Bogotá, Colombia, August 4, 2014

Civil Society Section

Office of the United Nations High Commissioner for Human Rights

Attn: Mr. Facundo Chávez or Ms. Krista Orama

*VIA EMAIL:* *registry@ohchr.org* *and* *disability@ohchr.org*

**RE: Response to Call for Input about Human Rights Council Resolution 25/20 – “The right to education of persons with disabilities”**

To Whom it May Concern,

My name is Andrea Parra and I am the Director of PAIIS (*Programa de Acción por la Igualdad y la Inclusión Social*), a human rights clinic of the School of Law at the University of Los Andes in Bogotá, Colombia.

Since 2007, PAIIS has engaged in legal and political advocacy at the national and international levels on behalf of persons discriminated on the basis of their disability, their sexual orientation, their elderly status and their gender identity. PAIIS also works in alliance with numerous local organizations as well as organizations and universities in the region.

Together with clinic students María Rocío Vargas, Mariana Mora and Dianny Rincón, we are pleased to submit our responses to the Call for Input regarding Human Rights Council Resolution 25/20 – “The right to education of persons with disabilities”, and we hope that you find the enclosed document useful in the completion of the study on the right to live independently and to be included in the community, due in March 2015.

Please do not hesitate to contact me if you have any questions or require further information.

Respectfully,

Andrea Parra

Director – PAIIS

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**Human Rights Council Resolution 25/20 - "The right to education of persons with disabilities" – Call for Input**

**1.       Is your country currently reviewing or has reviewed laws (i) denying or restricting the exercise of legal capacity, (ii) allowing for forced institutionalization, (iii) establishing a presumption of danger to self or others on the basis of disability, or (iv) providing social protection schemes and medical institutions that include segregated settings for living? Please provide details on any related legal reforms in no more than 500 words.**

Currently Colombia has laws that restrict and deny the exercise of the legal capacity of people with disabilities and allow for their forced institutionalization. The Civil Code of 1873, the Code of Civil Procedure and Law 1306 of 2009[[1]](#footnote-1) allow for plenary guardianship (interdiction) of people that the law calls as having “absolute mental disabilities” and deaf persons who cannot make themselves understood. The law also allows for partial guardianship through the disqualification procedure (Inhabilitación) for specific financial transactions for people that the law calls as having “relative mental disabilities”.

Ironically, Law 1306 of 2009 states that guardianship is a protective measure to restore the rights of people with mental disabilities. Because guardianship is seen as a “restoration of rights” anyone can initiate this process. It establishes the duty to initiate it for parents, spouses or partners, and blood and civil relatives up to the 3rd degree; directors of psychiatric institutions with respect to the persons institutionalized in their establishments, the family ombudsperson and the Public Ministry of the person’s place of residence. In response to a Freedom of Information Request submitted to the Public Ministry, we received information that more than 2,500 consultations on interdiction had been done between January and October of 2013.

Judicial guardianship is considered a procedure of voluntary jurisdiction, meaning that it is non-contentious and the only party to the case is the person requesting guardianship. The person being interdicted is not a party to the case and therefore cannot oppose his or her own interdiction. The judge usually issues a declaration of guardianship on the basis of the expert testimony of a forensic psychiatrist. In the cases of minors, the procedure can be initiated prior to them turning 18 to extend paternal and custody rights beyond the age of majority.

Law 1306 of 2009 also provides for institutionalization without consent and states that “*people with absolute mental disability have the right to freedom except when their internment due to their disability is indispensable for their health or therapy or to protect public security and tranquility*”. Emergency institutionalization can be for a period of two months when ordered by a medical professional. “Preventative reclusion” is authorized by law for up to a year and can be indefinitely extended for equal periods by a judge order. (arts. 20-24)

Because substitute decision-making is valid in Colombia, there are several laws that restrict the exercise of a great number of freedoms and rights because they are based on legal capacity. Some of these laws relate to legal consent for medical procedures, the legal capacity in contracts or the exercise of legal capacity before tribunals. For example, Law 1412 of 2010 allows for surgical sterilization of people under guardianship with the sole authorization of the guardian.

Recently Congress approved Law 1618 of 2013. This Law introduces and applies the Human Rights Convention on the Rights of People with Disabilities. Therefore this law guarantees the access to justice by people with disabilities and commands the Ministry of Justice and Law to impulse the necessary reforms to guardianship so the Colombian legal system is in line with article 12 of the CRPD. Nevertheless, no advancements have been made in that direction beyond initial meetings.

**2.       Does your country already have or is currently developing a programme or plan to promote the implementation of services enabling independent living such as: personal assistants, home assistants or other community-based services regardless of the kind of impairment? If so, please provide information on these plans detailing sources of payment, control over the services and availability in all areas of the country (no more than 500 words).**

Currently, there is no legal framework or incentives for personal assistants. Home care is solely provided through the health care system usually granted through litigation because health care insurers tend to reject requests for home care services. Since these services are provided solely by health care providers, the assistance is limited to personal hygiene and dress and provision of medication. The service does not include providing support for people’s daily activities like going to the bank, a job interview or recreational activities. There is an assumption that families ought to provide the whole range of assistance.

Currently there is Bill 05/13 in the Senate[[2]](#footnote-2), which seeks to promote employment of family members who are care takers of people with disabilities by ordering the Ministry of Labor to promote policies for labor inclusion of caretakers.

Additionally, Bogotá has an existing initiative called “721: Project for the Integral Attention of people with disabilities, their families and caretakers. Closing Gaps”. The project, initiated in 2012, seeks to strengthen the role of caregivers and families of people with disabilities. The program has the purpose of reinforcing processes of social inclusion. Even though the plan does not have independent living as a goal, services provided seek to strengthen people with disabilities’ autonomy. It has six components: articulated response to families and careers to give an answer to economic and emotional overloads; Development of capabilities and generation of opportunities for people with disabilities; Exercise of citizenship; Barriers elimination; Articulation and strengthening of institutional response; Transectoral work to order and articulate responses from de state, the community, the private sector, the NGOs and the academy.

Despite these efforts, the rate of institutionalization of children and adults with disabilities is appalling. A recent study conducted by Inclusion International about the conditions of people with disabilities in the institutions paid by the Government through the Family Welfare Institute (ICBF), found that over 10,000 people are institutionalized. No policies have been put in place to ensure deinstitutionalization of people with disabilities.

**3.       Does your country have effective mechanisms that people with disabilities could successfully employ in case of the denial of access to services enabling independent living and inclusion in the community including access to facilities for the general population on an equal basis with others? If so, do those mechanisms guarantee reasonable accommodation when necessary services or support are not in place? Please provide information on good practices.**

Colombia has one effective judicial mechanism to rapidly obtain redress when one’s fundamental rights under the Constitution are breached. It is called a writ of *tutela*. It must be responded to within 10 business days by the judicial authority and it has been successfully used by people with disabilities to ensure reasonable accommodations. Nevertheless, this by no means has translated in generalized practices ensuring accommodation by private and public agencies.

The writ of tutela is not exclusively to guarantee independent living and inclusion, but is a mechanism that is used to safeguard all fundamental rights. So, "acción de tutela" is a mechanism of protection in case of denial of access to services enabling independent living and inclusion.

So, if a man or woman with disabilities needs to protect his or her independent living or the access to facilities on an equal basis with others, the man or woman with disabilities must explain, clearly, the relation that exist between the independent living, the free development of personality and the possibility to live with dignity.

**4.       Is your country involved in international cooperation programmes related to ensuring the right to live independently and to be included in the community? If so, is your organization involved in any such programme**

The international cooperation programs are mechanisms that can improve the bilateral, regional and multilateral scenarios with other countries and strategic partners, helping the strengthening of the policy and prosperity in Colombia. In Colombia, the institution with the function to guide the politics of international cooperation is the Ministry of Foreign Affairs.

Nowadays Colombia is not involved in any international cooperation programs addressing the right to live independently.

The Presidential Agency of International Cooperation of Colombia (APC), develops programs of international cooperation, following the guidelines of the Government on human rights. They do not have programs related to ensuring the right to live independently and the inclusion of people with disabilities in the community, but they have programs to help, in other scenarios, people with disabilities, especially people that were soldiers. One example is the Program of Rehabilitation of Soldiers victims of landmines. That program, having sources of international cooperation, is part of the process of rehabilitation of the Presidential Programme to the Comprehensive Care Against Landmines (PAIMAC) and the Ministry of Defense.

The Victims’ Unit, which ensure integral reparations to the victims of the armed conflict has a group on disability that makes sure that the experience of people with disabilities is included within the attention and reparation route of actions.

**5.       Does your country collect statistics and disaggregated data on services provided to ensure independent living and inclusion in the community?**

The National Administrative Department of Statistics (in Spanish the acronym is DANE) is the Department responsible for making all the official statics related to the Colombian society. Nevertheless there are no official statistics related to independent living and inclusion in the community of people with disabilities. In addition to that, the DANE statistics about jobs, education and living do not have a category for people with disabilities.

However according to a private study of the Saldarriaga Concha Foundation, 37,9% of the population needs the assistance of another person, 5% are kids under 5 years old, 13% kids between 5 and 14 years, 26% people between 15 and 44 years, 14% people between 45 and 59 years and 42% adults over 60 years old[[3]](#footnote-3).

The lack of consistency among data collected by government agencies about disability is very discouraging. They do not have a unified way of registering disability and they usually register a disability if it is apparent. This creates a very precarious situation that does not allow determining the effectiveness of public policies and other measures.

1. Ley 1306 of 2009, “*Por la cual se dictan normas para la protección de personas con discapacidad mental y se establece el régimen de la representación legal de incapaces emancipados*”. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36400> [↑](#footnote-ref-1)
2. Available at: <https://docs.google.com/viewer?url=http://servoaspr.imprenta.gov.co:7778/gacetap/gaceta.nivel_3?v_anog%3D2014%26v_formato%3DPDF%26v_num%3D108%26v_seleccion%3DIniciar%2BBusqueda&chrome=true> [↑](#footnote-ref-2)
3. http://www.saldarriagaconcha.org/images/fsc/prensa/informes\_especiales/2012/discapacidad/0712\_%20informe%20vida%20independiente.pdf​ [↑](#footnote-ref-3)