



# HUMAN RIGHTS & HEALTH

## PERSONS WITH DISABILITIES

**THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH IS ONE OF THE FUNDAMENTAL RIGHTS OF EVERY HUMAN BEING WITHOUT DISTINCTION OF RACE, RELIGION, POLITICAL BELIEF, ECONOMIC OR SOCIAL CONDITION.**

—Preamble to the Constitution of the World Health Organization

### NOAH’S TRIALS\*

**Noah’s luck had just run out. In late March, he was arrested, accused of murdering two men five months earlier. And this was only the beginning. Things would get worse, much worse.**

**As Noah was leaving his preliminary hearing, a police officer shot him in the back. He was taken to a hospital, paralyzed in both legs. Three months later, Noah was returned to his prison cell. There he languished, unable to move on his own. He was forced to pay other prisoners to help him go outside and to take out his slop bucket. When he ran out of funds, he lay in his cell in deplorable conditions.**

**Throughout his long ordeal, Noah repeatedly complained to prison authorities about the conditions he was forced to live in. Nothing happened. Noah’s lawyers twice wrote to the national governor of prisons on his behalf, requesting the official to ensure that Noah be given proper assistance to allow him to leave his cell every day and to make arrangements for his slop bucket to be removed from his cell daily. Nothing happened.**

**Finally, after exhausting every avenue and level of redress in the country, Noah’s counsel finally raised the issue with an international human rights body and submitted a complaint to that body on his behalf.**

**The human rights body found that the conditions under which Noah, as a person with a disability, was forced to live in prison violated his right to be treated with humanity and respect for the inherent dignity of the human person, a right that is protected by the International Covenant on Civil and Political Rights. Moreover, the international human rights body found that the two long years and nine months between his arrest and his trial did not comply with the minimum guarantees required by the Covenant. The State was under obligation to provide Noah with an effective remedy, entailing compensation and placement in conditions that take full account of his health and disability. Further, the State was under an obligation to ensure that similar violations to the right to the highest attainable standard of health and other related rights did not occur in the future.**

\*This account is based on a real incident that occurred in Latin America. Similar cases dealing with the human rights and fundamental freedoms of persons with disabilities have been reviewed by the United Nations Human Rights Committee (<http://www.ohchr.org/english/bodies/hrc/index.htm>) and by the Inter-American Commission on Human Rights (<http://www.iachr.org/>)

### WHO ARE THEY? WHAT IS THEIR PLIGHT?

There are some 60 million children, women, and men who live with some type of physical, mental, intellectual or sensorial disability in the Americas. At least 50 million of them live in Latin America and the Caribbean alone. According to these numbers, 1 in 10 persons in the Region of the Americas are persons with disabilities.

More importantly, it means that everyone knows a person with a disability—a family member, a colleague, an acquaintance. And yet, sheer numbers don’t begin to tell the story of what persons with disabilities must endure. At best, society pities or ignores its brothers and sisters with disabilities, undermining their sense of self-worth and status of “persons” before the law; rendering them invisible. Worse yet, society often neglects or stigmatizes them, forcing them to live in deplorable conditions with unmet basic human rights and freedoms.

Children with disabilities carry an especially heavy burden. The vast majority of these children live in poverty, with little or no access to the enjoyment of the highest attainable standard of health, which includes the access to medical and rehabilitation services. At best, only 30% of children with disabilities in Latin America and the Caribbean attend school and enjoy their right to education. This is understandable, in that many public educational institutions in the developing world are not accessible to children with disabilities which affects negatively the exercise of basic rights such as the right to freedom of movement. What's worse, in certain jurisdictions children with disabilities are denied admittance into the mainstream educational system. And, as do adults with disabilities, these children are often left stranded by a transportation system that does not take their basic human rights into consideration, and so are unable to even get to school. With inadequate education, or no education at all, these children are condemned to live a life of poverty and discrimination.

Women with disabilities, too, are doubly discriminated against—as women and because they have a disability. Some have come to be disabled as a result of domestic violence, and statistics show that women with disabilities tend to be victims of violence at much higher rates than other women. Some are beaten precisely because they are persons with disabilities, which can represent gross violations of the right to health, life, and personal integrity.

Finally, disability has a particularly pernicious relationship with poverty. On the one hand, poverty—with its pervasive malnutrition, poor living conditions, high-risk work, and poor access to health care—often leads to disabilities or exacerbates existing ones. On the other, a person with a disability will likely have few, if any, educational opportunities, and so remains trapped in low paying jobs or work that doesn't pay at all, unable to break the vicious cycle of poverty. More than 80% of the persons with disabilities in Latin America and the Caribbean live in poverty, and in most countries these persons are among the poorest of the poor. This has dire consequences not only for the persons with disabilities, especially with regard to their right to health, education and work, but for their families as well. Up to 90% of the referred persons in the region are unemployed. Unemployment among persons

with disabilities in Argentina reaches a staggering 91%. These numbers are not surprising, given that workplaces are generally not accessible to those who have a physical or sensory disability. Many employers also are reluctant to hire persons with disabilities.

In short, persons with disabilities must overcome physical and communication barriers—in transportation, in building codes, in road construction policies, to cite but a few—that prevent them from fully enjoying their basic rights and freedoms such as personal integrity, freedom of movement, the right to vote, the equal protection of the law and the right to health, among others. They also must clear cultural, legislative, and social hurdles that keep them trapped in second-class status. Poverty, violence, armed conflict, undetected and unaddressed perinatal and childbirth risks, job related risks, drug and substance abuse, and aging all have a hand in swelling the ranks of persons with disabilities, with poverty playing a preeminent role. But it is society itself and State policies, practices, and laws that are the culprits in keeping these persons living in difficult, often deplorable conditions. And it is society as a whole who loses out by preventing these citizens from making valuable contributions.

For a country to effectively promote and protect the basic human rights and freedoms of its citizens with disabilities, it must, at the very least, put into effect a set of instruments—policies, plans, laws, and programs—that specifically protect the rights of these persons and that adhere to **international human rights conventions and standards**. As of this writing, 18 countries in the Americas had approved laws specifically protecting the basic human rights and fundamental freedoms of persons with disabilities<sup>1</sup>. However, these laws had not necessarily incorporated all the general norms that have been set by international human rights law, nor the special standards that apply to persons with disabilities that have been issued by international organizations and other agencies. In many Latin American and Caribbean countries, the human rights and freedoms of persons with disabilities also may be protected through general laws (for example, constitutional, civil, penal, labor, or procedural provisions) that also apply to all other citizens. They only guarantee some rights and liberties of persons with disabilities, however.

<sup>1</sup> Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States of America, and Venezuela.

How, then, can the human rights fundamental freedoms of persons with disabilities be protected in the absence of an adequate national legal framework? The next section details how the human rights and fundamental freedoms in the context of disability—*the right of equality before the law, the right to non discrimination, the right to equal opportunity, the right to independent living, the right to full integration, the right to personal freedom and security of person*—can be protected and promoted through legal instruments established by international human rights law.

THE VAST MAJORITY OF CHILDREN WITH DISABILITIES LIVE WITH LITTLE OR NO ACCESS TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH, WHICH INCLUDES THE ACCESS TO MEDICAL AND REHABILITATION SERVICES.



## PROTECTION THROUGH INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Both the United Nations (UN) and the inter-American human rights systems have a significant body of legal instruments that can be used to protect the rights and liberties of persons with disabilities. Because human rights instruments established by international law protect all persons without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, they also protect the rights and freedoms of persons with disabilities.

Some of these tools have emerged from **conventions or treaties**, and they are legally binding for States that have ratified them. Others—international human rights **declarations or “standards”**—although not legally binding, are considered to be authoritative interpretations of international convention requirements. It is important to note that these standards are enshrined in international law, and they represent a consensus of international opinion. In most cases, they are issued by the UN General Assembly, Council or High Commissioner of Human Rights, and by the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), as well as by specialized UN and inter-American

System agencies. They can be used to guide the formulation or review of policies, plans or programs; the enactment of pertinent legislation; and the restructure of health and rehabilitation services to benefit persons with disabilities.

### The United Nations System

#### *Binding Instruments*

**International Covenant on Civil and Political Rights** (1966). The States Parties undertake to take the necessary steps to adopt laws or other measures to give effect to the rights recognized in the Covenant. The Covenant states

that every human being has an inherent right to life and that no one shall be arbitrarily deprived of his or her life and that each State Party to the Covenant will respect all individuals within its territory and subject to its jurisdiction without distinction of any sort, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With regard to equality, it recognizes that all persons are equal before the law and are entitled to equal protection of the law without any discrimination. With regard to the right to receive information, this instrument states that every person has the right to freedom of expression—the right to seek, receive, and impart information and ideas of all kind, regardless of frontiers, orally, in writing or in print, as art, or through any other media. **Article 7** protects every person from being subjected to torture or to cruel, inhuman, or degrading treatment or punishment—specifically, it states that no one shall be subjected to medical or scientific experimentation without his or her free consent. **Article 26** states that all persons are equal before the law and have the right of equal protection of the law. The States Parties to the Covenant recognize the right of all persons to participate in cultural life. The Covenant establishes the UN Human Rights Committee as the treaty body for promoting and protecting the human rights enshrined in this instrument.

**International Covenant on Economic, Social and Cultural Rights** (1966). The Covenant requires State Parties to guarantee that the rights enshrined in this instrument will be exercised without discrimination of any

kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. While the Covenant does not specifically refer to disability, this all-encompassing call for non-discrimination implicitly includes persons with disabilities. Under **Article 12**, the States Parties recognize that all persons have the right to the enjoyment of the highest attainable standard of physical and mental health. In order to achieve the full realization of this right, State Parties will, among other things,

**MORE THAN 80% OF THE PERSONS WITH DISABILITIES IN LATIN AMERICA AND THE CARIBBEAN LIVE IN POVERTY, AND IN MOST COUNTRIES THESE PERSONS ARE AMONG THE POOREST OF THE POOR.**

take steps to ensure the healthy development of children, the improvement of all aspects of environmental and industrial hygiene, and the prevention, treatment, and control of epidemic, occupational, and other diseases. In **Article 10**, States Parties recognize that they should take special protection and assistance measures on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. According to the Covenant, States Parties must take steps, individually and through international assistance and cooperation, to progressively achieve the full realization of the rights recognized in this Covenant, including by adopting legislative measures. The Covenant establishes the UN Committee on Economic, Social and Cultural Rights as the treaty body for promoting and protecting the human rights enshrined in the covenant.

These two covenants, along with the **Universal Declaration on Human Rights**, constitute what is known as the **International Bill of Rights**. All three provide protection against discrimination of persons with disabilities.

**Convention on the Elimination of All Forms of Discrimination against Women** (1979). The Convention does not include any specific language on disability rights, but in protecting the rights of all women, it includes women with disabilities in its umbrella of protection. **Article 11** safeguards women's right to protection of health and safety in working conditions. Under **article 12**, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care

services, including those related to family planning. The Convention establishes the UN Committee on the Elimination of Discrimination against Women as the treaty body for promoting and protecting the human rights enshrined in the instrument.

**Convention on the Rights of the Child** (1989) contains human rights provisions in regard to children and adolescents; in **article 2** it lists disability as one of the grounds that discrimination is prohibited on.

**Article 23** recognizes the right of children who suffer from physical or mental disabilities to receive special care. The article also establishes measures that States Parties should take to guarantee the development of the child as an individual and ensure his or her participation in the community. **Article 24** recognizes the right to the enjoyment of the highest attainable standard of health. **Article 25** recognizes the right to periodic review of treatment given to children placed in institutions for physical or mental health reasons. **Article 27** recognizes the right of children to be protected from performing any work likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral, or social development. The Convention establishes the UN Committee on the Rights of the Child as the treaty body for promoting and protecting the human rights enshrined in this instrument.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (1984). The provisions contained in this Convention protect persons with disabilities who are supposed to be under the protection of governmental officials. Under **article 2**, States Parties agree to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. **Article 4** requires States Parties to ensure that all acts of torture are offences under its criminal law. Moreover, this article binds State Parties to make these offenses punishable by appropriate penalties which reflect their grave nature. This instrument establishes that each State Party shall take steps to prevent in any territory under its jurisdiction acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of

or with the consent or acquiescence of a public official or other person acting in an official capacity. These provisions are extremely important for the protection of mental and physical health and the prevention of disabilities in the context of public institutions. The Convention establishes the UN Committee against Torture as the treaty body for promoting and protecting the human rights enshrined in this instrument.

**Convention concerning Vocational Rehabilitation and Employment (Disabled Persons)** (1983). This is a treaty of the International Labor Organization (ILO), a UN specialized agency. It commits States parties to “formulate, implement and periodically review a national policy on vocational rehabilitation and employment of persons with disabilities (**article 2**). Further, underlining equal opportunity, it states that measures designed to equalize opportunities and treatment between workers with disabilities and other workers shall not be regarded as discriminating against workers with disabilities.

**Convention on the Rights of Persons with Disabilities** (2006). This Convention and its Optional Protocol were adopted on 13 December 2006 at UN Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the first comprehensive human rights treaty of the 21st century. The Convention is intended as a human rights instrument with an explicit, social and economic development dimension. It reaffirms that all persons with all types of disabilities (including mental disabilities) must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of human rights and fundamental freedoms apply to persons with disabilities and identifies areas where adaptations have been made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. The Optional Protocol provides specific mechanisms for enforcing the Convention.

### *Declarations, Principles, Standards and Technical Guidelines*

**Universal Declaration of Human Rights** (1948). The Declaration states that all people are free and equal in rights and dignity. This all-encompassing provision implies that people with disabilities also are entitled to enjoy their basic human rights and confers on everyone all

rights and freedoms set forth in the Declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (our emphasis). It also states that no distinction shall be made based on a person’s political, jurisdictional, or international status or the country or territory to which the person belongs, regardless of whether it is independent, trust, non-self-governing, or under any other sovereignty limitation. **Article 7** states that all persons are equal before the law and are entitled to equal protection of the law without any discrimination. **Article 19** safeguards the right to freedom of opinion and expression, including the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The Declaration recognized the right to work, to a free choice of employment, to just and favorable work conditions, to protection against unemployment and to medical care. **Article 5** protects every person from being subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In **article 25(1)**, the Declaration covers the socioeconomic rights of people with disabilities, specifically, the right to an adequate standard of living and the right to security in the event of unemployment, sickness, disability (our emphasis), widowhood, and old age.

**Declaration on the Rights of Mentally Retarded Persons** (1971). Although dated (even in its use of the term “mentally retarded” to refer to persons with intellectual disabilities), it establishes that persons with intellectual disabilities have “the same rights as other human beings,” and that these rights cannot be restricted without due process.

**Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (known as “Mental Health Principles”)** (1991). These principles are considered one of the most complete and detailed international standard for persons with mental disabilities. They provide guidelines for setting up or evaluating national mental health systems and they offer an interpretation of general human rights norms in the mental health context. They already have been used as a model for mental health legislation and as a guide for reviewing and recasting mental health policies and restructuring mental health services. They state that persons with mental disabilities enjoy all the rights and fundamental freedoms contemplated in

## INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS WITH DISABILITIES

| UNITED NATIONS HUMAN RIGHTS SYSTEM   |                                       |  |  |                                       |  |   |
|--|---------------------------------------|--|--|---------------------------------------|--|---|
| Protected Rights & Fundamental Freedoms                                    | Universal Declaration of Human Rights | International Covenant on Civil and Political Rights | International Covenant on Economic, Social and Cultural Rights | Convention on the Rights of the Child | Convention on the Elimination of All Forms of Discrimination against Women | Convention against Torture and Other Inhuman or Degrading Treatment or Punishment |
| Life   | Art. 3                                | Art. 6.1   |  | Art. 6.1                              |  |   |
| Humane Treatment   | Art. 5                                | Art. 7   |  | Art. 37.a                             |  | Arts. 1 & 16  |
| Personal Liberty   | Art. 3                                | Art. 9   |  | Art. 37.b                             |  |   |
| Fair Trial   | Art. 8                                | Art. 14  |  | Art. 40.2                             |  | Art.13  |
| Privacy  | Art. 12                               | Art. 17  |  | Art. 16                               |  |   |
| Freedom of Expression  | Art. 19                               | Art. 19.2  |  | Art. 13                               |  |   |
| Name   |                                       | Art. 24.2  |  | Art. 7.1                              |  |   |
| Movement   | Art. 13                               | Art. 12  |  | Art. 10.2                             | Art. 15.4  |   |
| Equal Protection   | Art. 7                                | Art. 26  |  | Art. 2                                | Arts. 3 & 15.1   |   |
| Judicial Protection  | Art. 10                               | Art. 14  |  | Art. 40.2                             | Art. 15.2  | Art. 13   |
| Work   | Art. 23                               |  | Arts. 6 & 7  | Art. 32                               | Art. 11  |   |
| Enjoyment of the Highest Attainable Standard of Physical and Mental Health | Art. 25.1                             |  | Art. 12  | Arts. 17, 19.1 & 24                   | Art. 12  |   |
| Education  | Art. 26                               |  | Art. 13  | Art. 28                               | Art. 10  |   |
| Benefits of Culture and Scientific Progress                                | Art. 27                               |  | Art. 15  | Art. 31.2                             | Art. 13.c  |   |
| Protection of Persons with Disabilities                                    | Art. 25.1                             |  |  | Art. 23                               |  |   |
| Protection of Children   | Art. 25.2                             | Art. 24  | Art. 10  | All                                   |  |   |
| Protection of Women  | Art. 25.2                             |  | Art. 12.2.a  |                                       | All  |   |
| Protection of Older Persons  | Art. 25.1                             |  |  |                                       |  |   |

### COUNTRIES OF THE AMERICAS THAT ARE PARTY TO UNITED NATIONS HUMAN RIGHTS TREATIES:

**Universal Declaration of Human Rights:** Not subject to ratification.

**International Covenant on Civil and Political Rights:** Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela.

**Convention on the Elimination of All Forms of Discrimination against Women:** Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Convention on the Rights of the Child:** Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, Venezuela.

**International Covenant on Economic, Social and Cultural Rights:** Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

## INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS WITH DISABILITIES

| INTER-AMERICAN HUMAN RIGHTS SYSTEM   |  |                                     |   |   |   |   |
|--|--|-------------------------------------|---|---|---|---|
| Protected Rights & Fundamental Freedoms                                    | American Declaration of the Rights and Duties of Man | American Convention on Human Rights | Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) | Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities | Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women | Inter-American Convention to Prevent and Punish Torture |
| Life   | Art. I   | Art. 4                              |   |   | Art. 4.a  |   |
| Humane Treatment   | Art. XXV   | Art 5                               |   |   | Art. 4  | Art. 6  |
| Personal Liberty   | Art. I   | Art. 7                              |   |   | Art. 4.c  |   |
| Fair Trial   | Art. XVIII   | Art. 8                              |   |   | Art. 7.f  | Art. 8  |
| Privacy  | Art. V   | Art. 11                             |   |   |   |   |
| Freedom of Expression  | Art. IV  | Art. 13                             |   |   |   |   |
| Name   |  | Art. 18                             |   |   |   |   |
| Movement   | Art. VIII  | Art. 22                             |   |   |   |   |
| Equal Protection   | Art. II  | Art. 24                             |   | Arts. II & III  | Art. 4.f  | Art. 8  |
| Judicial Protection  | Art. XXVI  | Art. 25                             |   |   | Arts. 4.g & 7   |   |
| Work   | Art. XIV   |                                     | Arts. 6 & 7   | Art. III.1.a  |   |   |
| Enjoyment of the Highest Attainable Standard of Physical and Mental Health | Art. XI  |                                     | Art. 10   | Arts. III.2.a & III.2.b   | Art. 4.b  |   |
| Education  | Art. XII   |                                     | Art. 13   | Arts. III.1.a & 2.b   |   |   |
| Benefits of Culture and Scientific Progress                                | Art. XIII  |                                     | Art. 14   | Arts. III.2 & IV.2  |   |   |
| Protection of Persons with Disabilities                                    | Art. XVI   |                                     | Art. 18   | All   | Art. 9  |   |
| Protection of Children   | Art. VII   | Art. 19                             | Art. 16   |   |   |   |
| Protection of Women  | Art. VII   |                                     |   |   | All   |   |
| Protection of Older Persons  | Art. XVI   |                                     | Art. 17   |   | Art. 9  |   |

**PARTIES TO INTER-AMERICAN HUMAN RIGHTS TREATIES:**

**American Declaration of the Rights and Duties of Man:** Not subject to ratification.

**American Convention on Human Rights (Pact of San José):** Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador):** Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Uruguay.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para):** Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

**Inter-American Convention to Prevent and Punish Torture:** Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

**Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities:** Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

general human rights conventions. Further, they state that the most important rights and freedoms for persons with mental disabilities are the right to medical care, the right to be treated with humanity and respect, the right to equal protection, the right to be cared for in the community, the right to provide informed consent before receiving any treatment, the right to privacy, the freedom of communication, the freedom of religion, the right to voluntary admission, and the right to judicial guarantees.

SOME WOMEN WITH  
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BECAUSE THEY ARE  
DISABLED, WHICH CAN  
REPRESENT GROSS  
VIOLATIONS OF THE  
RIGHT TO HEALTH,  
LIFE, AND PERSONAL  
INTEGRITY.

**Standard Rules on the Equalization of Opportunities for Persons with Disabilities** (1993). The Standard Rules set forth guidelines for implementing the basic rights and fundamental freedoms set forth in international instruments concerning persons with disabilities. They are the most comprehensive set of human rights standards regarding disability policy to date, and represent a commitment of Governments to actively pursue the equalization of opportunities for persons with disabilities.

These Rules underline the rights of persons with disabilities—and of their organizations—to participate in drafting new legislation on issues affecting them. Governments are expected to facilitate this involvement, and to do so in a significant way. Rather than a purely symbolic participation of a handful of persons with disabilities buried in large committees of many professionals or government representatives, the Rules envision involvement that ensures that the voices of the persons with disabilities are fully heard in the process. According to the Rules, people with disabilities, their families, and community advocates should be included in the planning, design, implementation, and evaluation of services, support, and oversight programs. Implementation of the Standard Rules is monitored by the Special Rapporteur on Disability.

**General Comment 5 of the United Nations Committee on Economic, Social and Cultural Rights** (1994). This comment analyzes the obligations of States with respect to equal rights for men and women with disabilities before the law; rights relating to work, social security, protection of the family, and mothers and

children with disabilities; freedom of movement; the enjoyment of physical and mental health; education and participation in cultural life; and enjoyment of the benefits of scientific progress.

**General Comment 14 of the United Nations Committee on Economic, Social and Cultural Rights** (2000). In this Comment, the Committee analyzes the content, scope, and obligations of Member States deriving from Article 12 of the International Covenant on

Economic, Social, and Cultural Rights (the right to enjoyment of the highest attainable standard of health). The Committee establishes that the right to health is closely related to and dependent on the exercise of other human rights, such as life; non-discrimination; equality; freedom from inhumane or degrading treatment; the right to association, assembly, and movement; food; housing; employment; and education. It refers to persons with disabilities as a group whose vulnerability calls for special, relatively low-cost programs that offer access to health facilities, goods, and services without discrimination.

**General Recommendation 18 of the Committee on the Elimination of Discrimination against Women** emphasizes that women with disabilities are burdened by the double discrimination against their gender and their condition as persons with disabilities. As such, the recommendation considers them as a particularly vulnerable group, and urges governments to provide information on women with disabilities in periodic reports, as well as on special measures they have taken to ensure that these women have equal access to education, employment, and health services and that they can participate in all areas of social and cultural life.

**Declaration on the rights of Disabled Persons** (1975). This declaration adopted by the UN General Assembly attempted to define “disability” for the first time; it includes several social, civil, economic, and political rights.

**WHO Resolution WHA58.23 Disability, including prevention, management and rehabilitation** (2005):



This resolution, adopted by the 58th World Health Assembly, requests WHO's Director to intensify collaboration within the Organization in order to work towards promoting the rights and dignity of persons with disabilities and urges Member States to participate actively and constructively in the preparatory work for the UN Convention on the Rights of Persons with Disabilities.

**WHO Resource Book on Mental Health, Human Rights and Legislation** (2005). This publication contains the most important human rights instruments applicable to persons with mental disabilities and presents innumerable examples of various experiences and practices, as well as extracts of international human rights treaties and other law-related documents from different countries. These examples do not represent recommendations or models to duplicate; rather, they are designed to illustrate what different countries are doing in the area of mental disability, human rights, and legislation.

## The Inter-American System

### *Binding Instruments*

**American Convention on Human Rights** (1969) and the **Rules of Procedure of the Inter-American Commission on Human Rights** (2000). These instruments cover a range of civil, political, economic, social, and cultural rights and set a binding protection and monitoring by the IACHR and the Inter-American Court of Human Rights. They require States Parties to protect the rights and freedoms of all persons, "without discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)** (1988). Specifically covers the rights of persons with disabilities. States Parties agree to establish programs designed to provide such persons with the necessary resources and environment to attain the greatest possible development of their personalities. State Parties also agree to provide training for families of persons with disabilities.

**Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities** (1999). In **article II**, the Convention aims

to prevent and eliminate all forms of discrimination against persons with mental or physical disabilities and promote their full integration into society. It is the first international convention that specifically deals with the rights of persons with disabilities.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Article 3** of this Convention extends to every woman the right to be free from violence in public and in private spheres. **Article 4** states that all women have the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments. Among these rights are a woman's right to have her life respected; to personal liberty and security; not to be subjected to torture; and to have her physical, mental, and moral integrity respected. All of these provisions clearly have implications for the involuntary confinement of women with disabilities in public health institutions without their consent, as well as for their treatment once admitted to any public institution.

**Inter-American Convention to Prevent and Punish Torture. Under Article 6**, the State Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties. Perhaps more important, under **article 7**, the States Parties shall take measures so that, in the training of public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture. The State Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment. These provisions have a direct bearing on protecting the mental and physical health and other rights and fundamental freedoms of individuals and preventing disabilities, especially those who are deprived of their personal freedom in public institutions, such as prisons or institutions for housing men and women with disabilities.

### *Declarations, Principles, Standards and Technical Guidelines*

**American Declaration of the Rights and Duties of Man** (1948). The Declaration affords protection of civil, political, economic, social, and cultural rights and fundamental freedoms.



and ratified international and regional human-rights conventions, and by so doing have accepted a range of obligations to persons with disabilities. Among other obligations, human rights law requires protection against infringements on individual freedom, personal integrity, freedom of movement and judicial protection, among others.

**Legislators** should gather information about the international human rights instruments to which their Government is Party to ensure that their country's legislation conforms with convention obligations and international human rights standards. If the domestic legal framework does not conform, it should be reviewed and revised to bring it in line. If needed, new legislation should be enacted, all of it conforming with international provisions.

**Ministries of health, of education, and of labor—as well as civil servants at all levels in those ministries—and policy makers** should be trained on the obligations from international human-rights conventions to which their Government is Party. If national policies, plans, and programs do not align with these obligations, efforts should be undertaken to revise them so as to make them consistent with those conventions and standards. In particular, **public school administrators and teachers** should be vigilant that the right to education is available to children with disabilities. Specifically, they should advocate for having their schools be accessible to those children, as well as having necessary materials and supportive equipment on hand that ensure that children with disabilities can learn.

**Judges, ombudspersons, the police, and officers of other relevant agencies in the criminal justice system** should be aware about the international-treaty obligations that they may be called upon to enforce. Ombudsperson's offices can follow up citizen complaints and visit health or rehabilitation institutions and community-based services to ensure compliance with national laws. They also should embrace the human rights of persons with disabilities as part of their agendas.

**Administrators of primary health care centers, general hospitals, and community based rehabilitation services** should ensure that regulations and standards governing their admission, treatment, holding, rehabilitation procedures

and handling of persons with disabilities conform to human rights protection standards and norms. They also should ensure that all staff in their facilities are aware of and clearly understand those norms. **Nurses and other health care workers in public health hospitals and clinics** should familiarize themselves with the rights of persons with disabilities and ensure that those rights are being upheld in every instance of contact with them. Health care workers must remember that they may be the last line of defense protecting the physical, psychological, and moral integrity of persons with disabilities, who may not be able to speak for themselves. If they witness any violation, they must act to stop it and bring it to the attention of responsible officials. **Admissions personnel and other staff dealing with rehabilitation procedures and care** should ensure that they have the informed consent of persons being admitted to the facility or subject to any medical experimentation, consistent with international human rights norms and standards such as those enshrined in the International Covenant on Civil and Political Rights.

### Civil Society

**Activists, families, organizations of persons with disabilities, and nongovernmental organizations working on disability rights issues** should understand how international human rights legal instruments can be used to protect the basic rights and freedoms of persons with disabilities and should know how to use the mechanisms of protection provided by the human rights conventions.

The **media** can air any human rights violations to the public. It also could be very helpful in disseminating the sorts of protection afforded by international instruments. Perhaps most important, the media can portray persons with disabilities as fully having the same right as any other person.

Above all, **persons with disabilities** should know their human rights and freedoms as they are protected under national and international law. They also should understand how the domestic, regional, and international mechanisms available to promote and protect these fundamental rights and freedoms work. They should come together to actively participate in the development or review of disability policies, plans, programs and laws, and in any evaluation of rehabilitation services that aims to protect their human rights.

## THE PAN AMERICAN HEALTH ORGANIZATION'S WORK

Since 1990, the Pan American Health Organization (PAHO) has issued guidelines for reforming health systems based on internationally accepted human rights norms and standards. It also has conducted many workshops with WHO and the IACHR to train community leaders, persons with disabilities, advocacy group members, medical professionals, and government workers and decision-makers, among others, about international human rights standards and their application in health care facilities, community based services, and the community.

PAHO, as the UN and OAS specialized agency for health in the Americas, has a central role to play in promoting and protecting the right to the enjoyment of the highest attainable standard of health and linking this right to other human rights. PAHO is committed to:

- Disseminate and promote the international human rights instruments that protect the life, personal integrity, health, and other rights of persons with disabilities. As of this writing, 780 persons have been trained on the application of human rights instruments in the public health context.
- Advise Member States on policies, programs, plans and legislation related to disability that are necessary to fulfill human rights obligations and, especially, make recommendations to States and international human rights bodies on the admission and care of persons with disabilities in public health and rehabilitation facilities based in the community, in accordance with international human rights treaties and standards.
- Collaborate with international and domestic human rights bodies, such as the IACHR,<sup>1</sup> special rapporteurs, UN Treaty Committees and national ombudspersons' offices by providing technical opinions, participating in hearings, conducting site visits to assess the protection of human rights of persons with disabilities in institutions, community based services and civil society.
- Provide training and technical expertise to governments and civil society to raise awareness of human rights of persons with disabilities and of the mechanisms to exercise those rights.
- Publish and disseminate technical documents outlining the human rights framework applicable to persons with disabilities.
- Work closely with the Center for Law and the Public's Health (Georgetown University Law Center and Johns Hopkins School of Public Health), which is the PAHO/WHO Collaborating Center on Human Rights Law.

<sup>1</sup> For example, some of the functions of the Inter-American Commission on Human Rights are to review and grant decisions regarding petitions concerning alleged violations of human rights recognized in the American Convention on Human Rights and other Inter-American instruments, visit OAS Member States and review their compliance with Regional human rights treaties, request that States adopt precautionary measures to prevent irreparable harm to persons and conduct general and specific hearings on human rights issues or individual cases. For further information see <http://www.iachr.org>

**THIS BROCHURE IS DEDICATED TO IVETH ARJONA DÍAZ WHO DEVOTED HER LIFE'S WORK TO PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES. IVETH DIED IN THE SPRING OF 2008.**



This brochure was written by Javier Vasquez, PAHO Human Rights Advisor, and the editors of the Publications Area. It was reviewed by Armando Vasquez, PAHO Advisor on Prevention of Disabilities and Rehabilitation. Any errors or omissions are the responsibility of the authors.

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