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Biannual

English Edition

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Interview with Luis Gallegos Chiriboga, President (2002-2005)
of the *Ad Hoc* Committee that Drew Up the Convention on the
Rights of Persons with Disabilities



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PRESENTATION



Sur Journal has the pleasure to release its issue number 14th, which focuses on the rights of persons with disabilities. The purpose of this issue is to promote a wide debate on the impacts of the adoption of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, and to evaluate the consequences of this normative evolution for national and regional systems in the Global South.

The final selection of articles presents a diverse approach to disability-rights, both in terms of regional representation and thematic scope. The dossier's opening article entitled **Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring**, by Luis Fernando Astorga Gatjens, discusses the role played by States Parties and civil society organizations, specially organizations of persons with disabilities (OPwDs), in implementing and monitoring the compliance with the convention, in accordance with the Article 33 of the Convention on the Rights of Persons with Disabilities.

From a comparative-law perspective, Letícia de Campos Velho Martel analyzes in **Reasonable Accommodation: The New Concept from an Inclusive Constitutional Perspective** the incorporation of the Convention into the Brazilian legal-framework.

On sexuality-related rights, Marta Schaaf, in her article entitled **Negotiating Sexuality in the Convention on the Rights of Persons with Disabilities**, give us a critical account on the dynamics of power and discourse related to disabled sexuality, pointing out the remaining silence on the matter even after the adoption of the Convention.

The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 Years, by Tobias Pieter and Hélène Combrinck, presents a review of the Convention's potential impact on African regional human rights normative framework and on implementation of disability-related rights in selected domestic legal systems (South Africa, Ethiopia, Uganda, and Tanzania).

Based on a critical account of theories of justice, **Human Diversity and Asymmetries: A Reinterpretation of the Social Contract under the Capabilities Approach**, by Stella C. Reicher, critically examines political participation of persons with disabilities, inclusion and diversity in contemporary societies.

Peter Lucas's **The Open Door: Five Foundational Films that Seeded the Representation of Human Rights for Persons with Disabilities** presents a careful description of five landmark disability rights-related films and suggests an original approach on the role of filmmakers in

advancing poetical strategies to represent disability; merging art and political will to break the silence and promote change.

Closing the dossier, we also included an exclusive **Interview with Luis Gallegos Chiriboga, President (2002-2005) of the *Ad Hoc* Committee that Drew Up the Convention on the Rights of Persons with Disabilities**. The interview was made by Regina Atalla, President of the Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (RIADIS).

Apart from our thematic articles, we have also included the article named **Social Movements and the Constitutional Court: Legal Recognition of the Rights of Same-Sex Couples in Colombia**, by Mauricio Albarracín Caballero, which explores how rights-mobilization by social movements have influenced the approach by the Colombian Constitutional Court to this issue.

Daniel Vázquez and Domitille Delaplace in **Public Policies from a Human Rights Perspective: A Developing Field**, expose a critical view on how to use the tools of the New Public Management in order to include human rights into public policies, bringing particularly the experience of Mexico.

The article by J. Paul Martin on **Human Rights Education in Communities Recovering from Major Social Crisis: Lessons**

for Haiti, discusses Haiti after the 2009 earthquake and elucidates the main challenges facing human rights education in a situation of post-conflict and national reconstruction.

Concepts expressed in the articles are exclusive responsibility of the authors.

We would like to thank the experts who reviewed the articles for this issue. We are especially grateful to Diana Samarasan and Regina Atalla for their involvement in the call for papers and the selection of articles related to rights of persons with disabilities for the current issue. In addition, we would like to stress our appreciation to Matheus Hernandez, who assisted in the elaboration of this issue in the first semester of 2011.

Sur Journal is glad to inform that the table of contents of this special edition on the rights of people with disabilities is also printed in braille, with the link to our website.

Exceptionally, the present issue, dated June of 2011, was printed in the second semester of 2011.

Finally, Sur Journal would like to remind our readers that the next issue will discuss implementation at the national level of the decisions of the regional and international human rights systems and civil society's monitoring role in regard to this process.

The Editors.

INTERVIEW WITH LUIS GALLEGOS CHIRIBOGA, PRESIDENT (2002-2005) OF THE *AD HOC* COMMITTEE THAT DREW UP THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

By Regina Atalla, President of RIADIS–*Red Latinoamericana de Organizaciones No Gubernamentales de Personas con Discapacidad y sus Familias* (The Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families)

Luis Gallegos Chiriboga was president of the United Nations General Assembly *Ad-Hoc* Committee that drew up the Convention on the Rights of Persons with Disabilities from 2002 to 2005. He is president of the Global Initiative for Inclusive ICTs (G3ICT) and the *Comisión de Diseño Universal* (Global Universal Design Commission). He has won recognition on multiple occasions for his work on behalf of the human rights of persons with disabilities, both in Ecuador and internationally.

Additionally, he has been one of the ten elected members to the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 2006. He also belongs to the Global Leadership Group on Human Rights and Transnational Corporations.

He is a career member of the Ecuadorian Foreign Service and has held bilateral diplomatic posts in Spain, Bulgaria, El Salvador, Australia and the United States of America. In the multilateral sphere he has been Ambassador, Permanent Representative of Ecuador to the United Nations in Geneva and in New York.

Before performing such an important role (as Your Excellency has in the United Nations in the process of negotiating the new Convention), what experiences have you had regarding persons with disabilities in Ecuador or other countries?

L: Before the Convention negotiating process, I participated as Vice President of the Commission of Human Rights in approving the resolution that began the process of achieving binding rights for persons with disabilities. For many years I have held a deep respect for these people who face extremely difficult situations, many of them unimaginable to those of us without disabilities or to those who have not lived in close proximity to someone who suffers from them. These people encounter many barriers, from everyday problems, such as difficulties in communication, mobility, entering a building or form of transport, to others that are much more difficult to overcome, such as discrimination and



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difficulties in accessing education and health services. These barriers become more complex in developing countries, where the necessary means to serve this vulnerable group in our society are often non-existent.

Nevertheless, despite the obstacles and adversities they have to face and their physical and social limitations, through a huge demonstration of willpower they seek to overcome them and succeed, setting a living example for us all.

How did this experience help you – if it has—when you took on the responsibility of presiding over the *Ad Hoc* Committee in 2002? What led you to open the doors to persons with disabilities to participate so directly in the process (which is recognized as a great success of yours, especially in light of the results achieved)?

L: The country representatives did not really understand the serious problems that affect persons with disabilities. Who better than they themselves to convey their experiences, their problems, the obstacles they face and their needs? Hence the importance and the need for them to take part in the process, so as to achieve a Convention that would serve to improve the lives of over 650 million persons with disabilities around the world. It's difficult to imagine that without the invaluable help of these actors, we could have succeeded in adopting a practical convention applicable to their realities. Opening negotiations to facilitate their participation was one of the greatest achievements of my professional career.

Persons with disabilities and their representative organizations played an active and important role in the treaty's negotiation. What do you think was the key factor in their playing this role? How do you explain how a sector so historically and structurally excluded could perform such a function in the process?

L: The motto of persons with disabilities during the Convention's negotiation, "Nothing about us without us," as well as the active participation of NGOs working in this field and the brilliant work carried out by these actors, great defenders of their rights, taught the international community that in order to have a convention on an issue as complex as disability, due to its specific nature, we had to incorporate representatives from the community of persons with disabilities.

It should be emphasized that in this regard the communication and information network built around the Convention negotiation was very important. There was a length follow-up to each meeting and every issued statement. The meetings' proposals and documents were distributed in the conference room in Braille and in accessible formats and technologies. Sign language was also used. Due to the communications network, what was taking place in United Nations conference rooms in New York was followed by the entire community of persons with disabilities around the world.

In your long and successful diplomatic career, Your Excellency has witnessed many negotiation processes at the UN. How would you generally evaluate the process that ended with the Convention's approval in December 2006?

L: I would be so bold as to say that this process was one of the most successful, not only for the short time it took to complete the negotiation (from 2002 to 2006), considering the standards of the United Nations where the approval

of Conventions can take decades, but above all for the broad participation of states and civil society. Finally, after overcoming the obstacles, the opposition to negotiating a convention and to including civil society in the discussions, we succeeded in obtaining the approval of a convention in favor of the promotion of rights for persons with disabilities. One can be born with a disability or acquire it during one's lifetime for various reasons (accidents, sickness, poverty, etc.), however, when we reach old age, we will all certainly have some kind of disability. For this reason, I think it is a universal Convention that encompasses billions of people and their families.

Drawing up this treaty followed a course previously unheard of at the UN, by creating a Special Committee, a mixed Working Group composed of both States and civil society to draw up a first draft of the Convention. How do you assess this democratizing experience at the UN? Could this be repeated with other conventions? What role did this first draft play in terms of the finally approved treaty?

L: The Working Group formed of representatives from both States and civil society was charged with drawing up a first draft that served as a basis for the Convention. I think that these practices should be repeated at the United Nations because they allow the adoption of instruments that are useful and applicable to the realities of the people on whose behalf they are legislating. The integration of everyone enabled a better result, and I hope that the same "inclusive" system can be used in dealing with other problems.

How do you evaluate the treaty that resulted from this process of negotiation? What is its scope? Do its contents meet your expectations?

L: Although the final results did not fully satisfy the participants in the process, we achieved the goal sought by everyone, the approval of an international instrument that places the rights of persons with disabilities on an equal footing with other people and eliminates discrimination. This instrument incorporates, among other things, provisions that signify that countries must commit to drawing up and putting into practice policies, laws and administrative measures guaranteeing the rights recognized in the convention and to abolishing laws, regulations, customs and practices that discriminate; to combating stereotypes and prejudices and promoting the awareness of the abilities of such people; to guaranteeing that persons with disabilities enjoy all their rights (to life, education, health, work) on an equal basis with all other people. I believe that what emerged was an instrument that permits a "universal language" for all those dealing with issues relating to disability to use as a road map for states and societies.

Does the large number of signatories and ratifications (99 so far) reflect the interest and commitment of States to changing the life conditions of persons with disabilities or is there still an idea that it's good to approve standards relating to persons with disabilities even if they are not complied with?

L: A new chapter in the story was written by those who have been fighting for the universal human rights of persons with disabilities. With resolution 61/106

of December 13, 2006, the United Nations General Assembly approved the International Convention on the Right of Persons with Disabilities, a milestone in the history of the UN and the first global human rights treaty of the 21st century.

So far, the Convention has registered 147 signatories and 99 ratifications, demonstrating the international community's firm commitment to this subject. The Convention, in its 50 articles and Optional Protocol, reaffirms that every person with a disability must be able to enjoy all human rights and fundamental freedoms, and codifies a broad set of rights ranging from civil and political rights to the economic, social and cultural spheres.

What do you think should be the key starting point to effectively apply this treaty in Latin American countries?

L: We are all very aware of the numerous global problems, new and emerging, that affect persons with disabilities. In this complex situation, our firm commitment to the advancement of the rights of persons with disabilities requires a strategic application of the human rights regulations set out in the Convention through actions, resources, institutions and mechanisms capable of responding to the needs of persons with disabilities.

We have to work together to promote the effective application of the Convention. Every one of the region's countries has to teach and convince each person, with or without disability, to join the movement toward a more universal and inclusive society, one that appreciates difference, recognizes diversity and is prepared to challenge the obstacles that still remain.

Poverty and disability are interrelated in a vicious circle. How can the treaty contribute to breaking this vicious circle?

L: The Convention on the Rights of Persons with Disabilities establishes that international cooperation must be used as a fundamental tool in achieving human rights for persons with disabilities. If poverty and its consequences are to be overcome, development policies must take into account the rights of persons with disabilities and this subject must be included in the actions undertaken, always with a focus based on human rights. This will have repercussions for many persons with disabilities living in situations of poverty.

Some countries have already drawn up and sent their first reports (two years) to the International Committee on the Rights of Persons with Disabilities, in compliance with the stipulations of the Convention's Article 35. Some persons with disabilities social movements have worked, or are working on, shadow reports due to lack of rigor in the official ones. What do you think of these initiatives by civil society?

L: The shadow reports drawn up by civil society regarding those presented by countries to the Committees monitoring compliance with the provisions of International Conventions give non-governmental organizations the chance to refute – when appropriate – the States' reports and make recommendations so that both the States and the Committees can take their views into account. The shadow reports also enable action to be taken to find solutions on issues about which they have voiced concern.

I feel that the active participation of civil society in various spheres is of great value.

How do you see the situation of persons with disabilities in our countries in 10 or 20 years from now if the provisions of the Convention are effectively complied with?

L: Ever since the Convention was approved by the United Nations on December 13, 2006 and signing began on March 30, 2007, the region of Latin America and the Caribbean has continued to lead the list of countries ratifying this international instrument, proof of the great interest in and commitment to this subject.

If the countries in the region assume the commitments to which they have agreed with the ratification of the Convention on the Rights of Persons with Disabilities, in 10 or 20 years we will have succeeded in achieving a substantial improvement in the situations of millions of people with disabilities. Those of us who participated in the process took up the challenge confident in the belief that our work would contribute to improving this population group's quality of life. The adoption of this instrument was a demonstration of solidarity and respect. Humanity took a great step forward in terms of universal human rights and all of us hope that in the shortest time possible we will be able to see positive palpable results from its application.

The Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families—*La Red Latinoamericana de Organizaciones No Gubernamentales de Personas con Discapacidad y sus Familias* (RIADIS) – founded the International Disability Caucus and participated until the end of the process, bringing the ideas and voices of Latin Americans with disabilities to the treaty's drafting process. It therefore played an active role in promoting the signing and ratification of the Convention. Today RIADIS promotes the treaty's effective application through outreach work, training and advocacy. What do you feel should be the role of organizations such as RIADIS in contributing to making this treaty effective?

L: The Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families played a fundamental role in the negotiation process and continues to do so today in the ratification and application of this instrument. I believe that the untiring work of RIADIS is invaluable.

My belief is that the essential elements contributing to the Convention's application are education and the publicizing of its contents at all levels so that people can better understand that only respect, solidarity and inclusion will enable us to improve the societies in which we live.

Lastly, I believe that we have to make clear that what we seek is a change in society—one where we can look in the mirror and clearly see our limitations and overcome barriers so that we have an inclusive society, where being “different” is valued and is not a reason for discrimination.

Ecuador, under the leadership of Vice-president Lenin Moreno has made great advances that are internationally recognized and have made Ecuador an example to the international community. It is a question of changing society so that respect for human rights is the norm rather than the exception.

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