



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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The Office of the High Commissioner for Human Rights (Secretariat of the Committee on the Rights of Persons with Disabilities), presents its compliments to the Secretariat of the Inter-American Court of Human Rights and has the honour to transmit as an attachment, the written opinion of the Committee on the Rights of Persons with Disabilities on a request for an advisory opinion, under Article 64(1) of the American Convention on Human Rights, related to "the content and scope of care as a human right, and its interrelationship with other rights".

The Secretariat of the Committee on the Rights of Persons with Disabilities avails itself of the opportunity to renew to the Secretariat of the Inter-American Court of Human Rights the assurances of its highest consideration.

19 September 2023

## Committee on the Rights of Persons with Disabilities

Committee's opinion on the "the content and scope of care as a human right, and its interrelationship with other rights"

September 2023

The Committee on the Rights of Persons with Disabilities (hereinafter, the Committee) has the honor to submit the following contribution to the Interamerican Court of Human Rights in relation to the request the Court received from Argentina to deliver an Advisory Opinion on the topic of the content and scope of care as a human right, and its interrelationship with other rights.

The Convention on the Rights of Persons with Disabilities, currently ratified by 187 States parties (hereinafter, the Convention) refers to the notion of care in different provisions. It mentions, inter-alia, that quality health care should be provided to persons with disabilities in a non-discriminatory manner (article 25), that alternative care for children with disabilities should be provided in family settings within the community (art.23), and that the right of children with disabilities to be cared for by their parents (art.18).

The Committee, as the international body established by the Convention to monitor the implementation of the treaty in States parties has reviewed, since its inception in 2009, more than 100 initial and period reports submitted by States parties to the Convention. It has observed with concerned that the notion of care used in national legislation, policies, and actions plans perpetuate frequently the charity and medical models of disability, which portrays persons with disabilities are mere recipients of care; that care is frequently provided in institutions and institution-like settings, thus perpetuating patterns of segregation, exclusion and stigmatization of persons with disabilities, and that persons with disabilities continue to be denied self-determination, autonomy, agency, and freedom of choice in the provision of services, including housing, food, health, education, and work and employment.

The Convention introduces a paradigm shift according to which persons with disabilities are right-holders and, thus, entitled to enjoy all range of human rights on an equal basis with others. The provision of care in the cases where the Convention refers to it, should therefore be in line with the human rights model of disability, and the principles underpinning it, referred to in article 3 of the Convention.

- a) Respect for inherent dignity, individual autonomy, including the freedom to make one's own decisions, and the independence of individuals;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of

- diversity and the human condition;
- e) Equal opportunities;
- f) Accessibility;
- g) Equality between men and women
- h) Respect for the evolving capacities of children with disabilities and their right to preserve their identity.

“Care” a human right, should be read in line with the duty to support to persons with disabilities, which under the Convention, should be respectful of their autonomy, will and preferences as a key element to achieve inclusive societies. The Convention refers to support in relation to various rights, including equal recognition before the law (art. 12); access to justice (art. 13); freedom from exploitation, violence and abuse (art. 16); live independently and be included in the community (art. 19); personal mobility (art. 20); freedom of expression and opinion and access to information (art. 21); respect for the home and family (art. 23); education (art. 24); habilitation and rehabilitation (art. 26); labour and employment (art. 27); an adequate standard of living and social protection (art. 28); and participation in cultural life, leisure, and sport (art. 30).

Articles 12 and 19 of the Convention, central to the purpose of the treaty, require States parties, respectively, to facilitate access by persons with disabilities to the support they may need to exercise their legal capacity; and to provide a range of community support services, including personal assistance, to avoid isolation or segregation from the community.

Support should be available, accessible, acceptable, affordable and adaptable and person-centred, age- and gender-sensitive and culturally appropriate. Eligibility criteria and procedures for accessing support should be non-discriminatory and should focus on the requirements of the individual with a disability rather than based on impairment. Support must be chosen by the person with disabilities, and fully managed by them.

In accordance with the Convention, the Buenos Aires Commitment “Recognise the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own decisions, and implement accessible policies, services and infrastructure to ensure their right to care, care and self-care, taking into account their specific needs, including the use of mobility aids, technical devices and assistive technologies”<sup>1</sup>.

The Committee, in its interaction with States party has also underlined the role of support systems and networks, including peer support, and support provided by family members, relatives, friends, neighbors and other trusted persons who provide support. It has also

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<sup>1</sup> *The member States of the Economic Commission for Latin America and the Caribbean participating in the fifteenth session of the Regional Conference on Women in Latin America and the Caribbean, gathered in Buenos Aires from 8 to 11 November 2022. Paragraph 14*

called on States to closely consult and actively involve persons with disabilities through their representative organizations in policy formulation, implementation and monitoring.

The Committee fully supports the possibility that persons providing support to persons with disabilities be widely recognized in terms of wages, benefits and any other possibility offered by decent work according to the standards established by the International Labor Organization. It considers that the duty of "care" should be framed in a manner that avoid returning to protectionist approaches towards persons with disabilities, or reinserting in the collective imagination the idea that persons with disabilities are not capable of making their decisions with support, but require to be cared for through medical personnel. The duty of care, instead, should be framed in full compliance with the human rights model of disability, enshrined in the Convention on the Rights of Persons with Disabilities, according to which persons with disabilities are right holders of all human rights on an equal basis with others, and have full agency to self-determine their lives.

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