

THE ACCESS TO JUSTICE OF THE PERSONS WITH DISABILITIES IN THE INTERNATIONAL CONTEXT AND THE CHALLENGES ON THE IMPLEMENTATION IN MEXICO OF THE ARTICLE 13 OF THE CRPD

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I. Introduction

In general terms, the right of access to justice could be defined as “*the right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable*”.¹ In addition to the aforementioned, the right of access to justice it is more than a quick response from the State, it should be understood as the best way that individuals have to access to an effective remedy when a violation to their rights had been committed.

The concept of access to justice “*arose in an era of the welfare state and growing rights consciousness, and was usually identified with committing the state to increasing social services and widening opportunities for dispute resolution*”.² Around 1960’s the movement of access to justice starts motivated by the necessity to promote changes in the public policies of those countries where vulnerable groups and/or citizens could not have access to the justice systems and to effective remedies.

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¹ ANDREW HARRINGTON, *Access to Justice Concept Note*. UNDP Justice System Program, citing the definition provided by the *2010 Justice Sector Strategic Plan* (JSSP, p.31).

² SHIRIN SINAN, *Access to Justice Topic Brief*. The World Bank Official Website, available at <http://go.worldbank.org/ZELBVA60W0> (last visited April 15, 2013).

But between 1980 and 1990, with the adoption of the neo-liberal policies around the world, many countries redesigned their public policies, reducing in some cases the governmental budget destined to social programs, creating a big debate about the impact of such policies based in the economic development of the states and the adverse effect that in the social policies was having. The result of such debate was that many countries began to pursue a common goal, create a system of justice capable to ensure the right of access to justice.³

It is important to highlight that some authors since 1978 have been addressing different ways to reform the traditional model of justice, proposing three specific ways to improve such system, “*the first wave consisted of efforts to make legal aid and advice more available to the poor; the second phase promoted representative actions and other procedures that would allow a single lawsuit to resolve a large number of claims; and the third wave addressed broad reform to the legal system, including alternative dispute resolution, small claims courts, and other procedural change*”.⁴ But as it could be noted, the development of the right of access to justice was mainly focused at this time in attend those people who was suffering the struggle of the poverty around the world, while other vulnerable groups were not being included.

With the appearance of the disability movement on the mid 1900's a new challenge appeared, the effective defense of the rights of the persons with disabilities and the inclusion of them into the society. This social movement was mainly motivated by the recognition of disability as an aspect of identity of the human being that influences the experiences of the individual and not as the sole-defining feature of a person,⁵ basically what this movement proposed was a change in the understanding of the disability, seeking for the adoption of the social model (that is focused in the argument aforementioned) instead than the medical model (which is based in the notion that a disability is an abnormal and shameful condition that should be medically cured, fixed or repaired).⁶

When the disability movement, and other social movements born as a consequence of the social movement in the 1960's, began to gain support, the access to justice movement starts to amplify his scope and

³ *Id.*

⁴ CAPPELLETTI, Mauro and BRYANT Garth. “Access to Justice: The Worldwide Movement to Make Rights Effective-a General Report.” *Access to Justice: A World Survey* (vol. 1, book 1). Mauro Cappelletti and Bryant Garth, eds. (Milan: Dott. A. Guiffre Editore, 1978).

⁵ *A Brief History of the Disability Rights Movement*, Anti Defamation League Website, available at archive.adl.org/education/curriculum_connections/fall_2005/fall_2005_lesson5_history.asp (last visited April 16, 2013).

⁶ *Id.*

stop focusing only in specific sectors. The access to justice redefined their necessities and start looking for more ambitious goals like a system of justice that could be accessible for everyone, not only for those who has not the sufficient economic support to afford the expenses of trial, also for those who, even when they are able to support such expenses, they can't have access to an effective justice system as a consequence of their disability.

Many international instruments had being issued with the goal to protect and ensure the access to justice for those disadvantage groups that could be deprived from this right for different reasons. In addition, around the world exists several domestic legislations that seeks to ensure the right to justice of persons with disabilities, maybe one of the more remarkable is the Americans Disabilities Act ("**ADA**") which provides interesting approaches like the correct use of the term "reasonable accommodations" and "alternative measures" or the issuance of different guidelines to ensure the accessibility of any kind of facilities.⁷

A lot of work stills pendent to be realized, many States around the world have improved their justice systems, but the problem still persists. What happen when this unsolved problem still appears when a State decides to modify his legal system?

Since 2006 Mexico, the principal sponsor of the United Nations Convention of the Rights of the Persons with Disabilities ("**CRPD**"), started to carry out a core modification to its criminal justice system, introducing the oral trials in the criminal procedure and implementing in recent days a National Criminal Code. In addition, the Local Government of the Federal District is currently discussing to modify the local Civil Code to modify the legal figure known as "*interdicción*"⁸ for a new model known as *Assisted Decision-Making System*, a model that fulfills not only with the requirements of Article 13, it also fulfills with the standards provided by Articles 9 and 12 of the CRPD, related with accessibility and legal capacity, as the case may be.

But, even when the aforementioned could be considered as a progressive step, it seems that these measures are not enough to completely guarantee the right to access to justice of the persons with disabilities, at least in Mexico.

⁷ For further information about the ADA, See the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).

⁸ The legal figure in México known as "*interdicción*", it is similar to the American guardianship, but is not the same. Both figures have interesting differences between them.

II. The Access to Justice in the International Context

As it was mentioned lines before, the access to justice it is regulated in different international treaties and domestic laws, most of them related with Human Rights issues, with an international scope and also in a regional sense, showing that it is not only a concern of some regions, it is a global concern.

But, at the same time, it is true that the concept of access to justice is broad, because it encompasses different issues, and this makes a little bit difficult to create an effective concept in the international context considering that it addresses a lot of issues. In first term is related with the effective access of the people to the justice systems, procedures, information, and locations. Also people participates not only as a party during the procedure seeking for some kind of remedy (when they feel wronged or mistreated in some way), they also participates if they are called as witnesses or as jurors in a trial for example (depending of the justice system of each country).⁹

It can't be ignored that the "*ability to access justice is of critical importance in the enjoyment of all other human rights and in the fair and effective administration of justice*",¹⁰ this is the main reason why several international treaties have tried to protect the access to justice of all the individuals. The concept of the access to justice in the international context was not defined in any of the international treaties enacted by the UN or in a regional level. The CRPD was the first international treaty to do this job. The next part of this paper will address which international instruments, under the UN System and the Regional Systems, protects the access to justice before the enactment of the CRPD.

II.1 International Human Rights Treaties

After the Second World War and after the creation of the UN, many international treaties were enacted; most of them with the purpose of ensure an effective protection of the Human Rights around the world, mainly motivated by the atrocities realized by the Nazi regime during the holocaust.

The first Human Rights Treaty under the UN System was the Universal Declaration of Human Rights (**UDHR**), enacted by the General Assembly in April of 1948. This international instrument provides a list of basic rights that the States should recognize and ensure their protec-

⁹ ORTOLEVA, Stephanie, "*Inaccessible Justice: Human Rights, Persons With Disabilities And The Legal System*", 17 ILSA J. Int'l & Comp. L. 281 2010-2011.

¹⁰ *Id.*

tion. Specifically, the Article 7 of the UDHR provides that “*all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*”.¹¹ Such article provides one of the most important characteristics of the access to justice, the equal recognition before the law and the prohibition of discriminatory laws.

In addition, the UDHR provides in his Articles 8 and 12 additional protections related with the access to justice. Article 8 provides the “*right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*”,¹² stating that another important element of the access to justice is the existence of an effective remedy that could repair or compensate, as the case may be, any violation against individuals. Article 12 limits to the authority to realize any arbitrary act against privacy, family, home, correspondence, honor and/or reputation.

Years after to the enactment of the UDHR, the Convention on the Elimination of All Forms of Racial Discrimination was enacted by the UN in 1965. This treaty provides in his Article 5 (a) and 5 (b) the right to equal treatment before tribunals and the security of the person, guarantying the State protection from any kind of violence or bodily harm.¹³

In 1952 two important treaties were enacted by the UN, the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). These two treaties in conjunction with the UDHR are known as the International Bill of Human Rights¹⁴ and both provides also protections related with access to justice. The ICCPR provides protections in its articles 14 and 16, specifically provides the equal recognition of every person before the courts and law.

¹¹ *The Universal Declaration of Human Rights*, United Nations, <http://www.un.org/en/documents/udhr/history.shtml> (last visited April 17, 2013).

¹² *Id.*

¹³ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, December 21 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.refworld.org/docid/3ae6b3940.html> (accessed 17 April 2013). It is important to remark that the CERD Committee General Comment No. 20 to Article 5 of the CERD provides a further explanation about the scope and application of this article in connection with the right of access to justice.

¹⁴ According to the Fact Sheet No. 2 (Rev.1) issued by the United Nations in 1996, states that these group of treaties and its optional protocols constitutes the International Bill of Human Rights, which represents “*a milestone in the history of human rights, a veritable Magna Carta marking mankind’s arrival at a vitally important phase: the conscious acquisition of human dignity and worth*”. UN Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights, Printed by the UN at Geneva in 1996.

Article 14 of the ICCPR, also provides the *In Dubio Pro Reo* principle, states several guarantees for the criminal procedures and obliges the States to recognize the right related with the review by a higher tribunal of all the convictions and sentences issued by domestic tribunals according to the local law.¹⁵ The ICESCR provides some protections in this sense too, recognizing that an effective judicial or administrative remedy is necessary to fully enjoy the economic, social and cultural rights protected by the Convention.¹⁶

Finally, the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) states in its Article 15 a provision to protect the right to access to justice. Considering that the purpose of the CEDAW is to promote and ensure the equality of rights between men and women, the contribution to the protection of access to justice is oriented to protect the access to the system of justice in an equal basis for men and women recognizing equal legal capacity for both.¹⁷

II.2 Human Rights Regional Systems

In addition to the UN Treaties, the regional systems have issued several provisions related with the access to justice, specifically the Inter-American Human Rights System, the European Human Rights System and the African System, are those which in their treaties have been protecting the access to justice.

Regarding to the Inter-American System, in 1948, the American Declaration of the Rights and Duties of Man was adopted by the Ninth International Conference of American States, in the City of Bogotá, Colombia. This treaty in its Article XVIII provides the right to a fair trial, addressing that “*every person may resort to the courts to ensure respect for his legal rights*”.¹⁸ This article also states that every person should have access to a simple

¹⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

¹⁶ The ICESCR doesn't stipulate nothing specific related with the access to justice, but the Economic and Social Council in his General Comment No. 9 provides that “*the need to ensure justiciability... is relevant when determining the best way to give domestic legal effect to the Covenant right.*” [Economic and Social Council, General Comment No. 9: The Domestic Application of the Covenant, (17th Sess., 1997), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 55, para. 41, U.N. Doc. HRI/GEN/1/Rev.7. (Vol.1) (2004)].

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁸ American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L./V.II.82, doc. 6, rev. 1 at 17.

and brief procedure whereby the courts will protect him from any abusive act of authority.

The American Convention on Human Rights (**ACHR**) is another relevant instrument in the Inter-American System. Adopted by the Member States of the Organization of the American States in 1969 in San Jose, Costa Rica, states in its Article 8 the right to a fair trial, providing that “*every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature*”.¹⁹ In addition, the article provides minimum guarantees to be ensured during any criminal proceeding.

The last relevant treaty that results relevant for our analysis regarding to the Inter-American System, is the *Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities*. This treaty is the first international instrument in the Americas related with Persons with Disabilities (**IACEDPD**), adopted on June 7, 1999 by the General Assembly of the OAS, it was created with the sole purpose of eliminate discrimination in the law enforcement and administration of justice, providing such objective in its articles second and third. Specifically, Article Two of the IACEDPD addresses the main objective of the Convention, providing that it pursues to “*prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society*”.²⁰ The Article III specifies that one of the obligations of the signatory States will be to take measures to “*eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available ... law enforcement and administration of justice*”.²¹

The European System has issued provisions to protect the right of access to justice as well. The European Convention of Human Rights (**ECHR**) provides in its Articles 6 and 7 the right to a fair trial (including minimum guarantees to consider in the criminal proceedings) and prohibits any punishment without law. The ECHR adopts in this regard similar terms to the provisions of the ICCPR and the ACHR.²²

¹⁹ American Convention on Human Rights, Nov. 21, 1969, 1144 UNTS 143.

²⁰ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, AG/RES. 1608, June 7, 1999.

²¹ *Id.*

²² Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5; 213 UNTS 221.

Africa and his regional system also have been taking measures in this regard, since the adoption of the African Charter on Human and People's Rights (**ACHPR**) in 1991 by the African States members of the Organization of African Unity. Articles 3, 6 and 7 of the ACHPR states the equal recognition of individuals before the law, the right to liberty and to the security of every person and provides several guarantees to be considered in every judicial proceeding, like the right to appeal, the right to be presumed as innocent (better known as *In Dubio Pro Reo* principle) and the right to be defended by a legal counsel or adviser of his/her choice,²³ among other guarantees.

Even when does not exist an Arab Human Rights System, it does exist a regional instrument that it is the Arab Charter on Human Rights (the **Arab Charter**). This instrument was adopted by twenty two Arabic nations in 1994 and provides a catalogue of Human Rights that have to be protected by the signatory countries of the treaty. Articles 5, 6, 7 and 8 of the Arab Charter²⁴ provide several protections to the right of access to justice, addressing similar provisions to the stated by the international treaties aforementioned.

III. The United Nations Convention of the Rights of the Persons with Disabilities

As it was addressed, several international treaties protect the right of access to justice, but any of the aforementioned instruments provided a concept of it or identified their elements, they only provides protections that are part of the scope of the access to justice in different articles and different ways. The CRPD is the first international treaty that provides in a sole article a holistic concept of access to justice and addresses the scope and elements of such right.

The CRPD is not the first international treaty adopted by the UN related with the rights of persons with disabilities. Years before to the adoption of the CRPD, the UN started taking care of this issue with the adoption of the Declaration on the Rights of Mentally Retarded Persons in 1971 and the Declaration on the Rights of Disabled Persons in 1975, and other kind of mea-

²³ Organization of African Unity, *African Charter on Human and Peoples' Rights* ("Banjul Charter"), June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.refworld.org/docid/3ae6b3630.html> (accessed 28 April 2013).

²⁴ League of Arab States, *Arab Charter on Human Rights*, September 15, 1994, available at: <http://www.refworld.org/docid/3ae6b38540.html> (accessed 28 April 2013).

asures implemented to protect the rights of the persons with disabilities.²⁵ All these efforts were materialized with the establishment of an *Ad Hoc* Committee, by the UN General Assembly by its resolution 56/168 of December 19, 2001, “*which was mandated to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities*”.²⁶

Mexico was a main piece in the creation process of the CRPD considering that the Mexican Government was who sponsored the resolution which called for the establishment of the *Ad Hoc* Committee. A total of eight sessions at UN Headquarters in New York between July 2002 and December 2006 were needed before the UN General Assembly unanimously adopted the CRPD on December 13, 2006 by Resolution No. 61/106. This international instrument was a historical effort with a relevant impact considered by the former UN Secretary General, Kofi Annan, as “*the most rapidly negotiated treaty of its type in the history of international law*”.²⁷

As it was mentioned above, the CRPD does not recognize new human rights, it only recognizes in a sole document all the rights protected by the international treaties adopted before. It creates a comprehensive legal instrument to protect the human rights of the persons with disabilities, incorporating a “*transformative view of disability, moving away from the ‘medical model’ of disability toward a ‘social model’ of disability*”.²⁸

The CRPD is composed by 50 Articles; it creates an organism named Committee on the Rights of Persons with Disabilities (Article 34), which is composed by twelve independent experts with the main purpose to evaluate the implementation of the CRPD by the Member States. It has an Optional Protocol composed by 18 Articles, which implements a system which allows the possibility of submit any communication from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the CRPD.²⁹

²⁵ *Convention on the Rights of Person with Disabilities and its Optional Protocol*, United Nations Audiovisual Library of International Law, available at: <http://untreaty.un.org/cod/avl/ha/crpd/crpd.html> (accessed April 28, 2013).

²⁶ *Id.*

²⁷ “*Secretary General Hails Adoption of Landmark Convention on Rights of People with Disabilities*,” Official Statement of the UN Secretary General, SG/SM/10797, December 13, 2006. Available at <http://www.un.org/News/Press/docs/2006/sgsm10797.doc.htm> (accessed April 29, 2013).

²⁸ ORTOLEVA, Stephanie, “*Inaccessible Justice: Human Rights, Persons With Disabilities And The Legal System*”, 17 *ILSA J. Int'l & Comp. L.* 287 2010-2011.

²⁹ Article I of the Optional Protocol of the CRPD states the objective and scope of this instrument and addresses that those States which ratifies the Protocol recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications (UN General Assembly, *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex II, available at: <http://www.refworld.org/docid/4680d0982.html> [accessed April 30, 2013]).

III.1 Access to Justice: Article 13 of the CRPD

As it was addressed lines before, the CRPD is the first international treaty providing a specific article referring the protection of the right of access to justice. Article 13, which is identified under the label “*Access to Justice*”, states that:

- “1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
- “2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff”.³⁰

This article was not further discussed during the CRPD negotiations considering that the scope and elements of the access to justice were addressed before by several international treaties, but the CRPD was the first treaty which condensates the concept in a sole article, addressing his scope and providing the elements and the minimum guarantees needed for its correct implementation.

The first draft of the CRPD provided by the Mexican Delegation provided the protection to the access to justice in the Article 10. The language used in the draft was “softer” than the current one, it only considered as a duty of the state to “*promote respect for the human rights of persons with disabilities in all legal proceedings*” addressing the characteristics that such proceedings should follow. In addition, the first draft of this article also considered as an obligation of the States to “*adopt measures to comply with these dispositions, which, among other things, shall include the sensitizing and training of public officials*”.³¹

The current language of the Article 13 is more binding for the Member States. Comparing the language used in the first working submitted by the Government of Mexico, now the States are bound to “*ensure effective*

³⁰ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html> (accessed April 30, 2013).

³¹ Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, A/AC.265/WP.1; New York, 29 July-9 August 2002, Working Paper by Mexico; available at: <http://www.un.org/esa/socdev/enable/rights/adhocmeetaac265w1e.htm> (accessed April 30, 2013).

access”, and not only to promote respect for human rights, through the implementation of provisions “of procedural and age-appropriate accommodations” to ensure and facilitate “the effective role as direct and indirect participants” of all the persons with disabilities. The CRPD provides, as an additional element to protect the access to justice, the obligation of the Member States to promote the “appropriate training for those working in the field of administration of justice” of all the personnel involved in the administration of justice, including the police and the staff of prisons.³²

It seems that the obligation imposed to the States by Article 13 of the CRPD, seeks to ensure the access to justice in an equal basis for all the persons with disabilities. But this ambitious goal need of several accommodations and implementations, not only in the infrastructure level, it involves also mandatory training for the personnel of the entire justice system, which includes the police, public defenders, prosecutors, prison staff and all those members from the judiciary branch related with the judicial proceedings of each country.

IV. Mexico and the CRPD

It was already mentioned lines before that Mexico was the sponsor of the resolution that created the CRPD; it was also one of the first countries adopting this instrument and right know it doesn't have any restriction, reservation or declaration that could limit the implementation of the treaty. But the process to fully implement the CRPD in the practice had been slow and, right now, is not fulfilled at all.

One of the first steps that Mexico took in this regard was the enactment of a Federal Statute to protect the persons with disabilities. This law, which was enacted under the name of “*Ley General para la Inclusión de las Personas con Discapacidad*” (General Law for the Inclusion of the Persons with Disabilities, hereinafter **LGIPD** for its acronym in Spanish), contains the general legal framework to protect the rights of the persons with disabilities. It includes concepts like “reasonable accommodations”, “universal design”, “inclusive education”, “special education”, among others, and also creates the National Council for the Development and Inclusion of the Persons with Disabilities³³ (*Consejo Nacional para el Desarrollo y la Inclusión*

³² UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html> (accessed April 30, 2013).

³³ *Ley General para la Inclusión de las Personas con Discapacidad* (LGIPD) (General Law for the Inclusion of the Persons with Disabilities) Diario Oficial de la Federación, May 30, 2011 (Mex.).

de las Personas con Discapacidad better known for its acronym in Spanish **CONADIS**).

According to Articles 38 and 39 of the LGIPD, CONADIS was created with the purpose of establish and develop a public policy for all the persons with disabilities, through the promotion and evaluation of the participation of the public and private sector and implementing actions, strategies, policies and programs arising from the LGIPD and other laws related with this objective.³⁴

The measures aforementioned were adopted after the ratification of the CRPD as a first step to fulfill its adoption and, at the same time, to complement other statues related with the matter like the Federal Law to Prevent and Eliminate the Discrimination (*Ley Federal para Prevenir y Eliminar la Discriminación*, hereinafter **LFPED** for its acronym in Spanish). This law enacted in 2003, three years before the adoption of the CRPD, prohibits any kind of discriminatory practice in Mexico, providing as one of these prohibitions to discriminate based in disability³⁵ and creates the National Council to Prevent the Discrimination, better known by its acronym in Spanish CONAPRED.³⁶ Article 13 of the LFPED, is specially focused in prevent the discrimination of the persons with disability and states several measures like the promotion of the inclusion of the persons with disabilities, the construction of accessible facilities, the promotion of the inclusive education and encourages the training of employers in this regard, among other measures.

In 2011, another measure for the adoption of the CRPD in Mexico was taken. On October 26, 2011 the Mexican Senate with 78 votes in favor and no votes against, approved the removal of the interpretative declaration made by the Mexican Government to the second paragraph of Article 12 of the CRPD.³⁷ The withdrawn of such declaration allowed the fulfillment of the spirit of the Convention, based in the recognition of the legal capacity of the persons with disabilities without any limitation.

³⁴ Id. Art 39 (Mex.).

³⁵ Specifically, Articles 4, 11.III and 13 of the LFPED protects and prevents the discriminations of the persons with disabilities (*Ley Federal para Prevenir y Eliminar la Discriminación* [LFPED] [Federal Law to Prevent and Eliminate the Discrimination] Diario Oficial de la Federación, June 11, 2003 [Mex.]).

³⁶ The Chapter V from the Article 16 to 42 of the LFPED creates and regulates this Governmental Organism (LFPED, DO June 11, 2003 [Mex.]).

³⁷ Press Release, CONADIS, “*CONADIS se congratula por el retiro de la declaración interpretativa de la Convención*” (October 26, 2011), http://www.conadis.salud.gob.mx/interior/sala_de_prensa/anteriores/retiro_declaracion_interpretativa.html

Mexico submitted in 2011 his First Periodic Report before the Committee on the Rights of Persons with Disabilities,³⁸ fulfilling the obligation provided by Articles 35 and 36 of the CRPD that states that “*each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned*”.³⁹

The Mexican Government has made different public declarations reaffirming his compromise with the persons with disabilities and the implementation of the CRPD, several governmental programs have been implemented as well, but the efforts have not been sufficient, much work is pendant to be done, specially ensuring the access to justice.

As a final comment, the new criminal procedure that is being implemented in Mexico needs to consider those reasonable accommodations needed to ensure the access to justice of those persons with disabilities at any stage or time of the proceeding. Also, it is essential to provide during the implementation process of the new system of justice, the adequate training to the judges, public prosecutors and attorneys involved in the criminal procedure. In addition, the Civil Code provisions that are related with legal capacity should be amended and the procedure known as “*juicio de interdicción*” shall be substantially modified including the limited guardianship and an assisting model recognizing the decision making process of the persons with disabilities.

Finally, it is necessary to emphasize that the Mexican Government has to work and invest more efforts in the fully recognition of the legal capacity of the persons with disabilities, according to the standards provided by the CRPD in this regard. The current legislation in Mexico related with legal capacity and access to justice of persons with disabilities is insufficient and it represents a barrier to the effective adoption of the CRPD.

³⁸ Article 34 of the CRPD creates this Committee composed by 6 independent experts and his functions shall be to monitoring the implementation of the CRPD in each Member State.

³⁹ Un General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106*, available at: <http://www.refworld.org/docid/45f973632.html> (accessed May 2, 2013).