**Costa Rica:**

**Report to the "Country Report Regarding the Compliance with the Convention on the Rights of Persons with Disabilities"**

**LIST OF PROPOSED QUESTIONS FOR THE LIST OF ISSUES ON COSTA RICA:**

(1) How could the National Conseil of Rehabilitation and Special Education (Consejo Nacional de Rehabilitación y Educación Especial – CNREE) develop public policy on disability (PONADIS) which seeks to respond to the problems and needs of persons with disabilities, if thereare not detailed statistics on the population of persons with disabilities and their situations?

(2) What actions have been developed by the Costa Rican State to progress in the effective implementation of article 8 of the CRPD?

(3) What is the level of knowledge which public institutions have on the CRPD, and in particular, persons who are responsible for implementing plans, policies and programs within those institutions?

(4) Has the Costa Rican State any reliable study on the general situation of physical, communicational and informational accessibility for persons with disabilities?

(5) Has the entry into force of law no 8661 / CRPD had some impact in the design of public policies on accessibility? For example, promoting a national accessibility plan?

(6) If the compliance provisions related to accessibility (physically in the urban environment, transportation, information and communication, ICT, technical assistance) of law 7600, are poor as described in multiple souces of information, what can be done to think that provisions of the CRPD are being or will be met?

(7) Since the time that the CRPD entered into force, and taking into account that the treaty has supralegal authority, have there been any efforts within Costa Rica to harmonize domestic laws concerning interdiction and guardianship in accordance with and provided for the CRPD in Article 12? If the answer is Yes, what results have been achieved?

(8) In order to change perspectives and traditional paradigms in the field of the legal capacity of persons with disabilities, have training programs been undertaken aimed judicial officers regarding Article 12 of the CRPD and its practical implications?

(9) Has the body in charge of guiding and regulating university education in Costa Rica made efforts to modify the curriculum of law schools so that prospective lawyers apply provisions of the CRPD related to legal capacity?

(10) While the CRPD in Costa Rica is clearly in full force, why has the legislative assembly been promoting a draft law (project no 17 777) which would permit a guardian to subject the body and the integrity of a person with disabilities under their charge, for experiments and bio-medical research?

(11) What significant changes have taken place in public education policy as internal drive to promote inclusive and quality education in Costa Rica? If changes have been effected, what are the results?

(12) What steps are being envisaged in the process of inclusive education, to include those adults with disabilities who have not gone to school who have not completed either primary or secondary education?

(13) What steps will the State take to ensure inclusive and quality education for children with disabilities?

(14) Has the public institution responsible for guiding and regulating University education in the country made efforts to change the curriculum in education faculties and departments and so that future teachers will implement CRPD provisions in the field of inclusive education?

(15) Many persons with disabilities are unemployed in Costa Rica due to - among other factors - weaknesses in the quality of its workforce. Is there a training policy for employment which includes persons with disabilities on equal terms with others? If there is, what is the practical impact of such a policy?

(16) Does Costa Rica have a national employment policy that properly includes PWDs? If it exists, what impact does it have on the inclusion of persons with disabilities in employment?

 (17) Since the entry into force of the CRPD, has the Costa Rican State through the Ministry of Labour or another institution promoted measures for the inclusion of persons with disabilities in employment on equal conditions? In the case that actions have been made, what results have been obtained to increase job placement for persons with disabilities?

(18) Starting from the entry into force of law no 8862 which ensures 5% of posts for persons with disabilities in the public sector: how many persons with disabilities have been employed by Costa Rican public institutions?

(19) Within the so-called Development Bank, have persons with disabilities been included in Costa Rica? For example, in facilitating micro credit for entrepreneurship of persons with disabilities which allows access to self-employment?

(20) Since the entry into force of the CRPD, have new programs been encouraged or have existing ones been strengthened in order to reduce poverty associated with disability? Which institutions have implemented them and what is their impact?

(21) What percentage of the population of persons with disabilities is estimated to be living in situations of poverty? How do existing programs address this to mitigate it or reduce it?

(22) How many persons with disabilities in Costa Rica benefit from pensions as a result of their disability and what is the average amount of these pensions?

(23) Is it true that the vast majority of the indigenous people in Costa Rica live in situations of exclusion and poverty, and even moreso for indigenous persons with disabilities? If so, what policies have been promoted to address this situation of exclusion and poverty that affects the quality of life of indigenous people with disabilities?

(24) Why has the Costa Rican State still not designated a public body in charge of promoting the implementation of the CRPD, the statement of which is set out in CRPD article 33, paragraph 1?

(25) In order to fulfill the role of promotion and coordination of public policies on rights of persons with disabilities, what features must this public body meet?

(26) Paragraph 2 of article 33 of the CRPD provides guidance to States to maintain, strengthen, designate or establish an independent mechanism to promote, protect and monitor implementation of the Convention. This mechanism must be independent. National human rights institutions are those most commonly considered. However, according to the Costa Rican Foreign Ministry, an inter-institutional Committee will fulfill this task. What is behhind the rationale for the Chancellery’s inclination toward a mechanism that does not comply with the CRPD, since the institutions involved can be both judges and parties in implementation and monitoring? Would the Defensoría de los Habitantes de Costa Rica (Ombudsman) not be the appropriate body to fulfil this role under Article 33(2)?

(27) What does the Costa Rican State do to ensure that persons with disabilities can participate in their own organizations and to ensure that they will strengthened in their invaluable role of consultation and monitoring?

**EXECUTIVE SUMMARY**

The Costa Rican state has achieved international prestige as a law abiding social state, where human rights are respected. This generally well-deserved prestige has declined in the last twenty years due to the country´s weakening of its social programs, which allowed social inclusion and effectively complying with human rights (particularly collective rights) of permanently excluded social and populations sectors.

It is within this background that the limited and incomplete compliance by the Costa Rican state is found, with respect to ensuring the rights of persons with disabilities (PWD). This country has approved laws and international treaties (like the CRPD), but its implementation has had a low impact, because public policies and programs are not designed with budget content. Consequently, those policies and programs are constantly postponed.

Though the National Rehabilitation and Special Education Council (in Spanish: CNREE), without any legal explicit support, declares itself "the institution in charge of disability matters in Costa Rica”, it has very little influence on the rest of Costa Rican institutions. This collegiate body is still weak so its incidence is not significant, neither for promoting inclusive and cross-cutting public policies benefitting PWD or for supervising compliance with existing norms.

Even though the Report of the Costa Rican State leaves a favorable impression regarding the compliance of the country with the CRPD, the substantial and real data, together with the everyday direct experience of PWD, uncover a very limited and superficial level of compliance. In fact, most of the public institutions have only tried to comply with the specific law (Law 7600), so their compliance with this law is also very deficient.

This weak compliance with the CRPD is linked to the fact that Costa Rica has not appointed an specific public entity to strongly and clearly be in charge of implementing the treaty (Article 33, part 1, CRPD) and, to that end, elaborate an action plan regarding its effective implementation.

Now, though the Costa Rican state ratified the CRPD (with supra-legal status) on September 29 of 2008, two years after this international instrument entered into force, it did not have a real impact in improving the lives of PWD. It was not transcendental and, unfortunately, almost five years since, the situation has not changed to this date (September of 2013).

The examination of facts that we present in this Alternative Report, prepared by organizations from the civil society, is not exhaustive regarding the extended debt of the Costa Rican state in the field of the rights of PWD.

Because of space limitations and scarce resources available, the OPWD involved in this effort had to prioritize on some of the theme areas which greatly affect the conditions and the quality of life of PWD.

**The areas covered in this report are:**

(1) Awareness-raising in society (Article 8, CRPD).

(2) Physical accessibility, information, and communication (Article 9, CRPD).

(3) PWD without legal capacity (Article 12, Equal recognition before the law (Article 12, CRPD.

(4) Segregated and low-quality education; not inclusive education (Article 24, Education).

(5) A minimum percentage of PWD are employed (Article 27, Work and employment).

(6) PWD are the most excluded of the persons excluded (Article 28, Adequate standard of living and social protection).

(7) Implementation and monitoring (Article 33, National implementation and monitoring). There has not been an appointment of the public entity in charge of fostering the implementation of the treaty and the Ministry of Foreign Affairs designated an Interinstitutional Commission (of the President’s Office) to supervise the implementation of the CRPD, excluding the Office of the Costa Rican Ombudsman (Defensoría de los Habitantes), which would assure the desired independence.

**General conclusion:** What may be appreciated in this report, which was elaborated by a group of organizations of persons with disabilities of Costa Rica (OPWD), as the **main conclusion,** is that the CRPD has not been a relevant judicial instrument for the great majority of public entities of the country, its diffusion very limited and, consequently, its implementation by of public policies and actions remains a great debt on the part of the Costa Rican state with PWD.

**I. INTRODUCTION**

*" Convention should have been a strong wind of change favoring the improvement of the lives of persons with disabilities of Costa Rica, yet until now it is only a weak breeze, almost imperceptible."*

**There is a big distance from talking to acting**

Persons with disabilities in Costa Rica, whether they developed this condition at birth or if they acquired it at some stage of their lives, confront enormous difficulties or it is actually impossible for them to achieve social inclusion, with dignity and satisfaction, under equal conditions as other persons.

Once the deficiency, that converts them into persons with disabilities is acquired, because of the lack of adequate conditions offered by the Costa Rican state and its society, the great majority of these persons contemplate how their lives are shredded or annulled in all social spheres, including areas like education, production, and work.

First, it is necessary to indicate that, within the judicial framework of Costa Rica, there are many norms (national and international) approved to protect the human rights of diverse social and population sectors. Among these there are those that generally or specifically protect the rights of persons with disabilities.

The greatest problem found regarding the majority of these norms, including the CRPD, is that the Costa Rican state either does not comply with them, or does so in a very limited manner and with scarce social impact. The country´s institutional system remains locked in declarations and promises that do not translate into effective policies and programs. The country has not provided the corresponding budget content for making real and concrete transformations. So, these norms become chimera, with null, limited, and diffuse compliance.

It is not casual that the influential Constitutional Court of Costa Rica has repeatedly indicated that, the country´s legislative body approves, without budget provisions for their effective implementation, legislation intended to benefit population social sectors. A proof of this situation is found in the 43 legislation projects regarding disability which have been presented and accepted for consideration by the legislative branch: none of them establish measures providing financial support for the actions to be undertaken or promoted.

This general situation is to be found within a weakening of the social programs experienced during the last government administrations, affecting directly the sector of persons with disabilities with an enormous and unattended social debt which has accumulated for decades. And, worse of all, there is no evidence of any political will or commitment to adequately pay for this social debt.

**Good norms, scarce compliance**

There are other norms pertaining the rights of persons with disabilities, for the purpose of this Alternative Report, two of them are emphasized: Law 7600 of Equal Opportunities for Persons with Disabilities and Law 8661 by which the Legislative Assembly of Costa Rica ratified the Convention on the Rights of Persons with Disabilities (CRPD).

**-Law 7600:**

The Law 7600 entered into force on May 29 of 1996 and its by-laws on April of 1998. Its level of compliance has been limited, irregular, and superficial in several aspects. Here is a concrete and significant example: The by-laws of Law 7600 orders that all public entities have to include, within their Annual Operation Programs, actions pertaining PWD and need to establish the corresponding budget to perform those actions. The majority of the Costa Rican public institutions do not comply with this regulation, and those few entities that plan specific actions pertaining PWD, later complain for not being able of performing those actions because of budget problems.

The Costa Rican National Rehabilitation and Special Education Council, defined as "the institution in charge of disability matters" in the country, performs a restricted supervision and has a limited impact regarding compliance with the norms recognizing and protecting the rights of PWD. It is pertinent to mention that this entity was created in 1973, pursuant Law 5347, that circumscribing its actions particularly to the areas of education and rehabilitation.

The Law 7600 mentions an entity in charge of disability matters in Costa Rica, without associating the CNREE with such condition. This is because the drafters of this law considered that said entity did not met the requirements for such a extensive role and, therefore, a new institution had to be created with other characteristics. Nevertheless, before an initiative leading to the creation of that new entity was manifested, the CNREE filled a request of interpretation with the Costa Rican Attorney General´s office regarding the meaning of the expression "an entity in charge of disability matters" found in the Law 7600. The Costa Rican Attorney General´s office responded by saying that the function of an entity in charge of disability matters corresponded to the CNREE. The bad thing was that this resolution was nothing but a mere formality, because it was not translated into a political, administrative, and financial mandate, for strengthening the CNREE in order to comply such function of being "in change".

From the date of the corresponding resolution of the Attorney General´s office in 1997 to present time (2013), the CNREE has made some internal efforts to assume that responsibility, but it has not received the corresponding governmental support, not even from the Costa Rican state in general, to effectively fulfill such role. This somehow explains why the CNREE, as the "entity in charge of disability matters", has had such a limited impact at improving the living conditions and allowing the exercise of their rights on the part of persons with disabilities.

This way, though the CNREE has undertaken efforts to promote compliance with the Law 7600 (a national norm that is already 17 years old) and also it has worked on supervising the corresponding compliance by other institutions, its achievements in this area has been limited. This contrasts with the exaggerated claim that it is the "entity in charge of disability matters", included in the Official Report presented to the International Committee by the Costa Rican state.

Unfortunately, there is a lack of a sound research establishing the situations before and after the approval of Law 7600 for the population with disabilities in Costa Rica. Furthermore, there is a need for an statistical study providing reliable data establishing the real percentage of the population with disabilities and indicating what are the living conditions of these persons.

Another way of understanding this situation of failure to comply with the norms, which translates into the violation or lack of attention to the rights of persons with disabilities, is reflected in the cases presented before the Constitutional Court of Costa Rica with demands because of the violations affecting this sector of the population. It is also opportune to mention here, the denunciations presented before the office of the Costa Rican Ombudsman, regarding lack of compliance with norms pertaining the rights of PWD[[1]](#footnote-1).

The protection measures filled before the Costa Rican Constitutional Court, together with the complaints submitted to the Costa Rican Ombudsman office, reflect the severe problems and unattended needs of PWD, and also reflect the low level of incidence by the CNREE in achieving effective answers for them.

**-Law 8661:**

As it was indicated before, this law contains the CRPD. It should be pointed out that the CRPD is above the other Costa Rican laws, including –of course- the Law 7600. This assertion is funded on article 7 of Costa Rica´s Political Constitution which established that the international treaties ratified by the Costa Rican state are supra-legal. But something else may be added related with the judicial rank of the treaty, within the framework of norms in Costa Rica: The Costa Rican Constitutional Court, through its different votes, has awarded constitutional value to international human rights treaties, including the CRPD.

Not withstanding this reality, the CRPD has not been used as an important reference by the majority of public institutions. The Law 7600 is relatively better known than the CRPD. Consequently, the compliance with this international treaty is still very scarce, compared with Law 7600.

Another limiting factor for complying with the Convention is the fact that the Costa Rican has not established what public entity is in charge of the application of the CRPD and for the coordinated and sustainable inter-institutional of this treaty. In other words, the Costa Rican state has not complied with the fundamental part 1 of the article 33 of the CRPD. At this point, it could be argued that the CNREE, as "the entity in charge of disability matters", should also assume the implementation of the CRPD, nevertheless, this is a fallacy. Costa Rica has not elaborated a Plan of Action for Implementing the CRPD.

The National Disability Policy (in Spanish: PONADIS/ 2011-2021), though a laudable effort, where in its promotion the CNREE considered the CRPD, still has a reserved prognosis regarding its implementation. This reservation is due to the weak influence and incidence of the CNREE at the moment of implementing public policies regarding the rights of PWD.

As an important point of reference and evidence of the marked level of failure to comply, there is this National Disability Policy (2000-2010), for which the CREE undertook leadership in its design on the year 2000. After a costly process, this disability policy has not had a meaningful impact o result on the lives of the great majority of persons with disabilities in the country.

**The real population of PWD: Statistical weaknesses**

In Costa Rica there is no wide, rigorous, and reliable statistical investigation establishing what is the percentage of PWD existing in the country, under what conditions they live, and where do they live (How many of us are?, What is our real situation? and Where do we live?

If the Census results for 2000 and 2011 are compared, it is noted that the first census (year 2000) indicated a percentage of 5.35 and the other census (year 2011) indicated a percentage of 10.52[[2]](#footnote-2) of persons with disabilities with respect to the general population. This means that the percentage of PWD practically doubles in 11 years. It is worth mentioning that the figure of the second census is closer to the results of the Household Survey of July 1998, Disability Module, where the established percentage of PWD was 9.4%.

Those inconsistencies reflect, on the one hand, the existence of incomplete information and, on the other, a level of bias not allowing the establishment of the real amount of PWD in the country nor permitting to achieve a reliable panorama of the conditions in which they live.

Therefore, until the desired sound studies are not conducted, the best reference available regarding the percentage of PWD is the World Report on Disability (World Health Organization/ World Bank, June of 2011), which indicates a percentage of 15%. This percentage figure indicates that the population of persons with disabilities in Costa Rica is estimated within a numerical rank of 600,000 to 700,000 persons.

In this sense, the Costa Rican state has an important debt regarding the adequate performance of the Article 31 of the CRPD: "Collecting data and statistics". As it is stated in this article: "State Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention."

There is an urgent need to perform a statistical study as indicated in this article, which will serve as a solid foundation to formulate and implement public policies to comply with the CRPD.

Nevertheless, the possibility for the Costa Rican state of conducting a study of this nature is very obscure. This is because reliable information on disability is not a priority of the Costa Rican state, nor it is a priority of the National Institute of Statistics and Censuses (In Spanish: INEC). This becomes clear, as the official country report indicates, that such a study would be very hard to perform because it would be to costly.

**Structure and methodology of the “Country Reports”**

On the substantial part of the report, where the Costa Rican State must demonstrate its implementation of the CRPD (Second Part: Specific document), it does not meet the dispositions established by the International Committee, on several aspects:

-In the first place, it does not inform pursuant to the content on each of the articles: From 1 to 33, with the purpose of showing what it has performed (or what it plans to perform) with respect to what each norm establishes. What was done was to forcibly organize a presentation of the report following the six axis defined by the National Development Plan of 2011-2014 of the present administration (2010-2014 Presidential Term). This way, the Country Report is channeled and structurally biased to respond to the vision of a particular government administration, therefore departing from the perspective of a State Party, as it should have been performed.

From a methodological point of view, the appropriate procedure was to provide the information article by article. That would allow to better appreciating the actions that were performed or not done, with respect to the CRPD. Thus, the Official Report becomes complex, because there is a series of articles that are repeated within those general axis.

There was a form to be followed in order to obtain a similar style of reporting, to better analyze and compare progress, standstills, and backward movements. But, because of the way that the Costa Rican state prepared its Country Report, it presents inconveniences for comparison and systematization purposes. This means that on the next report to be prepared (2010-2014), the same scheme would not be followed, necessarily.

It is opportune to underline the importance of having indicators that allow a clear visualization of the advances made at implementing the treaty. This first report should have laid the foundations for determining, by the future and successive reports, the levels of effective compliance regarding the CRPD in different topics and the rights of PWD. Obviously, this first Official Report did not meet this purpose.

-In second place, it is worth mentioning that the Official Report does not fulfill the dispositions of the International Committee because it does not provide evidence regarding the existing situation of the country, specially, on the advances it mentions that it has made in the field of reliable statistical information. The Official Report is vague and lacks precise data.

-Another important defect detected in the Official Report is that, in most cases, the actions and activities of short and medium term are presented in an isolated manner, which are not integrated within a large plan or policy. For instance, the authors of the report announce that in a city (Goicoechea) sound traffic lights for persons with blindness were installed, but this topic can not be found within a national accessibility plan guaranteeing freedom of mobility for PWD. Unfortunately, this is just the initiative of one of the 81 municipalities of the country, there are no measures planned to reproduce this action in other places.

-Another methodological and conceptual problem of the Official Report is that it concentrates on a simple enumeration of actions and activities. This presents two problems: On the one hand, there is no way of identifying the universe within which the action develops. Such reference is needed to determine the extent of the progress and to explain the pending issues. On the other hand, actions are enumerated but there is no explaining about how they impacted on the improvement of the living conditions of PWD. For example, on an issue like integration of PWD to the labor sector, all would be clear and concrete if the Official Report had indicated what is the percentage of PWD, of working age, who are presently unemployed (60, 70, 80%) and also, there should had been, an explanation of how much progress was made in the labor inclusion of PWD (whether in the open job market or by means of self-employment). Here it is very important to include figures, not just announcing job-promotion activities.

**-As it is well indicated on the Report of the Costa Rican state, the entity that wrote it was the CNREE, by request of the Costa Rican Ministry of Foreign Affairs. This transforms the CNREE into jury and party regarding what is being informed. Another negative aspect is that, in no section of the Country Report, there is an assessment on how this CNREE works and what has been its real role as "entity in charge of disability matters" on the public (and private service) institutions. It would have been opportune if here the CNREE would have included a self-evaluation regarding the actual impact of its actions on the public policy, including how it supervises the implementation of that public policy. Being such an important issue, this is a very notable omission.**

**-**Another weakness of the Official Report is the information available to elaborate it. As this "Country Report" recognize, several public institutions did not deliver the information requested, or did it extemporaneously. This situation establishes two worrying facts: The lack of commitment or interest among those institutions with respect to disability matters and, the limited incidence of the CNREE as "entity in charge of disability matters" before these public entities.

**Insufficient consultation to the civil society**

As the Official Report underlines, it is to recognize that the CNREE made an effort of consulting OPWD. It is equally positive that this institution gathered ideas from the OPWD on its different topics and that their critical reactions were included in the report.

By acting in this manner, the entity made an attempt to comply with Articles 4 and 35 of the CRPD regarding the obligation of consulting the OPWD, in this case, with respect to this first report on the implementation of the international treaty.

Nevertheless, the consultation process would surely have been more effective if it had been of the type of close consultation established by the CRPD. That is, if instead consulting the OPWD after the Official Report was elaborated with the information of the public institution, the entity would have involved the OPWD on all the different stages of the "Country Report".

**II. THE BIG TOPICS ANALYZED BY THE REPORT OF THE COSTA RICAN STATE**

**As indicated before, the PWD who elaborated this Alternative Report, did not meant it to be exhaustive, nor did we tried to cover all and each of the topics of the Official Report. Our purpose was to examine some relevant topics, which are very near the lives of PWD. The exclusion of some topics does not diminish the value of this Alternative Report as a whole. The idea of this examination is to place some important questions regarding the covered topics. These questions appear at the end of each topic covered.**

**1. Raising awareness in society (Article 8, CRPD)**

We start with the idea that, in order for a society and a country to effectively advance toward the implementation of the rights of PWD, there needs to be progress made on raising awareness in society regarding the situation of PWD, their rights and dignity, including the eradication of prejudice, stereotypes, and harmful practices pertaining PWD.

PWD continue to be underestimated and discrimination against these persons continues to prevail in Costa Rica. In this country, disability is not perceived as part of human diversity and PWD are considered as belonging to an inferior status of society. In the same way, though there has been some progress in the recognition of the rights of PWD, such recognition is still focused on some social sectors and institutions, and "disability" is not strongly considered a human rights topic. This situation is caused by the prevailing attitudes of assistentialism and charity within the public and private sectors in the country.

In this sense, the entering into force in the country of the CRPD (September of 2008), did not produced a significant change. The Costa Rican state has not conducted a single campaign or performed any relevant effort toward raising awareness of society regarding PWD, directed at: "fostering the respect of the rights and the dignity of these persons". In fact, neither the Costa Rican Ministry of Communication nor the Ministry of Education or the Ministry of Culture, have conducted any campaign for this purpose. Like the ministries mentioned, the CNREE has not conducted any of these much needed campaigns to promote the CRPD among other institutions, it concentrated in promoting the treaty internally.

Instead of regular campaigns, the CNREE has promoted training sessions on the CRPD at some specific public entities and OPWD. Though they are worth mentioning, these sessions constitute a very specific and focused effort: They still are small drops of water on a hot stone.

The OPWD in Costa Rica believe that if there was poll among the top rank officers, middle rank, and other employees of the public institutions with obligations pertaining the rights of PWD, asking what they know about the CRPD, the responses obtained would be very negative. This result would reflect the extended ignorance about the existence of the international treaty as a whole.

These findings are very worrying because a question emerges immediately: How could the there be compliance of a judicial instrument if persons do not know about it. Another worrying assertion that must be mention here is the fact that there are still many institutions believing that everything pertaining PWD and their rights, belongs exclusively to the sphere of the CNREE, and that disability issues are beyond their responsibilities.

**2. Physical accessibility, information, and communication (Article 9. CRPD)**

Accessibility, which allows for free mobility, and the free access to information and communication, are essential for exercising other rights, like health, education, work, etc. Unfortunately, Costa Rica has advanced very slowly regarding them, and with superficial and limited changes.

Though we recognize that some efforts have been made in areas like physical accessibility as consequence of the Law 7600, these efforts have not been so much extended as to provided the desired and needed transformation within the urban settings, like public and private buildings, and in the whole transportation system. The deficiencies in this areas gave room to continuous demands and reclamations which have been published by the Costa Rican media: inaccessible sidewalks, lack of accessible pedestrian crossings, absence of ramps, ramps in bad condition, lack of accessible information, all causing difficulties and even making free access and mobilization impossible for persons with motor and orientation impairments.

This situation affects the capital and all the main cities of the 81 counties of the country. Some municipalities have made efforts to improve accessibility, which include ramps here and there, yet the coverage has been limited. A clear description of this situation was undertaken by a newspaper of one of the main counties of Costa Rica, called San Carlos. The newspaper article was entitled: "Sidewalks without law and justice"[[3]](#footnote-3). For the purposes of this Alternative Report, we must mention that the description and journal comments of that newspaper report, dated March of 2013, may be applied and may be replicated for all the urban centers of the country.

This severe problem of lack of physical accessibility has been repeatedly denounced by the office of the Costa Rican Ombudsman. This is again evidenced by a recent television report (Channel 7: “Telenoticias”)[[4]](#footnote-4) from May 2013.

Here, it is pertinent to indicate that from the time the CRPD entered into force in Costa Rica, there has been any change in the field of urban physical accessibility. Neither the entities of the central government responsible for this topic, nor the municipalities have promoted any national accessibility plan. The situation of lack of attention, that do not go beyond isolated actions, in responding to an important issue for the freedom of mobility of PWD, only permitted a slow and limited progress

With respect to public transportation, it is opportune to indicate that Article 45 of Law 7600 had established that all public transportation must be accessible. This Law 7600, approved on the year 1996, had mandated a final date on which the 100% of collective transportation had to be accessible: May 29 of 2013. Nevertheless, the changes in this area and other areas had been so insignificant, that a few years later the OPWD elaborated and promoted a Ten Point Petition, two of this demands were specifically pertinent to providing accessible transportation. As a result of this struggle and the negotiations conducted by the OPWD with the representatives of the transportation front, the companies with transportation permits and transport concessions, offered 180 accessible buses, representing about 5% of the total bus fleet existing in Costa Rica at that time (May, 2004).

These actions allowed for a relative advance in the field of struggling for an accessible public transportation. Nevertheless, the transportation companies began to foster an amendment to the Law 7600 to lower the 100% of public buses to be totally accessible to just a 85. Because of the strong rejection by the OPWD and other sector, that reformed was blocked. Instead, the Law 7600 was amended by extending to 10 years the term for achieving the mandated accessibility on all buses. The amendment was passed by the legislative body and, consequently, all the public transportation fleet will have to be completely accessible by the year 2014 and this goal is impossible to meet.

The Official Report provides some data coming from the Costa Rican Public Transportation Council (in Spanish: CTP), the entity in charge of regulating the collective transportation sector. These data are questionable because, in no way, around 40% of the public transportation buses are accessible. In fact, though we recognize that some progress has been made, it is difficult to accept that 20% of the buses destined for public transportation in Costa Rica are accessible, and this percentage had to be lower at the time that the "Country Report" was elaborated. It must be indicated that many of the buses with hydraulic lifts do not use them because they are not in working conditions or deteriorate because of lack of maintenance.

In some occasions, this CTP refused to publicly knowledge the size of full bus fleet of the country and how many of them were accessible. The transportation companies refuse to provide this information when requested by the law makers. Among the POD there is the conviction that the percentage of accessible buses is inflated indicating a lower number of buses (the universe). The PAD who use the percentage of public transportation buses are the ones who constantly experience the limited amount of accessible buses, together with the long hours of waiting for an accessible bus they can use.

As a prove of the lack of will by the CTP to provide accessible transportation to achieve the corresponding goal of 100% buses accessible by the year 2014, this year of 2013, during which permits and concessions must be renewed, instead of classifying the lack of accessibility as a fundamental requirement, they established it as a minor failure. With this change, the CTP will be able to confer permits and concessions to the transportation companies even if they do not comply with the dispositions mandated by law.

Accessibility and the right to live independently (Article 19, CRPD), depend for many PWD on the possibility of having personal assistance. PWD have had to rely on one or more members of their families to obtain the personal assistance they need to perform the activities of daily living. The absence of a personal assistance system places financial difficulties on the families of PWD who need it. The family members providing personal assistance do not have time to perform paid work or other activities.

Unfortunately, in Costa Rica, governmental support for personal assistance needed by PWD to exercise their rights to personal independence is still an emerging topic. The promotion needed for a law to address and to regulate on these important issue (Legislative Assembly, Project No. 17305: Personal Autonomy of Persons with Disabilities) has generated some opposition from several national institutions. These institutions have immediately alleged that there is no budget available to fulfill the needs that would be presented by PWD if the law is passed.

At the same time, a pilot effort promoting the personal autonomy of PWD, fostered by the Independent Living Movement (in Spanish: MVI) and sponsored by the Japan International Cooperation Agency (JICA), has received some public financial support through the CNREE. Nevertheless, this support is being threatened and could disappear for reasons attributable to the CNREE, because this institution is not acting toward the creation of programs or fostering the amendments of essential regulations that need to be corrected and updated in order to consolidate the necessary services to implement the real autonomy of persons with disabilities in the country. Under present conditions, the only existing effort promoting personal autonomy, as it is established in Article 19 of the CRPD, could suffer a severe setback.

On the other hand, it is convenient to indicate that with respect to the progress being made in the sphere of access to information, things are not different. There has been some increase of awareness within some public institution on providing services that are accessible to persons who are deft. To do so, the institutions must train their personnel in Costa Rican Sign Language (LESCO). Some institutions have made progress in this direction, but it is something that is just beginning. The Official Report needs to list the public institutions and the existing services where they provide Costa Rican Sign Language. That is a way of proving how limited progress has been in this area.

Another problem occurs in the access to television broadcasts (news and general interest information programming). Though the existing dispositions establish that news programs must be accessible for persons who are deft, either by interpretation or close caption, no body complies.

On the other hand, persons who are blind, have a very limited access to public information. They confront the reality of the digital gap, because their conditions of poverty have not permitted them to develop educationally and, also, because they have not been able to purchase or access computer equipment or software and the Internet. Not to mention that some programs (like JAWS) are very expensive for them. Another limiting factor is the fact that most government Web Sites of the Costa Rican state are not accessible.

Lastly, it is important to underline the many accessibility problems encountered by most PWD who use technical aids, like wheelchairs, walkers, canes, orthotics, and prosthesis. Even though the Law 7600 establishes that the Costa Rican Social Security must provide those technical aids –as it is also mandated by Article 9 of the CRPD for all Party States, there is very poor compliance.

Hundreds of PWD need technical aids and they are obliged to tolerate long waiting lists, sometimes for five-years, before they receive the wheelchair or other personal assistance equipment they need. "With respect to the provision of technical aids, it is a well-known and notorious fact that the Costa Rican Social Security does not deliver the technical aids it prescribes. Because of this situation of lack of compliance, the beneficiaries must even request the support of private charity to meet that demand, which is a right guaranteed by the Law 7600”[[5]](#footnote-5). The conditions described by the 2004 study "Disability in Costa Rica: Present situation and perspectives," still prevail and, perhaps they have deteriorated as a consequence of the severe financial crisis affecting the Costa Rican Social Security since the year 2011.

**3.**  **Equal recognition everywhere as persons before the law versus legal guardianship (Article 12, CRPD)**

Since "300 days before they are born, persons in Costa Rica…”[[6]](#footnote-6), obtain the judicial capacity, that is the aptitude that each physical person, to be entitled or bearer of rights and obligations, notwithstanding his or her age, physical or mental condition, therefore, the judicial capacity accompanies physical persons during the person´s existence, and it will end "… upon the death of the person…”[[7]](#footnote-7)

Something different occurs with the capacity to act, a legal and social construction, which includes the capacity of exercising the rights conferred by means of the judicial capacity and of contracting obligations in a personal manner. "It is, therefore, the dynamic dimension of the judicial capacity”[[8]](#footnote-8), “the capacity to act is that judicially recognized state in which the person is a subject who is susceptible of acquiring rights and obligations.”[[9]](#footnote-9)

In Costa Rica, age and the physical, mental or sensory condition (in as much as they influence on the voluntary and cognitive capacity of the subject), are factors that modify the capacity to act. With respect to age, the Costa Rican Civil Code establishes that persons become of age when they reach their 18th birthday and, therefore, they acquire the necessary capacity to directly exercise a capacity for performing contracts and other acts of civilian life.

The Article 41 of the Costa Rican Civil Code establishes that the mental and even the physical status, is an aspect that may void the capacity to act, this is because: "the acts or contracts performed without voluntary or cognitive capacity will be relatively null, except if the disability has been judicially declared, in which case, those acts or contracts will be absolutely null."

Therefore, with respect to a persons with a psycho-social disability, or a person with an intellectual and physical disability, the capacity to act (in as much as they affect the person´s voluntary or cognitive capacity, their capacity o act is voided, from an accepted premise derived from the traditional biologic paradigm which presupposing that PWD should not make their own decisions because they cannot do so.

In this sense, the Costa Rican Civil Code, together with certain resolutions of the Judicial Courts, actually discriminate against PWD, because their interpretations cause realities that are similar to the civil death of these person affected. Civil death is understood as the "imposing of punishments directed to prevent persons indicted from any participation regarding civil rights"[[10]](#footnote-10). Such punishments are now unanimously rejected. Nevertheless, as they are imposed upon PWD, such punishments cause them to become civil lifeless persons, because a man or a woman without capacity to act, under sound judicial technique, may not be a full right subject.

It should be noted that when the Convention mentions a judicial capacity of PWD, it contemplates both judicial capacity (part 2, Article 12) and capacity to act (part 2, ibid). But the terminology that is still used in our legislation regarding PWD is discriminatory and even offensive, for instance "guardianship" is specified as being synonymous of "protection of the incapable", referring to "that protective treatment provided to persons incapacitated because of dementia." Insanity means: "madness, impaired judgment, therefore, the insane is a crazy individual". Interdiction: "the loss of civil rights defined by law".

From a basic reading of the judicial dispositions existing in Costa Rica on guardianship, the harmful direct effects caused by the present system regarding the legal capacity become clear. These legal dispositions and procedures damage the dignity and impose obstacles for rights of PWD. Those dispositions do not comply with Article 12 of the CRPD.

The Costa Rican Constitutional Court has indicated on the process of interdiction and guardianship "…the process tends to intervene on the civil rights of the insane, so that it is not he or she, but instead the representative appointed by the legal jurisdiction, who will exercise those rights".[[11]](#footnote-11) Also, there has been a traditional influence of the medical field impregnating our Political Constitution. The Constitutional Court has resolved that the constitutional expression "the needy ill" equals Person with Disabilities.

With respect to the existing procedures for appointing a legal guardian, the first thing that is performed is the interdiction process. That is, to declare the estate of interdiction for reasons of insanity. The applicant requests the declaration of “interdiction" through non-contentious actions for insanity, including the non-contentious judicial activity, a fast-track procedure, meaning that there is no contention. If there should be opposition, the file is closed and, then, is presented for an abbreviated contentious procedure. In this instance the party requesting the declaration of interdiction, must justify or prove that the person under consideration is mentally incapable or does not have will of his or her own. Then, a forensic examination is requested, together with the criteria of the professional treating the person. That will constitute the whole proof.

On the other hand, "guardianship" is the means "…to request the appointment or removal of a legal guardian for a person for whom the state of interdiction has been declared"[[12]](#footnote-12). The process of guardianship (in Spanish: "curatela", Costa Rican Code of Civil Procedures, Articles 867 to 870) is used only and exclusively to request the judicial appointment of a legal guardian who will represent, in every sense, the PWD. In order for this appointment to be made, "… the firm sentence of interdiction”[[13]](#footnote-13) must be presented. In other words, the procedure of declaration of "insanity" explained before, must be completed.

Considering the comments presented so far, the strict medical content of the process is something very harmful, because it assimilates disability with illness, a vestige of the ancient Roman legal guardianship. The generalized misconception that illness was always present, though not justifiable or proven, can be explain for historical times when human rights did not even exist as they are now recognized. This forced connection of disability and illness is impossible to sustain it in our days, because the assimilation of illness with disability constitutes a violation of human rights, particularly, the Article 12 of the CRPD.

On the other hand and to make things worse, the judge "may examine the presumed insane”[[14]](#footnote-14); but this judge intervening in the process is not obliged to meet and interview the persons who he or she pretends to declare "incapable". Meeting and interviewing the person presumed incapable is just one faculty left to the discretion of the judge. Therefore, in many cases, the judge declares the state of interdiction (insane), without even meeting the individual personally. Such judges resolve these processes just by reading documents and files presented that are them. This situation deteriorates the rights of the PWD who are subjected to this process.

From the perspective of the Roman Law, the objectives of the guardianship have been to guarantee the security and proper administration of the goods and property of the person who has been legally declared incapable. But, in Costa Rica there are abuses in the exercise of the faculties of the legal guardian. Even today, we find initiatives being promoted in this direction, like Project 17.777: Law of Biomedical Research, proposing that the legal guardian will be able to authorize experiments and investigation on persons declared insane and who have been entrusted to him or her. In other words, the law authorizes the legal guardian even to dispose of the body and the physical integrity of PWD. All of these matters violate the Article 15, paragraph 15, of the CRPD.

**4. Segregated and low quality education, non-inclusive education (Article 24, Education)**

Costa Rica had made significant progress in education a few decades ago. Unfortunately, this situation of advantage has weakened both, in the qualitative aspects (quality of education) and in the quantitative aspects (number of students served). The increasing bifurcation between public and private education has weakened the public education programs. It is within this context that the advance (or lack of advance) should be placed regarding inclusive education.

When it ratified the CRPD, the Costa Rican state recognized that a quality and inclusive education is a right of PWD "at all levels and during their whole lives". Nevertheless, after five years of that ratification, using facts -not words- as reference we must conclude that the country has not made any notable advance on quality and inclusive education.

When the international treaty entered into force, the Ministry of Public Education (in Spanish: MEP), acting as the entity responsible of educational matters in Costa Rica, should have initiated an inclusive education national policy. It did not, and it has not done so to the present date (2013). With respect to the needed changes it has to make within its internal structures, the Ministry of Education has only performed minor changes and it still concentrates the education for PWD within its Department of Special Education. Therefore, this educational institution is acting as if the main instrument for the rights of PWD was not the CRPD. So, instead of being a strong wind of change, for the Ministry of Education, the CRPD became an almost imperceptible breeze.

Under close examining, you notice that the chapter dedicated to education in the "Country Report", does not mention of inclusive education. This is because what is described in that chapter mainly constitute processes related with special education and "special educational needs".

Clearly, this type of segregated education not only does not address the needs of the majority of girls and boys with disabilities, but also, does not provide the quality standards, and conditions of social mobility and inclusion that students need.

A high percentage of adults with disabilities never had, and still do not have, access to education. On the other hand, the offer for work-oriented technical training for PWD is very limited. And this has become a great need to improve the quality of technical skills and, at the same time, advance with the inclusion of PWD in the productive labor market.

"The Census conducted last year by the National Institute of Statistics and Census (in Spanish: INEC) confirms this reality: of almost 453,000 persons with disabilities in the country, most of them only went to primary education and many of them did not complete it". (One of Costa Rica´s main newspapers “La Nación”, 07/ 07/ 2012).

A positive aspect to note regarding inclusive education is the creation of the National Resource Center for Inclusive Education (in Spanish: CENAREC)[[15]](#footnote-15). This center, created on the year 2002, has fostered training for teachers, PWD, and family members, so they will promote inclusive education. Nevertheless, these efforts do not fulfill the existing need of professionals in the field of education with a sound training on inclusive education, among the students of Costa Rican public and private universities.

**5. A minimum percentage of PWD are employed (Article 28, Work and employ, CRPD)**

The Costa Rican state has not offered and it still does not have an effective inclusive employment policy for PWD who have possibilities and desired to work. The figures regarding the inclusion of PWD in the country´s work force are almost symbolic.

According to the Costa Rican Ombudsman office, around 64% of persons with disability –who are in their productive age- belong to the Economically Inactive Population (in Spanish: PEI). “Since they are not part of the work force, the satisfaction of their basic needs is complicated. This is the warning message expressed yesterday by the Costa Rican Ombudsman´s office, during the celebration of the National Day of Persons with Disabilities". ( Newspaper: “La Nación”, 07/ 07/ 2012).

On its part, the CNREE estimates that unemployment associated to disability in the country reaches about 95%. This is underlined on a newspaper report: "95% of persons with disabilities are without work. A failure of a plan to promote employment for the disabled" (Newspaper: “La Nación”, 10/ 09/ 2012).

As mentioned before, the severe accessibility problems that historically and presently face PWD when they try to benefit from education programs and technical training opportunities, is one of the causes for which PWD are not able to offer high-quality work related skills. Consequently, their possibilities to enter into the work force or to engage in a productive activity are significantly reduced.

This situation, of the low-quality work skills offered by most PWD, combines with the attitudinal rejection toward PWD, when disability is associated with lack of productivity. Then, discrimination in the field of employment because of disability, together with other existing barriers, such as the absence of physical accessibility in an inadequate urban setting, lacking accessible transportation, information and communication, all come together and interact negatively.

A new norm was recently approved to include PWD in the public sector (Law 8862, which guarantees a 5% of job positions for PWD). Nevertheless, this norm has not entered into force and, at about the same time, the President of Costa Rica has suspended hiring of more new personnel in the public sector.

Under these conditions, the hopes of PWD wanting to find work in the public sector simply disappear, not even considering if they are able to comply with the corresponding requirements or if they are able to overcome the well-known accessibility barriers.

In general, the Costa Rican Ministry of Labor and Social Security (in Spanish: MTSS) has never had a national employment policy and, in particular, it does not have a policy to address work opportunities for PWD. Since the year 2002, this institution offers the services of a Unit of Equalization of Opportunities for PWD, which was created by an Executive Decree (in Spanish: Decreto 30391-MTSS)[[16]](#footnote-16).

Though this Unit has performed laudable efforts promoting employment of PWD within the private sector, its impact at obtaining work placements is almost imperceptible.

On the other hand, the small progress in hiring of PWD is linked with initiatives sponsored by the private sector (like the Network of Inclusive Employers) and by the international cooperation (in Spanish: Programa POETA, Trust-OEA), not of the public sector, which is responsible of complying with the dispositions of Article 28 of the CRPD.

Another work alternative that could be developed is self-employment of PWD, through micro-entrepreneur models. Unfortunately, the only program of this type, with micro-enterprises operated by PWD and their families, that existed in Costa Rica and was under the protection of the CNREE, disappeared. On the other hand, is worrying situation is that there are no alternatives within the State Banking System or the private banks, for providing access to loans for productive initiatives operated by PWD or families of PWD, with technical support and accessible credit. It is well-known that PWD are not credit subjects. This is because of existing prejudice and, generally, because of their poor socio and economic conditions.

**6. The most excluded of the persons excluded (****Article 28, Adequate standard of living and social protection)**

Without doubt, one of the strongest points of the CRPD is having contemplated the need for social and economic inclusion of PWD, by means of the effective implementation of their collective rights.

In Costa Rica, as well as in the other countries of Latin America and the Caribbean, there is this need to start recognizing a concrete reality: Poverty and disability are deeply united within a vicious circle, where both interact and strengthen one another.

A family having one of its members with disabilities, is more likely to become poor, because it faces more additional expenses (those required by the situation of the PWD) and, in general, one or two of the members of the family, in a productive age (the PWD and who provides care for him or her) are not working, so the family income is lower. Therefore, the lack of adequate conditions (hygiene, attention to health, risky jobs, social violence, etc.), all combine to generate different types of deficiencies in children and adults, which States and societies transform into disabilities, as they refuse to provide adequate conditions for accessibility and social inclusion (this is, the effective compliance with human rights).

It is not by chance that, in many of its annual reports, the Costa Rican Ombudsman´s office has characterized PWD as being "the most excluded of the persons excluded" and of being an invisibilized sector.

In Costa Rica, there are some social programs addressing poverty associated with disability but, in no way, do they cover the existing needs. Many PWD and their families our not in the list of beneficiaries and, on the other hand, the existing programs only mitigate effects, but do not reach for an effective horizon of options allowing PWD and their families to come out of poverty.

One of programs addressing this situation, is developed by the CNREE and it is called "Poverty and Disability" but, far from reaching the total population who needs it, it does even benefit three thousand persons.

PWD are discriminated because they are PWD. Furthermore, PWD are discriminated, both because of their disabilities and because of their poverty. When women with disabilities are involved, the gender component is added to the discrimination.

This situation also harms the autochthonous persons with disabilities in Costa Rica, like if they were three heavy memorial stones, representing factors of discrimination and exclusion: their disability, their ethnicity, and the prevailing situation of poverty, just become oppressive.

Until present time, the Costa Rican state has not paid enough attention to the rights of the members of autochthonous people with disabilities and, proof of this situations, is that in the "Country Report" they were completely invisibilized and that document does not include the severe situation of discrimination and exclusion that these persons experience. This becomes another obstacle for them to participate in decision-making processes regarding their lives, particularly if we respect the fact that autochthonous peoples have their own internal processes to adopt them.

In order to address poverty among members of autochthonous persons with disabilities, they must have social protection, including, as needed, employment, education, and health services, and coverage for specific expenses related to disability, but separate from their labor condition. Today, the Costa Rican state does not provide any of these services.

This situation of exclusion and invisibilization has fostered, with the support of the Unit of Disability of the Costa Rican Legislative Assembly, the organization of autochthonous persons with disabilities and their families, to gain knowledge and struggle for their rights. After the approval of the CRPD, three associations of autochthonous people with disabilities have been established, and they have expressed their concerns in several scenarios.

**7. Implementation and monitoring (Article 33, National implementation and follow-up)**

As it has been indicated, as of present time the CRPD has not been an important norm and reference, in processes for the effective implementation through plans, program and public, inclusive cross-cutting policies, with the corresponding budget. That has resulted in its incomplete and weak impact.

A cause and consequence of this situation is the fact that the Costa Rican state has not appointed the institution responsible to promote and coordinate the implementation of this treaty within the other governmental institutions.

On part 1 of Article 33 of the CRPD remains an unfinished business for the Costa Rican state. Attempts have been made to define such an institution, during this time (almost five years to this date) conditions have been created under which the Costa Rican state has not complied with its obligations regarding the CRPD. A public entity with specific characteristics is need, and the CNREE does not respond to them.

Among these characteristics the following must be mentioned:

* This public entity must be created by a law of the Costa Rican Legislative Assembly, not by an Executive Decree or directive, which is perfectly modifiable and is weaker and less far reaching. With respect to the CRPD, the CNREE has not been designated by any Executive Decree or directive, neither by a law, there simply exists a taking up of fact.
* Institutional strength to effectively make incidence before the other public entities (Executive, Legislative, Judicial, and Electoral Power) and demonstrate some level of authority before the central government power structure (yet, at present, the CNREE, is an entity ascribed to the Ministry of Health).
* Available budget and resources needed to perform its mission, goals, and objectives.
* A body of professionals who would be to generate and direct public policies, including efficient cross-cutting programs for and with the public institutions (and private public service entities) related with implementing the rights and social inclusion of the PWD.
* An entity with the capacity and commitment to consult with the OPWD, regarding the dispositions of the CRPD on this matter, respecting their autonomy and independence as organizations of the civil society, fostering their effective and strong development.
* To have technical personnel in the public entities, with knowledge regarding public policies on the rights of PWD, particularly those for which their institution is closely related, and that they visualized and effectively comply with the dispositions of the designated public entity.

Another topic to be considered regarding the designation of the public entity responsible for the implementation of the international treaty, deals with the Institutional Commissions on Disability (in Spanish: CIMAD) and the Municipal Commissions on Disability. The CIMADs were created by Presidential Directive N° 27, which was generated by the 2000-2010 public policies. Though this was a laudable and well-intentional initiative, they have not had a real impact and have not met the expectations under which they were established. That operations are very limited and their influence on the institutions where they were establish is not significant, and they have not improved the policies and practices of those public institutions. In fact, some public institutions have not created their Commissions on Disability and other of this Commissions that were created do not function.

Another issue to be attended, also deals with Article 33 of the CRPD: the designation of the institutional mechanism on the part of the Costa Rican state "to promote, protect and monitor the implementation" of the CRPD. Without doubt, such role must be assumed by a public entity independent from the Executive Power, created by law, with its own budget, and responsible of preparing the corresponding report with independence. In other words, a national human rights institution able to comply, to the best extent possible, with the "Principles of Paris"

The national public entity that is nearest to these conditions is the Costa Rican Ombudsman´s office. That institution was created with the inspiration of the Norway Ombudsman. Consequently, the institution responsible for the implementation of the CRPD, must be created by the Costa Rican Legislative Assembly and its head officer must be appointed by this congress.

Nevertheless, upon the insistence of the OPWD requesting that the Costa Rican Ombudsman´s office should assume that responsibility, the Ombudsman's office consulted repeatedly the Ministry of Foreign Affairs. There was no answer for a long time, until recently (April 4, 2013). There was no assigning of this vital role of independent monitoring to the Costa Rica Ombudsman´s office (as it was hope for), but to an "Interinstitutional Commission".

The letter address to Mrs. Ofellia Taitemlbaum, Head of the Ombudsman´s office:

"With superior instruction from Mr. Enrique Castillo, Minister of Foreign Affairs, I am pleased to answer your Reference DH-PE-0026-2013, by which there is a request of information on the process to designate of an independent entity to monitor the Convention on the Rights of Persons with Disabilities and the results of said process".

“On this regard, I inform you that on September 30 of 2011, the Official Register "La Geceta" publishes the Executive Decree Number 36776-RE by which the Inter-institutional Commission for the Follow-up and Implementation of International Human Rights Obligations is constituted".

“The National Rehabilitation and Special Education Council (in Spanish: CNREE), entity in charge of disability matters in Costa Rica, has expressed its criteria manifesting that with the creation of the Inter-institutional Commission and its participation in it, **there is compliance** (bold from the OPWD subscribing this report) with the obligation of Article 33 of the Convention on the Rights of Persons with Disabilities, because this Commission assumes the monitoring function regarding the Convention".

That letter is subscribed by Mrs. Estela Blanco, General Director, Interim, General Directorate of Foreign Policy of the Ministry of Foreign Affairs.

As it may be noted, the creation of an Inter-institutional Commission to supervise the compliance with the CRPD on the part of the Costa Rican state, does not comply with the text nor with the spirit of part 2, Article 3 of the CRPD, whose purpose has always been that the corresponding institution or mechanism would be independent. But, what was created from the Costa Rican Ministry of Foreign Affairs is a mechanism whose actors are public institutions which have to execute, by means of public policies, the dispositions of the CRPD. That causes the Costa Rican state to become jury and party, because its public institutions execute and would be monitoring their own execution. That does not guarantee its independence.

It is not questionable the fact that a this commission was created, because it is not a bad thing for institutions to meet to evaluate how is the Costa Rican state complying its human rights obligations. What is not acceptable is that this mechanism of the Executive Power substitutes another mechanism based on the national institution for human rights, a role that must be developed by the Costa Rican Ombudsman´s office.

This decision must be immediately corrected because of the relevant role de must be developed by the national human rights institutions regarding the follow-up of the observations and recommendations of the International Committee of the CRPD upon the Reports presented by Party States. It is absolutely inadmissible that this responsibility is assumed by a mechanism within the orbit of the Executive Power, instead of an entity specialized in defending and monitoring human rights in a independent manner.

This error, cause by an incorrect interpretation of the international treaty must be corrected immediately, assigning the responsibility to the Costa Rican Ombudsman´s office. Nevertheless, in order for the Ombudsman´s office to be able to effectively meet this enormous responsibility, its Unit for the attention of the human rights of PWD must be strengthened.

The correction of this designation is of vital importance because there is full awareness that the movement of PWD is still weak for executing the corresponding supervision and monitoring. It is an essential task in its agenda and present challenges.

*San José, Costa Rica, August, 2013*

***(Translated into English by: Oscar Rivera Moya, Costa Rica, 2013)***

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| **#** | **Name of the subscribing orgatization:** | **Representative:** | **Title:** |
| 1) | Foro por los Derechos de las Personas con Discapacidad | Federico Montero Mejía | Presidente |
| 2)  | Instituto Interamericano sobre Discapacidad y Desarrollo Inclusivo (IIDI) | Luis Fernando Astorga Gatjens | Director Ejecutivo |
| 3) | Asociación Pro Centro Nacional de Rehabilitación (APROCENARE) | Carmen Fonseca | Presidenta |
| 4)  | Federación Pro Personas con Discapacidad (FEREPRODIS) | Francisco Villalta Montes | Presidente |
| 5) | Asociación Movimiento de Vida Independiente (MVI) | Mainor Ramírez Vargas | Presidente |
| 6) | Asociación de Personas con Discapacidad de Curridabat | Karla Ballestero Villagra | Presidente |
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| 13) | Fundación Charcot de Costa Rica | Ileana Sancho Sibaja | Directora Ejecutiva |
| 14) | Fundación Andrea Jimenez | Andrea Chaves  | Funcionaria |
| 15) | Fundación el Futuro es para todos  | María de los Angeles Monge | Directora Ejecutiva |
| 16) | Movimiento Participación Ciudadana de Alajuela | Victor Rojas | Coordinador  |
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| 31) | Asociacion *Talita Cumi*  | Guillermo Vega Zamora  | Presidente |

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5. “La discapacidad en Costa Rica: situación actual y perspectivas” [English: Disability in Costa Rica: Present situation and perpectives], CNREE-OPS/ OMS, 2004, página 32. [↑](#footnote-ref-5)
6. Civil Code, Article 31. [↑](#footnote-ref-6)
7. Civil Códe, Article 34. [↑](#footnote-ref-7)
8. GARCÍA VIDAL (Luis Ignacio), Protección jurídica del Discapacitado: En torno a la enfermedad Mental, artículo de la Revista Humanismo y Trabajo Social, p. 152. [↑](#footnote-ref-8)
9. COSTA RICAN CONSTITUTIONAL COURT Res: 2001-12994.. San José, fourteen hours and seven minutes of December 19 of 2001. [↑](#footnote-ref-9)
10. Brenes Córdoba (Alberto), Tratado de las Obligaciones, p. 139. [↑](#footnote-ref-10)
11. SECOND HALL OF THE SUPREME COURT OF JUSTICE, October eighteentth of nineteen ninety six. [↑](#footnote-ref-11)
12. Civil Procedural Code. Article 867. [↑](#footnote-ref-12)
13. Civil Procedural Code. Article 868. [↑](#footnote-ref-13)
14. Civil Procedural Code. Article 849. [↑](#footnote-ref-14)
15. <http://www.cenarec.org/index.php/es/quienes-somos> [↑](#footnote-ref-15)
16. <http://www.cnree.go.cr/sobre-discapacidad/legislacion/53-decreto-30391-mtss-unidad-de-equiparacion-de-oportunidades-para-personas-con-discapacidad-del-ministerio-de-trabajo-y-seguridad-social.html> [↑](#footnote-ref-16)