

THE RIGHTS OF THE CHILD IN THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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The convention on the rights of persons with disabilities: A change in paradigm

On 13 December 2006 the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities,¹ the first international human rights treaty that specifically addresses persons with disabilities through a comprehensive approach. The Convention is a landmark instrument, as it reflects the necessary change of perspective towards persons with disabilities from a model traditionally focused on welfare and healthcare to a rights-based, social model. Moreover, it sets an important standard in international law in terms of its encompassing and revolutionary provisions and the inclusive and participatory way in which it was drafted.

The Convention represents a historic step for the international community and especially for the estimated 650 million persons with disabilities in the world. To them, their families and communities, the Convention truly means hope. The treaty, once in force, should make a substantive difference in the lives of persons

with disabilities by ensuring that they fully enjoy all their human rights and fundamental freedoms without discrimination and that they are provided with equal opportunities to participate in society.

The main drive to elaborate the Convention was the striking evidence that the provisions of existing international human rights treaties were insufficient, as the rights of this population group were not being respected in spite of the legislation in force. It was clear that specific measures needed to be devised in order for persons with disabilities to truly enjoy the rights to which they are entitled. Another basic reason was the necessity to incorporate the important change in paradigm with regard to persons with disabilities into the international human rights body, so as to foster the rights-based, social approach.

Children with disabilities are at the core of these overarching objectives, and the Convention addresses their situation in a comprehensive manner. It is estimated that there are 200 million children with disabilities in the world,²

who need special attention because of their particular situation. Notwithstanding the protection granted to them under existing human rights treaties, they continue to face problems originating principally from disability-based discrimination and they are prevented from enjoying even their most basic rights, frequently with lifelong repercussions.

Children with disabilities in the existing international legal framework:

The convention on the rights of the child

The protection and promotion of the rights of children with disabilities is a legal obligation of States, as their rights are guaranteed under the seven core human rights treaties. In particular, the Convention on the Rights of the Child (CRC),³ was the first one to ever include a specific reference to disability. The CRC explicitly mentions disability as one of the grounds for discrimination in Article 2. Further, it includes an article dedicated to children with disabilities (Article 23). This constituted a crucial step not only in addressing the situation of this special group, but also in enhancing international awareness in this regard.

The Committee on the Rights of the Child recently issued General Comment No. 9, on the rights of children with disabilities.⁴ In it, the Committee provides essential guidance and clarifications regarding the implementation of these rights, while stressing that they are by no means limited to the provisions contained in Articles 2 and 23. Further, it takes into account the developments of the Convention of the rights of persons with disabilities. The Committee's observations came at a very important time: As the Convention on the rights of persons with disabilities had been finalized, the need for the implementation of both treaties to be done in a

coherent and mutually reinforcing manner was evident. In this regard, the respective monitoring bodies will play a key role.

What does the convention on the rights of persons with disabilities mean for children?

The Convention addresses the rights of children with disabilities at different levels of its provisions. First, it needs to be stressed that the rights of children with disabilities should be protected by virtue of the entire Convention. The fact that there are some dispositions that refer specifically to children does not mean that these are the only ones applicable to them. Therefore, the implementation of the Convention should benefit children with disabilities as part of the mainstream.

In addition, the treaty contains an important set of provisions that address the particular situation of children with disabilities. In doing so, the Convention follows a "multi-track approach:" It includes a specific article on children with disabilities as well as references to children when relevant in other articles. This approach is the result of many discussions in the Ad Hoc Committee: while all delegations were aware of the need to grant special attention to children in the Convention, there were also important concerns that the new treaty should not duplicate and much less undermine the rights of children with disabilities as already established in existing treaties and principally in the CRC. The disabilities convention should represent a clear added value by filling in existing gaps. The negotiating Committee thus adhered to this principle throughout its work.

Reservations were also expressed about highlighting specific population groups, as this could result in an unbalanced treatment. The

Convention recognizes the need to address the difficulties faced by persons with disabilities subject to multiple discrimination on the basis of race, sex, ethnic, indigenous or social origin and age, among other factors. However, the case was strongly made for the inclusion of an article on children as well as one on women with disabilities. On both issues civil society organizations played a pivotal role.

Article 7: Children with disabilities

Article 7 of the Convention establishes the obligation of States Parties to “ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.” It also reaffirms that in all actions concerning children with disabilities, the best interest of the child shall be a primary consideration – a core principle when it comes to children. Further, drawing from the CRC, it provides that States Parties shall ensure the right of children with disabilities “to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

The article as such seeks to address two of the main problems that prevent children with disabilities from enjoying their rights: Discrimination and the persistent denial of the right to express their views as well as a strong tendency to dismiss them, including when they refer to their most basic needs and wills. This results in continuous marginalization that impedes the child’s development.



Jacqueline Méndez
Profile



Jesús Melgarejo
The mummy



Francisco Pulido
Humpback



Armando Robles
Castle



Ana Bertha Kuri
Sarita and I



Victor Lora
Dead

Ambassador **Luis Alfonso de Alba** has been a



member of the Mexican Foreign Service since 1983 and was appointed Ambassador of Mexico in December 2001. He has been Permanent Representative of Mexico to the United Nations and other inter-

national organizations in Geneva since March 2004. Ambassador de Alba holds a B.A. in international affairs from the Institut d'Etudes des Relations Internationales in Paris. In the multilateral field, he has been elected Chairman of the Committee on Disarmament and International Security of the United Nations General Assembly (First Committee) (June–November 2004); President of the Council of the International Organization for Migration (November 2005–2006); and First President of the United Nations Human Rights Council (June 2006–2007). As Deputy Permanent Representative of Mexico to the United Nations in New York (January 2002 – March 2004), he promoted in the General Assembly the Mexican initiative to elaborate the Convention on the rights of persons with disabilities, as well as the resolution that led to the establishment of the Special Rapporteur on the protection of human rights in the fight against terrorism.