilities.
- Annex 9.-** Response to the public information request number 0064100567810 provided by Mexican Institute of Social Security (IMSS). Specific information about PwD inexistent.
- Annex 10.-** Response to the public information request number 0001400025210 from the Secretariat of Labor and Social Welfare (STPS) about their lack of knowledge regarding the number of PwD employed in the public sector.
- Annex 11.-** Response to the public information request provided by the Electoral Institute of the Federal District (IEDF) about accessible voting materials for PwD.