

## THE AMERICANS WITH DISABILITIES ACT AND ITS IMPACT ON INTERNATIONAL AND LATIN- AMERICAN LAW

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An evaluation of the ten-year history of the Americans with Disabilities Act ("ADA") would be incomplete without some assessment of the global dimension of its impact. This commentary provides a brief overview of some of the far-reaching effects that the ADA has had on Latin-American laws and on international instruments that protect human rights for persons with disabilities. Within the international human rights system, the ADA has had a positive influence in several ways.

First, in 1993, Dr. Leandro Despouy, special rapporteur to the Human Rights Commission for the United Nations, issued the first U.N. Report on the status of human rights for persons with disabilities in the world.<sup>1</sup> The ADA was one of the laws that Dr. Despouy used to support the report.

Second, the ADA impacted another area within the United Nations. On December 20, 1993, the General Assembly of the United Nations approved the Standard Rules for Equal Opportunities for Disabled Per-

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1. Leandro Despouy, HUMAN RIGHTS AND DISABLED PERSONS (Study Series 6), U.N. Sales No. E92.XIV.4 (1993).

sons.<sup>2</sup> These rules also drew heavily on the example of the ADA.

Third, on June 7, 1999, the General Assembly of the Organization of American States approved the first and only international instrument that protects human rights for disabled persons: The Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities.<sup>3</sup> Twenty countries have now signed this Convention, which has a particularly important impact in Latin-American countries where international treaties have a status higher than or equivalent to constitutional law. This means that when these countries ratify the Convention they have an anti-discrimination law that is at the same status or even higher than their constitutional law. The ADA is one of the laws that has been used as an example for the government's representatives.

Currently, there are discussions underway in the international community regarding two important proposed international treaties that involve disability rights issues, the Rules of Procedure of the International Criminal Court and the United Nations Convention Against All Forms of Discrimination Against Disabled Persons. With respect to the former, the disabled persons' movement has been working to introduce the issue of the rights of persons with disabilities who are victims of crimes against humanity and war crimes. Procedures and reparation are the main issues in this discussion. A group of experts from around the world has been working on the latter document to have it ready in the year 2002. There are plans to present it to United Nations authorities for adoption pursuant to official procedures.

Within Latin America, the ADA has had a clear influence on the passage of a group of laws around the region. The ADA—along with the U. N. Standard Rules—served as models for bills that have been presented to national legislative bodies throughout much of Latin America. The first Latin American disability law approved was a 1992 Brazilian law.<sup>4</sup> The Chilean "Social Integration of Disabled Persons Law"<sup>5</sup> followed in 1994, and in May 1996, the Costa Rican "Law on Equal Opportunities for Disabled Persons"<sup>6</sup> was approved. Today there are similar laws in Guatemala, Nicaragua, Peru, and Venezuela.

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2. STANDARD RULES FOR EQUAL OPPORTUNITIES FOR DISABLED PERSONS, U.N. Resolution 48/119 (1991).

3. The Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, June 7, 1999, Organization of American States, AG/RES. 1608 (XXIX-O/99) [hereinafter *The Inter-American Convention*].

4. Ley de Igualdad de Oportunidades para las Personas con Discapacidad (Law of Equal Opportunities for Persons with Disabilities) (1992).

5. Ley No. 19.284, Enero de 1994, Ministerio de Planificación y Cooperación, División Social/Unidad de la Discapacidad, Fondo Nacional de la Discapacidad.

6. Ley No. 7600, No. 112 del 29 de mayo de 1996, Publicado en el Diario Oficial La Gaceta.

One example of the ADA's influence, is on the definition of disability. In the Latin American laws there are three definitions for disability or persons with disabilities. The first definition is in the "Law for Social Integration of Disabled Persons"<sup>7</sup> from Chile. In Article 3 of the law a person with disability is defined as a person who has lost one third of his/her capacity for education, work, or social integration.<sup>8</sup> Article 7 of the law provides that a medical commission will certify the disability.<sup>9</sup>

The second definition is taken from the "Law for Attention of Disabled Persons" of Guatemala.<sup>10</sup> It defines disability as a physical, mental or sensorial impairment that substantially limits one or more of the individual's major life activities.<sup>11</sup> This definition is almost a copy of the ADA definition of disability.

The third and most interesting definition of disability is the one contained in the Inter-American Convention Against Discrimination Against Disabled Persons<sup>12</sup>. In Article I, Section 1 disability is defined as "a physical, mental or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment."<sup>13</sup> This definition has two new aspects: (1) its reference to "temporary" disabilities, and (2) its reference to the "economic and social environment."<sup>14</sup>

The Convention also has a definition of "discrimination against persons with disabilities" in Article I, Section 2 (a).<sup>15</sup> It defines discrimination as "any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms."<sup>16</sup> This definition also has new aspects that are important to point out. First, it refers to a history of disability, former disability, or perception of a disability opening the definition to new applications to discrimination against disabled persons.<sup>17</sup> Second, as is true with the

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7. No. 19.284, Enero de 1994, Ministerio de Planificación y Cooperación. División Social/Unidad de la Discapacidad. Fondo Nacional de la Discapacidad.

8. *Id.*

9. *Id.*

10. Ley de Atención a las Personas con Discapacidad de Guatemala (Law for Attention of Disabled Persons), B5-96.

11. *Id.*

12. See The Inter-American Convention, *supra* note 3.

13. *Id.* art. I, § 1.

14. *Id.*

15. *Id.* art. I, § 2(a).

16. *Id.*

17. See The Inter-American Convention, *supra* note 3.

definition of discrimination contained in the Convention Against All Forms of Discrimination Against Women,<sup>18</sup> the definition is not limited to intentional or purposeful discrimination. Under this provision, discriminatory effects without any intention to discriminate can constitute discrimination.<sup>19</sup>

It is also important to mention Article I, Section 2 (b) that expressly allows affirmative action or positive discrimination as an instrument to eliminate discrimination against disabled persons.<sup>20</sup> There are examples of affirmative actions regarding employment in Spain, and regarding housing in Costa Rica.

This Symposium on A Ten-Year Retrospective on the Americans with Disabilities Acts presented by the University of Alabama School of Law offers an opportunity for a brief retrospective on the use of disability laws in Latin America, as well. For example, four years after the adoption of the Costa Rican law, our courts have resolved several interesting cases.

In *Quesada Venegas y Otros v. Colegio Patriarca San José y Ministerio de Educación Pública*,<sup>21</sup> the authorities of the Patriarca Colegio excluded students with disabilities from their high school graduation ceremonies, arguing that it was not convenient to have them at the graduation. The Constitutional Court found Patriarca Colegio had discriminated against the disabled students by excluding them from the activities of the high school.

In *Martínez Vargas v. Liceo de San José*,<sup>22</sup> the authorities of the Liceo de San José denied special curriculum accommodations that Martínez needed. The Constitutional Court declared that necessary curriculum accommodations are part of the rights of education of a person with disabilities. It ordered the high school to pay reparations to Martínez and to immediately provide the accommodations that students need.

In another Costa Rican case, the Constitutional Court determined that the State of Costa Rica violated the right of equal opportunity because they did not provide special accommodations for blind persons on employment tests.<sup>23</sup> The Court ruled that the tests must be made avail-

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18. Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13 (1981).

19. The Inter-American Convention, *supra* note 3.

20. *Id.* art. I, § 2(b) ("A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference.").

21. Voto 4834-p-96, Sala Constitucional de la Corte Suprema de Justicia de Costa Rica.

22. Voto No. 8621-c-97, Sala Constitucional de la Corte Suprema de Justicia de Costa Rica.

23. Voto No. 567-91, Sala Constitucional de la Corte Suprema de Justicia de Costa Rica.

able in Braille.

In a case against a Costa Rican taxi cooperative, the Court ruled that a woman who depended on a guide dog has the right to ride in a taxi with her dog.<sup>24</sup> The company was ordered to pay reparations to the plaintiff.

In *Randall Morales v. Telenoticias, Multivisión de Costa Rica, Televisora de Costa Rica, Televisora Canal Dòs Univisión, Repretel, Sistema Nacional de Radio y Televisión Cultural SINART*,<sup>25</sup> the Constitutional Court established that failure to provide sign language on television news programs violates the right of information of deaf or hearing-impaired persons.

As this brief overview indicates, the impact of ADA within the international human rights system and within Latin America has been enormous. Ten years after its enactment, we can truly say that it has given hope to millions of disabled persons south of the Rio Grande.

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24. Expediente No. 98-005747-007-Co, Sala Constitucional de la Corte Suprema de Justicia de Costa Rica.

25. Voto No. 6732-98, Sala Constitucional de la Corte Suprema de Justicia de Costa Rica.