

# Disability and Social Policy: an Evaluation of the Colombian Legislation on Disability<sup>1</sup>

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## Abstract

*This paper studies the evolution of disability policy in Colombia from 1980 to 2002 based on national laws and regulations. The study evaluates legislation through the Comparative Disability Policy Framework proposed by Silverstein (2000) in order to determine whether the Colombian laws promote and apply an integrated national policy to benefit people with disabilities. The paper also considers the extent to which general and disability-specific policies and programs in Colombia reflect the new paradigm of disability and the goals of disability policy (equality in opportunity, full participation, independent living, and economic self-sufficiency). Legislation in Colombia only fulfills some of these goals of disability policy. Most statutes only recognize civil rights for people with disabilities but fail to specify the actions and mechanisms needed to put those rights in practice. Required is greater advocacy by the disabled community focused on improving the design and implementation of public policy to challenge disability attitudes in favor of a meaningful integration of this community in mainstream society.*

## Resumen

*Este documento estudia la evolución de la política en discapacidad en Colombia desde el año 1980 hasta el año 2002 basándose en leyes y regulaciones nacionales. El estudio evalúa la legislación a través del Marco Comparativo de la Política de Discapacidad propuesto por Silverstein (2000) para determinar si las leyes colombianas promueven y aplican una política nacional integrada en favor de las personas con discapacidades. El documento también considera el grado en el cual las políticas y los programas generales y específicos de discapacidad en Colombia reflejan el nuevo paradigma de discapacidad y las metas de la política en discapacidad (igualdad en oportunidades, participación completa, vida independiente y autosuficiencia económica). La legislación en Colombia satisface solamente algunas de las metas de la política de discapacidad. La mayoría de estos estatutos reconocen únicamente los derechos civiles para la gente discapacitada, pero no especifican las acciones y los mecanismos necesarios para poner en práctica estos derechos. Se requiere una mayor participación de la comunidad discapacitada en la defensa de sus derechos para mejorar el diseño y la implementación de una política social adecuada, así como para desafiar las actitudes frente al fenómeno de la discapacidad en favor de una integración significativa de esta comunidad en la sociedad en general.*

*Keywords: Disability policy, Legislation, New paradigm of disability, Colombian social policy.*

*Palabras claves: Política en discapacidad, Discapacidad, Legislación, Nuevo paradigma de discapacidad, Política social colombiana.*

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## I. Introduction

This paper analyzes laws and regulations at a national level to determine the evolution of disability legislation in Colombia based on the *Comparative Disability Policy Framework* proposed by Silverstein (2000). Using this benchmark, I evaluated whether Colombian laws promote and apply an integrated national policy to benefit people with disabilities. I also studied the extent to which general and disability-specific policies and programs in Colombia reflect the "new paradigm" of disability and comply with the goals of disability policy mentioned below.

The historical understanding of disability policy identifies barriers, strengths and inadequacies necessary to improve the situation of people with disabilities in any country. As Silverstein (2000) suggests, the evaluation of disability policy requires a framework to analyze values, principles, and goals destined to make disability policy meaningful in opportunities for everybody. The purpose of this study is to analyze and evaluate the disability policy in Colombia through the framework developed by Silverstein (2000). This study classifies national legislation in disability since the 1980s in order to evaluate whether this policy aligns with the *new paradigm* of disability and the goals of disability policy: equality in opportunity, full participation, independent living, and economic self-sufficiency.

In Colombia, disability has been primarily approached from a rehabilitation standpoint (Fernández, 2000). The majority of the few existing national programs and policies create rehabilitation services that endorse the notion of disability under the *old paradigm* in which people with disabilities are seen as "defective" and in need of "fixing" (Silverstein, 2000). The provision of "ugly laws" also reflects the widespread consensus on the old paradigm (Schweik, 2002).<sup>3</sup> In line with the previous traditional concept of disability, the Colombian government has tried to predict the size and nature of disability as part of the Global "Burden" of Disease Project<sup>4</sup> (The Global Burden of Disease: A Comprehensive Assessment of Mortality and Disability from Diseases, Injuries and Risk Factors in 1990 and Projected to 2020, 1996) commissioned by the World Health Organization (WHO) and the World Bank, localizing disability as a health condition in need of medical treatment (Fernández, 2000).<sup>4</sup>

Under the new paradigm, disability is considered as a natural and normal part of the human experience that in no way diminishes a person's *rights* for a full participation in society. The new paradigm, Silverstein (2000) argues, should be the core concept of disability policy. For that reason it is essential to identify to what extent this new perspective of disability is reflected in the Colombian public policy in order to recognize the impact of disability laws in the national agendas on health, education and social justice<sup>5</sup>.

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<sup>3</sup> In general, these laws authorize the exclusion of people with disabilities from public education; force them into institutionalization and sterilization, among other things.

<sup>4</sup> The Global Burden of Disease considers the indicator Disability-Adjusted Life Years (DALYS) to measure the nonfatal health outcomes of disease in terms of disability. Under the GDB perspective, disability belongs to selected diagnosed chronic conditions or injuries that create functional limitations.

Given the goals of disability policy under the new paradigm the present study classifies the Colombia legislation on disability according to five categories (Silverstein, 2000): i) Civil Rights statutes, ii) entitlement programs, iii) discretionary grant-in-aid programs, iv) regulatory statutes, and v) miscellaneous provisions. As expected, the classification is fundamental to the analysis and evaluation of current social policy on disability in Colombia.

Since Colombia experienced a major legal reform in 1991 when the national Constitution was reformed to recognize fundamental rights for the benefit of people with disabilities and other marginalized groups, this study seeks to answer the following research questions: i) what was the legal context of disability from 1980 to 1991?, ii) did the Colombian legislation over the last two decades comply with the goals of a disability policy directed toward the new paradigm? iii) in current legislation on disability, what goals of disability policy from the Silverstein framework have not been addressed? What are their prospects in Colombia?

Several attempts have been made to list (and sometimes classify) the legislation that affects people with disabilities in Colombia (Olano, 2001; Fernández, 2000; Huertas and Perea, 1998). Unfortunately, the evaluation of social policies in disability cannot be based exclusively on the number of legal statutes available but on the adequacy of the existing laws with respect to a desirable benchmark or guideline. Silverstein (2000) provides such a benchmark based on the goals of

disability policy articulated in the American with Disabilities Act (ADA). Along this line, this paper, for the first time, analyzes and evaluates the disability policy of Colombia using this comparative framework. The rest of the paper proceeds as follows. Section II presents a review of the situation of people with disabilities in Colombia. Section III discussed the method used in the paper and section IV applies it to the Colombian case. Section V presents the analysis and section VI evaluates the goals of disability policy. Section VII discusses the changes in the language used to describe people with disabilities in the Colombian legislation and section VIII concludes.

## II. Perspectives on Policy Analysis in Colombia

Hoffman and Field (1995) recognize that developing countries, including Colombia, set their priorities in disability policy to control the infectious diseases that lead to disability, and to improve working conditions in order to reduce occupational hazards and disability generated by occupational injuries. Developing countries de-emphasize disability policy because they struggle to manage problems that are seen in need of more attention (Hoffman and Field, 1995). Developing nations have to deal with extended poverty, wars and civil disorders (as in the Colombian case), and it is difficult to initiate thoughtful innovations towards an integrated and adequate policy on disability.

This paper evaluates social policy on disability through legal statutes. Even though Olano

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<sup>5</sup> Silverstein (2000) also affirms that under the new paradigm, the goal of public policy is to determine how society can "fix" the environment to give the same opportunities for people with disabilities.

(2001), Fernández (2000), and Huertas and Perea (1998) describe legislation in Colombia regarding disability, their studies lack an evaluation of the adequacy of disability policy. For this reason, the present study extends previous analyses through the application of the *Comparative Disability Policy Framework* (Silverstein, 2000). Silverstein's (2000) framework allows an evaluation based not just on the number of legal statutes available, but also on the adequacy of the existing laws. The basis for comparison is established with respect to a desirable point of reference of what should be an *adequate* social policy on disability.

Even though Silverstein's framework was designed to analyze legislation on disability in the United States, it is applicable to other countries since it characterizes the goals of disability policy on the basis of the new paradigm. There is nothing country specific with the goals described by Silverstein (2000) although the mechanisms by which these goals are achieved vary by cultural, political and socioeconomic reasons.

The new paradigm represents the *state of the art* in the analysis of disability policy. Because Silverstein's (2000) framework evaluates whether disability-specific policy and programs reflect this new paradigm, it allows countries to determine their current state in disability policy, their weakness and achievements in this matter. Silverstein's (2000) framework also allows policy makers, people with disabilities, their families and advocates evaluate, develop and improve the design and implementation of public policy to ensure meaningful inclusion of individuals with disabilities in mainstream society.

Additional frameworks for an evaluation of Social Policy in disability are limited in their

scope. For example, the framework proposed by the United Nations (Standard Rules on the Equalization of Opportunities for Persons with Disabilities A/Res/48/96, 1993) restricts its analysis to the classification of laws and regulations under certain categories: i) Right to equality, ii) human dignity, iii) right to education, iv) right to health, v) right to employment, and vi) accessibility to recreation. This classification does not provide an adequate evaluation of the fundamental goals of disability-specific policy because the categories are not related to any specific goal. Besides, all the rights listed above concentrate on equality in opportunity and full participation and ignore the role of independent living and economic self-sufficiency.

Due to the chronological nature of the analysis, the paper employs a historical research methodology, i.e., Borg and Gall (1983) and Matejski (1986). The paper examines the years between 1980 and 2002 and presents the legal events within an interpretative framework. There are two broad milestones. First, after 1980, Colombia was encouraged by diverse international agreements to create its own national laws and programs to improve the situation of its disabled population.

After the 1991 Constitutional reform that framed the beginning of the enactment of a series of laws intended to people with disabilities as well as the improvement of an organizational structure in favor of disability in the country. I describe the development of disability legislation and how the evolution of laws and regulations in Colombia arose to provide better legal protection and participation for people with disabilities. Finally, I consider future disability policy issues in the country.

## A. Current Situation of Colombians with Disabilities

Unfortunately, there is a lack of reliable and systematic registries of disability in the Colombian population. Several studies have analyzed the situation of people with disabilities in Colombia: *Universidad Javeriana* (1995), *Ministerio de Salud* (1995a, 1996b), *Instituto del Seguro Social* (1999), and *Universidad del Valle* (2001). However, there is not a unified and reliable measure that estimates the number of people with physical, sensorial and mental disabilities. The studies designed to measure disability are, in general, not comparable because they often differ in their base population as well as in their method of analysis.

The National Statistics Department (DANE) made the first attempt to study disability in the 1993 National Census; however, the question had a very limited scope (i.e., Vejarano, 2000).<sup>6</sup> The National Census provided the following information for 1993: a disabled population of 593,546 and a total national population of 32,132,720 (Plan Nacional de Atención a las Personas con Discapacidad, 1999, 2002), which translates to 1.8 percent prevalence. In 1995 the *Universidad Javeriana* (1995) found a larger figure of 23.8 percent rate of disability in the population, while the National Attention Plan for People with Disabilities (1999) suggested an international figure of 12 percent of the general population.

The prevalence of disability is still under discussion. Nevertheless, throughout the 1990s di-

verse studies were made to describe quantitatively and qualitatively the situation of disability in selected territories of the country. Rodríguez (2001) reviewed nine of the studies available at that time. Although, they are not methodologically comparable, each one of them tries to analyze the geographic and socio-cultural perspectives of disability. Rodríguez (2001) estimated that total disability was greater in the urban areas in both prevalence and severity. The regions of the West and Center East of Colombia also had higher disability rates. The incidence of *permanent* disability in Colombia is 8 percent. Based on the 1993 Census, disability was mostly due to sensorial, physical and cognitive impairments. They represented 68 percent of all cases. Of that 68 percent, 39.5 percent was due to blindness, 28.5 to deafness, 20 percent to paralysis and loss of limbs, and 19 percent to cognitive disorders; 7 percent of the population reported with more than one disability.

The causes of disability in children are primarily perinatal, congenital or infectious conditions; and its proportion is very high: 12.5 percent in children aged 0 to 5 years. People older than 65 had a disability prevalence of 12.2 percent, the 3.8 percent for people between 45-64 years, and the 1.4 percent for the 15-44 group. People older than 60 years had mostly chronic conditions and young adults exhibit disability associated with injuries (Rodríguez, 2001). In terms of the impact of policy on people with disabilities, Rodríguez (2001) finds that there were several restrictions for the incorporation of people with

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<sup>6</sup> Following the organ/body approach proposed by the World Health Organization (WHO), the question of the Census seeks to detect the level of impairment in the population by: "Do you have any of the following limitations?" making reference to blindness, deafness muteness, mental retardation or impairment, paralysis or absence of upper limbs, paralysis or absence of lower limbs.

disabilities into the education and labor sectors and limited accessibility and social participation. A high percentage of people with disabilities were employed in the informal sector.

Disability has become a public health problem of increasing proportions due to the generalized state of violence. Colombia's national history since the wars of independence of the nineteenth century has been punctuated with periodic civil wars. In fact, for 1995, 29 percent of the Health Adjusted Life Years Lost to Disability (Ministerio de Salud, 1995a) were caused by trauma and violence. Violence is one of the major causes of mortality and disability incidence in Colombia. Mesa (2003) estimates that in 15 departments (regional political divisions) and 66 municipalities alone, 1,514 people have a disability as a result of the violence in the country.<sup>7</sup> In the last six years, the rate of murders in the country was 78.4 per 100,000 inhabitants and in the more violent zones this rate more than triples (Rozell, 2001).

Though the situation of people with disabilities in Colombia has evolved in a more positive way during the last decade, there is still a struggle between *opportunity* and the *rejection* of social integration.

## B. The Colombian Context for Social Policy before 1980

Little evidence is available for adequately describing the situation of people with disabilities

in Colombia before 1980, when the national government, in conjunction with all its public entities, committed to assume responsibility for the protection of the rights of the disabled population. Alvarez and Castro (1988) explore Colombian policy on disability before the Constitutional amendment of 1991. Among other aspects related to disability (education, transportation, rehabilitation, etc), these authors explored if the *subjective notion of right*, understood as the different privileges an individual has (e.g., the right of ownership, the right to be entitled to get financial credit), was given under the constitutional principle of *equality* to all members of the State. Specifically, they were interested in whether the civil concept of *person* also applied to people with disabilities. They analyzed if people with disabilities enjoyed the *subjective rights* available to other members of society. Subjective rights involved, they argued, a fundamental notion that invokes the same *opportunity* for the participation in public and private activities.

Alvarez and Castro (1988) found that some high-priority needs of the disabled community were absent in the legal system. These high-priority needs make reference to the recognition, protection and accomplishment of *innate subjective rights*.<sup>8</sup> The first aspect analyzed by Alvarez and Castro (1988) was the recognition of the juridical aspect of *person* for people with disabilities. Under the Colombian Civil Code (Article 73), a *person* is whoever is *able* to exert rights and obligations. Under such concept of *person*, people

<sup>7</sup> Mesa (2003) also gives an account of the situation of abandonment of landmine victims by the absence of opportunities of rehabilitation services and social integration.

<sup>8</sup> Those are understood as the different privileges an individual is given under the constitutional principle of equality to all members of the State (e.g., the right of ownership, the right to be entitled to get financial credit).

with disabilities were not regarded as persons, they were considered *second-class* citizens.

As second-class citizens, people with disabilities were denied the access to the judicial world. They were declared "incapable", although the Civil Rights Code made a clear distinction between the *absolutely incapable* and those who were incapable in a *relative way* (Alvarez and Castro, 1988). Table 1 shows the classification of people into the categories according to the Civil Rights Code.

Those declared *absolutely incapable* needed other people "properly authorized" to celebrate and fulfill unilateral judicial acts in their name. On the other hand, the *relatively incapable* had to be declared as such by a legal process initiated at their direct request. Such process ended with

a judicial sentence that declared such incapacity. As a benefit, they were authorized to get married and to recognize a son legally.

The Civil Law created an independent regime for these two groups of people with *restricted ability* (the *absolutely incapable* and the *relatively incapable*) by an *underlying deficiency* due to physical, organic or mental causes. They were the *lunatics*, the *deaf*, and those with defects and physical diseases. Besides the previous rules, these people (also called *minusválidos* by the Law) were legally limited to perform several juridical acts. For example, deaf people were denied the right to make a will of their possessions and people with mental disabilities were refused the right to have property. In summary, Colombian legislation prior to 1980 failed to recognize people with physical and mental disabilities as capable

**Table 1**

**DEFINITIONS AND RIGHTS OF "ABSOLUTELY" AND "RELATIVELY" INCAPABLES**

	<i>Absolutely Incapable</i>	<i>Relatively Incapable</i>
<b>Definition</b>	Article 1540 of the Civil Rights Code indicates: "They are absolutely incapable lunatics, adolescents and deaf, who cannot make themselves understand by writing. Their acts do not even produce natural obligations and they do not admit caution". (Alvarez and Castro, 1988, p.142).	Article 60 of the Decree 2820 of 1974 specifies: [...] "They are relatively incapable, the minor ones, the dissipators, and those people whose incapacity is no absolute and their acts can have some value in certain circumstances and under certain respect determined by the laws" (Alvarez and Castro, 1988, p.143).
<b>Justification for restriction of right</b>	According to the Law, the celebration of contracts, the juridical fulfillment of acts and the dynamic acquisition of rights must be made by people <i>properly</i> authorized to act in the name of the absolutely incapable.  The reasons for such restrictions are: insufficient chronological development, age, alterations of mental (Alvarez and Castro, 1988, p.142).	The Law supposes a greater development of these individuals, but not as sufficient as the years old individual who has demonstrated certain judgment in the handling of his/her juridical commitments (Alvarez and Castro, 1988, p.144).
<b>Example</b>	Lunatics, people with physical anomalies, the deaf, and those who cannot make themselves understand by writing.	People with less than 18 years of age and dissipators.

individuals with rights to participate in an equitable manner in society.

### C. Disability Policy after the 1991 Constitutional Reform

The years after 1991 have been fundamental to the development of international legal instruments and norms to protect the rights of people with disabilities and to look for their complete integration into society. As any other country, Colombia has been encouraged by these diverse international instruments to create its own national laws and programs in order to improve the situation of the disabled population.<sup>9</sup> The result of these international requirements has been the proliferation of a series of policies and legislation intended for people with disabilities. However, many of these legal mechanisms remain unimplemented, limiting full social integration of people with disabilities in Colombia. The main problem lies in the fact that society and government legislation still consider disability as a medical condition, and by that assumption it has been addressed mainly as a public health concern.

Ever since the 1980s, Colombia had a national disability policy. However, it was in 1991 when Colombia promulgated a new Constitution intended to recognize fundamental rights that benefit people with disabilities as well as other marginalized groups. The adoption of this new Constitution in 1991 demanded, among other things, a State policy to prevent disability and to provide

opportunities of participation and attention for this population in the areas of education, communication, health, well-being, work, recreation and sports, transportation, information, and socio-cultural development. As an additional mechanism, the new Constitution created the *tutela*, a legal instrument that allows citizens to enforce the law to prevent fundamental rights violations.<sup>10</sup>

This Constitutional reform frames the beginning of the creation of regulations and the organizational structure related to disability in Colombia. For this reason special emphasis is given to the laws and regulations enacted after the latest constitutional reform. Two studies by Olano (2001) and Fernández (2000) have documented the legal situation of disability in Colombia after 1991. Both reports overviewed Colombian legislation on disability within a national and international framework. Olano (2001) discusses the protection of people with disabilities in the context of Colombian norms focusing especially in the jurisprudence of the Colombian Constitutional Court. Fernández (2000) takes into account the influence of international and Human Rights norms in the Colombian Legislation.

Even though Olano (2001) and Fernández (2000) provide a characterization of Colombian legislation, their objective is purely descriptive. They do not attempt to evaluate disability policy or to determine the adequacy of the Law under the new paradigm. In that sense, the present study complements and extends the previous analyses of disability policy in Colombia.

<sup>9</sup> Appendix A presents the diverse international norms that have had impact in the formulation of laws and programs in Colombia.

<sup>10</sup> This is equivalent to the role of the Attorney General Office in each State in the United States.



### III. The Comparative Disability Policy Framework by Robert Silverstein

To classify Colombian legislation in disability, the paper applies Silverstein (2000). Using this legal framework, the paper identified the laws that affect people with disabilities in Colombia. The analysis included disability policy regulations, as well as legislative and regulatory history. According to Silverstein (2000), laws affecting people with disabilities can be arranged in the following five categories:

#### A. Civil Rights statutes

These include national civil rights statutes that prohibit covered entities (such as state or local governments, and business) from discriminating against individuals on the basis of or by reason of disability. These laws are *permanent* in nature; they do not expire on a certain date (Silverstein, 2000). The Americans with Disabilities Act (ADA) is an example of this type of law.

#### B. Entitlement programs

They are "open-ended" entitlement programs to guarantee eligible individuals a specified level of benefits. Some examples of this category of

laws are the Social Security Insurance (SSDI) Program, and the Vocational Rehabilitation Program.

#### C. Discretionary grant-in-aid programs

They provide supplementary federal financial assistance to support particular activities carried out by other entities, such as state and local public agencies and private agencies. There are two types of discretionary grant-in aid programs: *formula programs* and *competitive grant programs*. *Formula programs* support ongoing activities allocating resources based on a given formula.<sup>11</sup> *Competitive grant programs* involve awards based on competition, rather than on a formula.<sup>12</sup>

#### D. Regulatory statutes

They include regulatory legislation that provides minimum protection for a class of people including, but not limited to, people with disabilities.<sup>13</sup>

#### E. Miscellaneous provisions

They include appropriations bills, tax legislation, and loans that provide funding for various programs that enhance opportunities and provide incentives for covered entities to comply with the existing responsibilities.<sup>14</sup>

<sup>11</sup> An example of a formula grant program regarding public education is Part B of the Individuals with Disabilities Education Act (IDEA). This program provides financial assistance to state and local educational agencies to meet their constitutional responsibilities for free and appropriate public education to children with disabilities.

<sup>12</sup> The National Institute on Disability and Rehabilitation Research (NIDRR) provides funds for research, demonstration projects, and training and related activities with respect to individuals with disabilities. The Institute was established under Title II of the Rehabilitation Act of 1973.

<sup>13</sup> The National Voter Registration Act of 1993 requires states to provide enhanced voter registration services at locations where driver 's licenses, public assistance, and state disability related services are provided.

<sup>14</sup> An example of miscellaneous provisions are the Disabled Access Tax Credit, which provides tax credits to small business for expenses incurred in providing reasonable accommodations to employees with disabilities in order to comply with the ADA.

Some laws *overlap* into more than one category. A number of laws are both civil right statutes and discretionary grant-in-aid programs. For example, under Part B of the Individuals with Disabilities Education Act (IDEA), children with disabilities are entitled to a free adequate public education consistent with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. It is in consequence a civil right statute. In addition, Part B of IDEA is also a grant-in-aid program providing financial assistance to States.

#### IV. The Comparative Disability Policy Framework Applied to Colombia

The present section applies Silverstein's (2000) framework to the Colombian legislation on disability. Appendix B provides a detailed description of the Laws and regulations studied in each category not mentioned in the text.

##### A. Civil Rights statutes

The national Constitution of Colombia, reformed in 1991, guarantees the right of an equal treatment and protection for the whole population.<sup>15</sup> The Constitution also assures equal rights to education, health, and employment opportunities for all its citizens. Since 1970, when the rights of people with disabilities were articulated with the action plans defined by the United Nations, the national government, in conjunction

with all its public entities, was committed to assume responsibility for the protection of the rights of this population.

The 1980s ended with a cessation of the governmental, institutional and local efforts to formulate disability policy because the administrative acts were neither applied nor regulated (Fernández, 2000). Perhaps the crisis in the country (characterized by weakened state institutions, loss of effective state control over vast, though remote, areas of the country, and intense violence), focused government efforts to confront the country's violence and polarization and delayed the advance on disability policy development.

The decade of the 1990s was fundamental for the development of several civil rights statutes for people with disabilities in Colombia. The 1990s began with the passage of Law 10, which in its Article 4 included the process of rehabilitation within the National Health System.<sup>16</sup> In 1993, the government enacted Law 100, which is the statute of *the Social Security* in Colombia. Under that law, all disabled people with limited economic resources will be beneficiaries of the subsidized regime of Social Security (Article 157). Chapter III of this law creates the *General System of Professional Hazards*. It defines the terms for the qualification and payment of integral disability pensions. A year later, the Decree 1295 of 1994 was passed to organize and determine the management of this system.<sup>17</sup>

<sup>15</sup> Articles 1 and 13 proclaim Colombia as a social State of right founded on the respect of the human dignity. Under this Constitution all people will enjoy rights, liberties and opportunities without discrimination. Article 47 declares that the State will develop a policy of prevention, rehabilitation and social integration for the physical, sensorial and mental diminished ones.

<sup>16</sup> Law 10 of 1990 guarantees the benefit of health services as a public matter in charge of the State.

The biggest achievement during the 1990s was the passage of Law 361 of the 7 of February of 1997 or the Clopatofsky's Law. This regulation establishes the mechanisms for the social integration of people with disabilities (5 Titles, 73 Articles). The law's principles are based on Articles 13, 47, 54 and 68 of the National Constitution. These principles recognize the personal accomplishments, the social integration of people with disabilities, and treatment and protection for people with severe and profound disabilities. In 1997, the government enacted Law 397, also known as the Culture law. In its Article 22, states that through the Ministry of Culture and regional entities, the government will take measures to eliminate architectural barriers that limit the access of physically disabled people, children and seniors to public spaces that host cultural activities.

The most recent civil rights statute formulated regarding people with disabilities was Law 762 of 2002. This law approves the regulations established in the "Inter-American Convention for the Elimination of all Discrimination Barriers against People with Disabilities" subscribed in the city of Guatemala, Guatemala, on June 7<sup>th</sup> of 1999. This law reaffirms that people with disabilities have fundamental human rights and liberties, and that these rights, including protections against disability discrimination, emerge

from the dignity and the equality that are inherent to all human beings.

## B. Entitlement programs

In 1981, the Decree 2358 enacted the creation of the *National System of Rehabilitation*.<sup>18</sup> At that time, this system did not manage to develop the objectives for which it was created, although it identified weakness in rehabilitation services for people with disabilities (Fernández, 2000).

In order to compensate for the implementation failure of the National System of Rehabilitation in 1981, President Gaviria enacted the Decree 2164 of 1992 to create the *Division of Rehabilitation Services* inside the Ministry of Health. Among its functions, the Division of Rehabilitation Services seeks to promote, organize and develop the National System of Rehabilitation. By the previous Decree 2164, the government delegated the disability policy into an existing establishment and avoided, by this way, the creation of new independent organizations that would create a greater budget pressure for their operation, probably the reason of its previous failure.

Along this line, in 1993 the government enacted Law 60 that defines competence and resources for the attention in health.<sup>19</sup> Specifically, Article

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<sup>17</sup> The General System of Professional Hazards (Decree 1295 of 1994). Article 5 defines physical and vocational rehabilitation as benefits for qualified disabled workers. Article 46 defines the disability as a state that surpasses the fifty percent of the labor incapacity.

<sup>18</sup> The National System of Rehabilitation was defined as the group of public and private entities coordinated to offer services of prevention of psychosocial and biological risks that produce disability.

<sup>19</sup> This law develops Articles 151 and 288 of the Political Constitution in which the distribution of competitions in charge of the Nation and the territorial organizations is defined. It also develops articles 356 and 35, which establish the fiscal budget, and the participation of the municipalities in the Nation's income.

21 establishes the funding for programs for people with physical or mental *deficiencies* or *alterations*. The funding would cover any of the following modalities: attention, endowment, and maintenance of physical settings. In addition, the law also covers the funding for prosthesis and orthosis, and other necessary resources (assets) that permit the rehabilitation and integration of this population.

### C. Discretionary grant-in-aid programs

I classified the Colombian Statutes across the two categories of discretionary grant-in aid programs proposed by Silverstein (2000). Among the *formula programs* the Decree 730 of 1995 created the *National Consultative Committee on Disability* assigned to the Ministry of Health.<sup>20</sup> This Committee would function like a consultative organization for the Vice-presidency, in matters related to disability in the social and economic arenas. In 2000, the conformation and functions of the Committee members was amended by the Decree 276.

In the second category of the Discriminatory Grant-in-aid Programs, *Competitive grants*, I placed the National Plan for the Attention of People with Disabilities (PNAPD) that finds political support on law 361 of 1997 (Civil Right Statute). The plan is evaluated once every 4-year presidential period. The Plan develops eight cross-sectional strategic lines that correspond to: infor-

mation systems; planning, services supply and technological development; technical attendance; communication and culture; technical cooperation; research; regulation and legal protection; and evaluation and follow-up.<sup>21</sup>

One of the responsibilities of the national administration in the PNAPD is to *finance* and / or to develop studies and research, statistics and indicators, and to facilitate the formation of professionals who, from different areas, promote the social integration of people with disabilities. The final product of the initial phase of the PNAPD during the presidency of Andrés Pastrana (1999-2002) was the development of the document *Orientaciones para la Construcción de una Política Pública para la Discapacidad* (Guidelines for the Construction of a Public Policy on Disability). This document will be the basic reference to create a national policy, and to promote the constitutional principles of: justice, participation and decentralization for people with disabilities and their families.

### D. Regulatory statutes

In 1983 the government passed the Resolution 08321 of the Health Ministry in relation to the protection of the *deaf population* and the conservation of hearing, health, and well-being of people exposed to the emission of high levels of noise. In 1985 the Ministry of Health approved Resolution 14861, which established the general

<sup>20</sup> The Consultative Committee on Disability, as an advisor, will attempt the establishment of a culture based on the respect to human dignity and the improvement on the quality of life of the disabled population.

<sup>21</sup> The development of the PNAPD has legal support on the National Constitution of 1991, under the principle of not-discrimination. It recognizes the obligations of the State towards people with disabilities to expand a policy of prevention, rehabilitation and social integration, (Articles 13, 47, 54 and 68).

norms that will serve as the base to the dispositions and regulations necessary to preserve, recover and improve the sanitary conditions of the population, specially the protection of the *handicapped (minusválidos)*.<sup>22</sup> This resolution establishes the norms to make public and private environments accessible to disabled individuals.

Although Resolution 14861 introduced the regulatory norms to create accessible environments to people with disabilities, it did not establish specific requirements for new constructions or for the elimination of the physical barriers in public spaces. Two years later, Law 12 of 1987 established these regulations.

### E. Miscellaneous provisions

Article 24 of Law 361 of 1997 defines the benefits to particular employers that hire people with disabilities.<sup>23</sup> Article 31 of the same law specifies the taxable benefits to employers who hire people with disabilities, and Article 34 guarantees subsidized loans from the Government to companies that produce goods or services for disabled individuals, as long as at least eighty percent of their employees have a disability.

Finally, Law 582 of 2000 (which reforms Law 181 of 1995 and Decree 1228 of 1995) authorizes in its Article 5, the Colombian government to carry out all the budgetary actions (credits and

loans) necessary so that the Colombian Paralympic Committee can fulfill all the functions and objectives indicated by the Law.

## V. Analysis of the Disability Policy Framework in Colombia

Table 2 summarizes my classification of the Colombian legislation on Disability according to the five categories proposed by Silverstein (2000). Currently, Colombia has 37 legal statutes affecting people with disabilities. The majority (15) are in the category of Civil rights, followed by seven laws and Decrees in the category of Entitlement programs, seven in Regulatory Statutes and six in Discretionary grant-in-aid programs. Finally, there are two laws in the category of miscellaneous provisions.

As the table shows, prior to 1991, most regulations are regulatory statutes. Since those regulations only include people with disabilities indirectly, their predominance indicates the absence of an integrated social policy in disability in Colombia. These regulations were intended for specific groups such as minors and people exposed to high levels of noise or under poor sanitary conditions and covered people with disabilities only as an indirect extension.

Equally important, only one regulation discusses the possibility of economic support in the form of entitlement programs with no discre-

<sup>22</sup> This resolution in its Article 8 orders (for the first time) the use of the International Symbol of Access, The symbol was mandatory to be used in all constructions whose facilities and services can be accessible to any person without any restrictions. Article 15, stipulates the construction of accessible ramp on sidewalks.

<sup>23</sup> Particular employers who hire people with disabilities will have some benefits such as: to be consider in equal conditions on the application, awarding, and celebration of business contracts whether private or public, if they have at least ten percent of its employees with disabilities.

**Table 2**  
**SUMMARY OF COLOMBIAN LEGISLATION ON DISABILITY**

Type of Law	Pre Constitution 1980-1990	Post Constitution 1991-2002
Civil Rights statutes	<ul style="list-style-type: none"> <li>- Law 12 of 1987</li> <li>- Decree 2177 of 1989</li> <li>- Law 10 of 1990</li> </ul>	<ul style="list-style-type: none"> <li>- National Constitution of 1991</li> <li>- Law 100 of 1993</li> <li>- Law 105 of 1993</li> <li>- Decree 2381 of 1993</li> <li>- Decree 1295 of 1994</li> <li>- Law 115 of 1994</li> <li>- Law 181 of 1995</li> <li>- Decree 2082 of 1996</li> <li>- Law 335 of 1996</li> <li>- Law 361 of 1997</li> <li>- Law 397 of 1997</li> <li>- Law 762 of 2002</li> </ul>
Entitlement programs	<ul style="list-style-type: none"> <li>- Decree 2358 of 1981</li> </ul>	<ul style="list-style-type: none"> <li>- Decree 2164 of 1992</li> <li>- Law 60 of 1993</li> <li>- Law 100 of 1993 (Articles 156, 157, and 257)</li> <li>- Decree 1346 of 1994</li> <li>- Decree 348 of 2000</li> <li>- Decree 524 of 2000</li> </ul>
Discretionary grant-in-aid programs Formula programs		<ul style="list-style-type: none"> <li>- Decree 730 of 1995</li> <li>- Law 324 of 1996</li> <li>- Decree 2080 of 1996</li> <li>- Decree 1336 of 1997</li> <li>- Decree 276 of 2000</li> </ul>
Competitive grant programs		<ul style="list-style-type: none"> <li>- National Plan for Attention to People with Disabilities (PNAPD) (1999-2002)</li> </ul>
Regulatory statutes	<ul style="list-style-type: none"> <li>- Resolution 08321 of 1983</li> <li>- Resolution 14861 of 1985</li> <li>- Law 12 of 1987</li> <li>- Decree 2737 of 1989 (Title VII)</li> </ul>	<ul style="list-style-type: none"> <li>- Law 171 of 1994</li> <li>- Decree 2644 of 1994</li> <li>- Law 375 of 1997</li> </ul>
Miscellaneous provisions		<ul style="list-style-type: none"> <li>- Law 361 of 1997 (Articles 24, 31, and 34)</li> <li>- Law 582 of 2000</li> </ul>
Total	8	29

tionary grant-in-aid programs at all. The entitlement program (Decree 2358 of 1981) created the *National System of Rehabilitation*. As its name indicated, the system (reformed in 1992) addressed disability from a traditional rehabilitation standpoint.

The absence of support programs for people with disabilities seems to reflect the lack of private and public resources for marginalized groups. Since Civil Rights statutes usually do not compromise monetary resources but require actions of agencies already in place, it is not

surprising to find several Civil Rights statutes and almost no miscellaneous provisions prior to 1991.

In summary, between 1980 and 1991, Colombia passed eight laws in support of people with disabilities. It appears as if those regulations were not part of an integrated social policy in disability. Of the eight regulations, four of them were regulatory statutes; that is, they were not exclusive to disabled individuals and covered people with disabilities only indirectly. Policies covered Civil Rights with almost no appropriation of governmental resources for the implementation of disability policy. This seems to be the outcome of limited resources and an economic downturn experienced during the 1980s.

It appears that legislation in disability prior to 1991 was intended as a requirement to comply with international agreements.

For example, Decree 2177 of 1988 was enacted to comply with Agreement number 159 subscribed with the International Labour Organization as an isolated attempt to guarantee equal labor opportunities for people with disabilities. Since the Decree did not establish the mechanisms by which such goal was to be achieved, it was not implemented.

Table 3 also indicates an increase in the number of laws affecting people with disabilities for all types of laws. The 1991 Constitutional reform initiated the first attempt for an integrated policy in disability. The new Constitution proposed a disability policy based on prevention, rehabilitation and social integration (in that order). The Constitution extended Civil Rights to people with disabilities not considered in the past, such as no discrimination based on disability, equality

in labor opportunities, access to education and access to public spaces. The Constitution recognized people with disabilities as an active part of the State and assumed responsibility for their protection and legal treatment.

After 1991 legislation emerged in support of people with disabilities in the areas recognized by the Constitution: access to public spaces; employment; no discrimination in education, health, transportation and recreation (especially culture and communication). In almost all the previously cited legislation however, the Law recognized the rights of people with disabilities but left unspecified the mechanisms by which those regulations were to be applied. Thus, although the Law granted Civil Rights, programs and plans were almost never executed. Moreover, the laws and decrees promulgated were intended for specific groups such as the deaf and the blind without considerations for groups with severe and profound disabilities.

After the new Constitution, entitlement programs granted economic and health benefits nonexistent before 1991 for those eligible with disabilities. However, most of those programs provide medical attention and no vocational rehabilitation services. Only insured workers disabled while on the job enjoy those services. Also, the regulations lacked employment incentives and left aside particularly vulnerable groups such as civil victims of the armed conflict. Rehabilitation services or pensions were not available for victims of violent acts such as landmine victims. Similarly, discretionary-grant-in-aid programs allocated resources from the State to support specific activities but only for the benefit of the deaf, the blind, and the physically disabled.

Table 3

## SUMMARY OF COLOMBIAN LEGISLATION ON DISABILITY

	Equality in Opportunity	Full	Independent participationLiving	Economic Self-Sufficiency
Pre Constitution	Resolution 08321 of 1983 Resolution 14861 of 1985 Law 12 of 1987 Decree 2177 of 1989 Decree 2737 of 1989 Law 10 of 1990			
Post Constitution	National Constitution of 1991 Decree 2164 of 1992 Law 60 of 1993 Law 100 of 1993 Law 104 of 1993 Law 105 of 1993 Decree 1295 of 1994 Law 115 of 1994 Decree 1346 of 1994 Law 171 of 1994 Law 181 of 1995 Law 324 of 1996 Decree 2080 of 1996. Decree 2082 of 1996 Law 335 of 1996 Law 361 of 1997 Law 375 of 1997 Law 397 of 1997 Decree 348 of 2000 Law 582 of 2000 Law 762 of 2002	PNAPD		Law 361 of 1997 (Articles 24, 31 and 34)

Note: The fact that regulations appear listed in one category does not mean that they fulfill all the requirements of the goal; they often address only one of the concepts mentioned by Silverstein (2000, p.1717).

In terms of Civil Rights and Discretionary grant-in-aid programs, perhaps the most recognizable achievements after the 1991 Constitution were the Clopatofsky's Law (Law 361 of 1997) and the PNAPD (National Plan for the Attention for People with Disabilities). For the first time, the Clopatofsky's Law established the *mechanisms* for the social integration of people with disabilities and their vocational rehabilitation. It mandated the creation of specific organisms such as the National Consultative Committee on Disa-

bility (discussed in footnote 22) to put into action the dispositions and programs regarding prevention, education, rehabilitation, labor integration, social welfare, and accessibility. This law not only acknowledged previously recognized rights, but it established the actions needed to put those rights in place.

The PNAPD supported in the Clopatofsky's Law mandated governmental intervention in matters of disability as in previous legislation, but was



distinctive in that it addressed regional and local concerns through the inclusion of disability issues in regional policies. In addition, the PNAPD solicited the opinions of people with disabilities and their families, and proposed quantitative and qualitative measures to better understand disability in Colombia. Over the last three years, the PNAPD constructed a proposal to be discussed by Congress in a hearing scheduled for August 2<sup>nd</sup>, 2003. The proposal will ultimately become the first Conpes (National Council of Economic and Social Planning) on disability policy and will outline the appropriation of economic resources to carry further the PNAPD.

## VI. Goals of Disability Policy Applied to the Colombian Legislation

As previously mentioned, to reflect the "new paradigm" of disability, Colombian legislation should be directed toward the four goals of disability policy: equality of opportunity, full participation (empowerment), independent living, and economic self-sufficiency (Silverstein, 2000). I next consider those goals in the legal statutes in Table 3.

### A. Equality in opportunity

For equality in opportunity, according to Silverstein (2000, p.1717), policies have to reinforce the concepts of "individualization and interdisciplinary assessment; genuine, effective, and meaningful opportunity (accommodations, auxiliary aids and program accessibility); genuine, effective, and meaningful treatment (modifications of policies and procedures); and treatment in the most integrated setting appropriate."

Colombian legislation fails to properly define a *qualified* individual with a disability. All le-

gal statutes specify regulations in terms of broad and nonspecific persons with a disability without a clear definition of eligibility. This is a significant barrier for equality in opportunities. Only Decree 1295 of 1994 defines disability as a condition of labor incapacity that surpasses fifty percent, a definition inapplicable to other disabilities and that limit the access of other individuals to benefit from the programs.

Before additional regulations are put forward, the Law must specify clear eligibility criteria to allow any person with a disability to enjoy the benefits of programs in education, employment, welfare, and health among others. Even though the Law must be precise, the criteria should allow enough flexibility to accommodate individuality.

In order to provide a genuine, effective and meaningful opportunity, policy has to recognize the importance of *accommodations* for people with disabilities. Statutes such as: Law 12 of 1987, Law 115 of 1994, Law 105 of 1995, Law 361 of 1997, among others, state what services people with disabilities should have access to. However, those laws only state the rights but not the mechanisms to guarantee their execution. Law 397 of 1997 states, for example that the government should take *measures* to eliminate architectural barriers that limit the access of *physically* disabled people to spaces that host cultural activities. Still, the Law no specifies those measures and even if they were, since they only cover *physical* barriers, they exclude particular groups such as the deaf. Only Decree 1295 of 1994, which considers accommodations in the workplace, provides a more precise definition of the needed accommodations. In 2002 Congress considered the possibility of accessible accommodations in public transportation for the city of Bogotá (Astorga, 2002, 1).

In summary, the Colombian legislation lacks of a clear definition of disability, leaves unspecified the mechanism responsible for the execution of the laws and ignores the importance of fundamental accommodations to grant equality in opportunities.

## **B. Full participation (empowering people with disabilities and families)**

The second goal of disability policy can be achieved if people with disabilities and their families fully participate in the decisions that affect them at the *individual* level. For example "when and where to receive services and support, which services to receive, by whom services should be provided" (Silverstein, 2000 p.1724). In addition they should be able to participate at the *systems* level. That is, "citizen participation in the design, implementation, and evaluation of programs and policies" (Silverstein, 2000 p.1724).

Unfortunately, since only few services are available for people with disabilities, laws in Colombia do not consider active participation in the decision-making process at the *individual* level. For example, vocational rehabilitation services are available only for insured workers (Decree 1295 of 1994), so most people with disabilities have no options at all in this regard. In the area of education, parents often set back as advocates of their children with disabilities because families have no alternative other than segregated schools for "special" children. This occurs despite the provisions of Law 115 of 1994 that established no discrimination for *any* educational level, or *any* educational service whether in a public or a private organization for children with disabilities. Several reasons contribute to the rejection of children with disabilities in public

and private schools include the lack of accessibility, accommodations, trained teachers and personnel to assist children with developmental, cognitive, behavioral, and physical disabilities.

In the health service area, only people with private health insurance have the option to choose their service providers but their participation in the intensity and type of services provided is limited. People with disabilities affiliated with the Subsidized Regime of Health (Sisben), endorsed by Law 100 of 1993, do not have the opportunity to exercise control over the type and intensity of services and other assistance they receive, if they receive any assistance at all.

Nevertheless, at the *systems* level, the Colombian government tries to promote the participation of people with disabilities in the development of a new social policy on disability through the PNAPD. The new policy recognizes disability as the result of different *social* factors and their principal objectives are the maximization of *integration* and *participation* of people with disabilities in every aspect of their life.

In summary, the Colombian legislation needs to establish the mechanisms by which people with disabilities should be empowered to influence and to have an opinion in the services and supports they receive (individual level). However, the PNAPD is offering a space in which people with disabilities can actively participate to create a new policy on disability.

## **C. Independent living**

The objective of independent living according to Silverstein (2000, p.1727), is "enabling the individual to live in the community and participate

in community activities." Independent individuals require training, personal assistance services and support, and cash assistance. None of them are specified or even mentioned in Colombian Law as a universal principle for people with disabilities. As usual (see footnote 15), only insured workers have the option of cash assistance due to permanent incapacity caused by job injuries or professional illness. Disability policy in Colombia does not consider people with disabilities as capable of living independently and productively.

Some private and non-profit entities in Colombia conduct efforts to train and assist people with disabilities in their daily life activities or on a job. For example, the Integral Center of Rehabilitation of Colombia (*Centro Integral de Rehabilitación de Colombia*, CIREC) offers technical and psychological assistance to people with disabilities. The National Institute for the Blind (INCI) and the National Institute for the Deaf (INSOR) offer training in the performance of daily life activities for young people and adults with visual or auditory disabilities respectively. However, according to the technical director of the National Federation of Deaf people of Colombia (*Federación Nacional de Sordos de Colombia*, Fenascol), Alejandra Leon, "after finishing their studies in special education, deaf individuals are sent to workshops to learn how to make brooms, weld and carpentry, even if they do not want to do so" (Latorre, 2002, 3).

Overall, Colombian legislation does not consider people with disabilities as independent productive individuals. At most, laws endorse medical rehabilitation services (Decree 2737 of 1989, Law 10 of 1990, Decree 2164 of 1992, Law

60 of 1993), and disregard vocational rehabilitation and training, personal assistance services, or cash assistance necessities for individuals with disabilities to live and participate in the community.

#### D. Economic self-sufficiency

The fourth goal of disability policy is to promote economic self-sufficiency (economic security, stability, and productivity) of people with disabilities (Silverstein, 2000). According to Silverstein (2000), a national policy accomplishes this goal though "systems providing employment-related skills (education and training); cash assistance programs that include work incentive provisions; and a tax policy that provides incentives to employers to hire persons with disabilities, and deductions and credits for disability-related expenditures that enable a person with a disability to work" (Silverstein, 2000, p.1729).

In Colombia, only Law 361 of 1997 considers taxable benefits for employers who hire people with disabilities. This law guarantees subsidized loans from the Government to companies that produce goods or services for disabled individuals, as long as, at least, *eighty* percent of their employees have a disability. Other than that, no laws provide incentives for training programs for people with disabilities in employment-related skills, or cash assistance programs that include work incentive provisions.

Unquestionably, economic self-sufficiency is not a primary purpose of the Colombian legislation. There are only isolated efforts to prepare youth and adults with disabilities for *employment* in limited tasks.

## VII. Disability, Language and the Law

According to Snow (1991, 8), "when we misuse words, we reinforce the barriers created by negative and stereotypical attitudes [...]. Disability labels are simply sociopolitical terms that provide a passport to services. For too long, labels have been used to define the value and potential of people who are labeled". The preferred terminology in disability illustrates the respect and the dignity of the disabled community as a social group. As Snow (1991) argues, this terminology often describes a "people-first" language in which the individual is recognized as a person first, and then he / she is defined in terms of his / her characteristic: disability or functional limitation. For that reason, Charlton's (1998, p.67) claim appears unsurprising: "for the last two decades people with disabilities have waged a po-

litical, policy, legal, academic, and philosophical struggle to make disability-related language neutral and more responsive to the changing political and cultural world".

Language use in Colombian legislation has also shown an evolution in the legal terms describing disability. Table 4 shows the general vocabulary used to make reference to people with disabilities in the Colombian Legislation. In the 1980s terms such as: handicapped (*minusválido*), invalid (*inválido*), diminished (*disminuido*), deficient (*deficiente*), among others, were the most frequent way to address individuals with disabilities in the laws. All those terms denote an agreement of the Colombian legislation with the idea of people with disabilities as "less human" and "innately inferior" in Charlton's (1998, p.66) analysis.

**Table 4**  
VOCABULARY USED IN THE COLOMBIAN LEGISLATION

Legal Statute	Handicapped minusválido	Invalid inválido	Diminished disminuido	Deficient deficiente	Disabled discapacitado
- Resolution 14861 of 1985	Art. 30, 32, 50				
- Law 181 of 1985					Art. 42, 89
- Law 12 of 1987			Art. 1		
- Decree 2177 of 1989		Art. 3, 24		Art. 222, 223, 224, 225, 226,	
- Decree 2737 of 1989				228, 229, 230, 231	
- National Constitution of 1991	Art. 54		Art. 47		
- Law 100 of 1993					Art. 26
- Law 105 of 1993					Art. 3
- Decree 2381 of 1993			Introduction		Introduction
- Decree 730 of 1995					Art. 4, 5
- Law 324 of 1996					Art. 1
- Decree 2080 of 1996					Art. 1, 2, 3, 4, 6
- Decree 2082 of 1996					Art. 13
- Law 361 of 1997					Art. 7, 24, 31
- Law 397 of 1997					Art. 22
- Decree 276 of 2000					Art. 1
- Decree 348 of 2000					Art. 3
- Decree 524 of 2000					Art. 1
- Law 582 of 2000					Art. 3

Despite the legal changes in the social policy on disability, only in the late 1990s Colombian legislation began the use of the term "disabled" (*discapacitados*) to address people with disabilities.<sup>24</sup> Language change has proven to be more difficult than changes in legal statutes, perhaps due to the persistence of stereotypes and myths. Even after twelve years of the enactment of the Constitution, the Civil Code still applies terms that identify people with disabilities with the notions of absolutely and relatively incapable among others considered in Table 2. Just recently, due to a *tutela* (lawsuit), the Constitutional Court found unconstitutional on discriminatory grounds, the use of terms such as lunatics and idiots for people with mental disabilities (Vargas, 2003).

## VIII. Conclusions

This paper evaluated the social policy on disability in Colombia through an analysis of national legislation that affects people with disabilities since 1980 and classification of laws into the Silverstein's (2000) framework for policy evaluation. This classification served to evaluate the adequacy of Colombian legislation under the goals of the new paradigm of disability. Although, there is a wide variety of legislation on behalf of people with disabilities, this paper shows that social policy in Colombia only partially fulfills the goals of disability policy. In particular, it shows that there is currently no legislation intended for the independent living of people with disabilities. The analysis also shows that most legislation focuses on civil rights that intend to

give equality in opportunity with few attempts for economic self-sufficiency and full participation.

Judging by the amount of regulations in Colombia, social policy on disability could be considered ample and adequate. However, the use of a framework to evaluate social policy according to its legislative intention indicates that the number of laws is by no means an accurate indicator of the adequacy of disability policy. In Colombia, most statutes only recognize civil rights for people with disabilities but fail to specify the actions and mechanisms needed to put those rights in practice. The absence of coordination between policymakers, people with disabilities, and public entities appears to be the main reason for such limitations in the Law. Limited economic resources and different priorities in public policy appear to be another factor in the absence of an integrated policy on disability.

The widespread passage of civil rights statutes suggests the role of limited economic resources. It is not surprising that the Colombian Law recognizes equality in opportunities and no discrimination (in general) for people with disabilities because civil rights often involve no action beyond the simple recognition of rights. In contrast, entitlement programs, discretionary grain-in-aid programs, and miscellaneous provisions utilize government resources.<sup>25</sup> In Colombia, it is the entitlement programs that are almost absent or specified only for certain groups of people with disabilities such as the deaf, the blind or insured workers with job-related disabilities.

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<sup>24</sup> Charlton (1998, p.67) disagrees with the term *discapacidad* (that he translates as less capable). However, when we study the roots of the word, "dis" means different, and "capacidad", means ability, which turns out to have the same meaning as disability in English. In Spanish, *capacidad* is a synonym of *habilidad*, ability in English.

In terms of the goals of disability policy, most regulations partially cover equality in opportunity, with secondary consideration for full participation and economic self-sufficiency, and no regulations for independent living. In *equality in opportunity*, as mentioned before, Colombian legislation needs to indicate who should be considered a person with a disability. This legal definition would provide clear criteria for eligibility to programs and benefits. Regulation intended for equality in opportunities should also reinforce the concepts of individualization and stress the need for reasonable accommodations outside labor settings. In this regard, the Colombian government has been building a new policy in disability since 2000. This new disability policy seeks to determine the political principles for State involvement in the promotion of a coordinated intervention in disability. The main difference with the current policy is the effort to assure "consistency" between State organizations, civil society and national institutions on policy promoting social integration of Colombians with disabilities.

Regarding *full participation*, legislation on disability fails to address issues associated with fully participating in the decisions that affect individuals and systems. However, it is important to mention that, through the PNAPD, the government has tried to open a new space in which the disabled community can actively participate in the design, implementation, and evaluation of programs and policies. Still, the Colombian

government needs to extend the scope of rehabilitation services, improve the plans of benefits in social security, and raise the awareness about the entities that provide health services (EPS).

To promote *economic self-sufficiency*, legislation needs to implement programs that provide employment-related training (vocational rehabilitation) and education according to people's preferences and skills. Regulation intended as labor market incentives for people with disabilities must consider wider possibilities beyond equality in opportunity (e.g., creation of support systems, cash assistance). Currently, the only tax incentive requires the employment of people with disabilities working on products in favor of people with disabilities in enterprises with more than 80 percent of employees with a disability.

Finally, Colombian legislation does not consider people with disabilities as *independent productive individuals*; at this time, there are no attempts to provide training or support to help people with disabilities become an active part of society. Nevertheless, the new policy of the PNAPD seeks improvement of the living and employment conditions of people with disabilities by the creation of social networks. Through regional programs, the government seeks to promote prevention, health services, employment, accessibility and social support networks with the purpose of obtaining a greater independence and autonomy of this population.

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<sup>25</sup> The lack of programs reflects in part the absence of economic resources. In 2003 the government allocated, through the Network for Social Solidarity (Red de Solidaridad Social), 0.3 percent of its budget to ensure the urgent necessities of the disabled population and to facilitate its participation in the social programs. In 2002, these programs received about three times the share in 2003 since appropriations corresponded to 0.9 percent of the budget for that year (Red de Solidaridad Social, 2003).

More than the absence of legal protection, the current challenges for people with disabilities involve the *use* of the laws. For that reason, it appears as if people with disabilities in Colombia mainly need to be *empowered* to enforce the rights they have already acquired. Also, the lack of continuity and coherence in the policy and the absence of a rural policy with concrete actions that include people with disabilities in those regions have to be addressed for a more adequate future social policy. Still, more research is needed in this area.

Overall, compared with the situation prior to the Constitutional reform of 1991, the condi-

tion of people with disabilities has improved somewhat. Yet the reality for Colombians with disabilities is presented by discrimination and lack of equal conditions in their participation in society. The situation is unfavorable and the condition of public marginality is evident. Required is greater advocacy by the disabled community focused on improving the design and implementation of public policy to challenge disability attitudes and develop public education campaigns to reframe and rename disability, to see disability differently than as a *personal tragedy*. Those actions will move Colombia away from the old into the new paradigm of disability.

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## Appendix A

### INTERNATIONAL INSTRUMENTS AND COLOMBIAN LAWS

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Several international norms have had an impact in the formulation of programs, laws, and policy on disability in Colombia. From the perspective of the human rights instruments, they are: the United Nations' *Universal Declaration of Human Rights* (United Nations, 1948), *The International Covenant on Economic, Social and Cultural Rights* (United Nations, 1966), *The International Covenant on Civil and Political Rights* (United Nations, 1966), and the *Declaration on Social Progress and Development* (United Nations, 1969).

The Organization of American States has passed a series of instruments, which have been helpful for the definition of a legal framework in disability in Colombia. They are: *The American Convention on Human Rights* (OAS, 1969), *The American Declaration of Rights and Duties of Man* (OAS, 1948). *The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (OAS, 1988).

Specifically related to disability, the United Nations Assembly unanimously adopted the *Standard Rules on the Equalization for Persons with Disabilities* (United Nations, 1994). These rules are not legally enforced internationally, but they provide basic international standards in disability policy for member states. The *Standard Rules* were the result of early pressure from international disability interest to promote greater participation of people with disabilities in society. The concern was initially expressed in the 1971 by the *Declaration of Rights of Mentally Retarded Persons* (United Nations, 1971), the 1975 *Declaration of the Rights of Disabled Persons* (United Nations, 1975), and in a more comprehensive statement in 1982 by the *World Programme of Action Concerning Disabled Persons* (United Nations, 1994), whose concepts should apply with the same scope and urgency to all countries, regardless of their level of development (Braddock and Parish, 2001).

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## Appendix B

### COLOMBIAN LEGISLATION ON DISABILITY

#### A. Civil Rights

The Civil Rights Statutes promulgated in Colombia during the 1980s were:

- **Law 12 of 1987.** This law established the requirements for new constructions and for the elimination of public barriers to make possible the access of people with disabilities.
- **Decree 2177 of 1989.** Develops Law 82 of 1988, approving the agreement No. 159 subscribed with the International Labour Organization on professional readjustment and employment of *invalid* people.<sup>1</sup>

Other Civil Rights Statutes formulated during the 1990s decade in favor of people with disabilities, were:

- **Law 104 of 1993.** Article 19 of this law guarantees the humanitarian attendance to the victims of terrorist attacks, understanding the indispensable aid to take care of requirements urgent and necessary to satisfy the constitutional rights of these people who have been *reduced* by the terrorist action.
- **Law 105 of 1993.** Establishes basic dispositions on transportation. Specifically, Article 3 defines the public transportation system as an industry that has to guarantee the mobilization of people by means of appropriate vehicles.
- **Decree 2381 of 1993.** Declares the 3<sup>rd</sup> of December as the national day of people with disabilities.<sup>2</sup>
- **Law 115 of 1994.** Establishes that nobody can be discriminated for reason of his/her *limitation* to accede to any education service whether in a public or private or-

ganization, and to any educational level. The **Decree 2082 of 1996** regulates how education must be provided to people with *limitations*, or with exceptional talents.

- **Law 181 of 1995.** Dictates the dispositions for the promotion of sports, recreation, the use of the free time, and creates the Physical Education and the National Sports Systems.<sup>3</sup>
- **Law 335 of 1996.** In its Article 12 dictates that commercial television and public broadcasts should provide closed-captioning or sign language to guarantee access to the deaf or people with hearing problems.

#### B. Entitlement Programs

Other examples of entitlement programs laws in Colombia are:

- **Art. 156, 157, and 257** of law 100 of 1993 (civil rights statute). Article 156 creates a subsidized regime of health for the poor population and the *vulnerable* ones. Article 157 prioritizes the medical attention for people with disabilities among the poor and vulnerable population. Finally, Article 257 defines economic aid for the population with physical limitations.
- **Decree 1346 of 1994** regulates the establishment, financing and operation of the *Evaluation Boards of Disability*<sup>4</sup>. Once an affiliated to the General System of Social Security is evaluated by an Evaluation Board of Disability, and it is determined that his/her disability is the *result* of a job accident or an occupational illness, he or she will have the right to a payment of economic benefits.
- **Decree 348 of 2000** establishes that the Program of Integral Attention (Subsidized Regime of Health, Sisben)

<sup>1</sup> Decree 2177 of 1988 mandates equal labor opportunities and rights for people with physical, mental or sensorial impairments, according to the Agreement number 159 subscribed with the International Labour Organization.

<sup>2</sup> The Commission of Human Rights of the United Nations in its Resolution no. 1993/29 of 5 of March 1993 appeals to the States members to observe December 3<sup>rd</sup> of each year as the International Day of People with Disabilities.

<sup>3</sup> Specifically Article 4 of Law 181 of 1995 legalizes the creation of special programs for the physical education, sports, and recreation of people with physical, mental, sensorial disabilities and seniors.

<sup>4</sup> The Evaluation Boards of Disability (Juntas de Calificación de Invalidez) are private entities created by the law. The Evaluation Boards of Disability, through the medical findings of job-injury, determine the origin and/or degree of a disability.

## Appendix B (Continuación)

### COLOMBIAN LEGISLATION ON DISABILITY

has to include all children of social strata 1,2, 3 plus children with disabilities pertaining to such levels and those in situation of social exclusion, high risk or abandonment.

- **Decree 524 of 2000.** This decree, which modifies Art. 31 and 32 of law 21 of 1982 establishes that all orphan children, and parents of a disabled person with a reduction of their physical condition superior to 60 percent, have the right to a payment of familiar subsidy from their Familiar Benefit Equalization Fund (*Caja de Compensación Familiar*).

#### C. Discretionary Gran-in-aid Programs

Other laws that allocate government resources on programs targeted to cover the needs of people with disabilities (formula programs) are:

- **Law 324 of 1996.** Establishes the norms about the deaf and hearing impaired population, and guarantees that the State will provide the *economic*, logistic and infrastructural means to assure that the deaf community has access to local and nationwide television channels to spread its programs, their culture, their interests, etc.
- **Decree 2080 of 1996.** Regulates the Paralympic Federation. Specifically, Article 6 establishes that the State will give economic resources (by contract with the Paralympic Federation) to foment sport activities for different disabilities.

- **Decree 1336 of 1997.** Approves the national Agreement number 960034 of December 12<sup>th</sup> 1996 that establishes the internal structure of the National Institute for the Blind, (INCI), and determines its functions and dependencies.

#### D. Regulatory Statutes

Other Colombian laws that provide minimum protection for a group of people, including people with disabilities are:

- **Decree 2737 of 1989.** Established the Code of the Minor. In its Title VII, it develops all the aspects related to the minor with physical, mental and sensorial disabilities, and creates the *National Committee for the Protection of the Deficient Minor*. It assigns functions and it defines the responsibilities on programs of protection, treatment, special education and rehabilitation for these minors.
- **Law 171 of 1994.** Approves the additional Protocol of the Agreements of Geneva, August 12<sup>th</sup> 1949, relative to the protection of the victims of armed conflicts without international character.
- **Decree 2644 of 1994.** Adopts the *Unique Chart for Compensation*<sup>5</sup> by loss of labor capacity, which was established in a range between the 5 and 49,99 percent.
- **Law 375 of 1997.** This law, also known as the Youth law, intends to establish the institutional frame and to orient policies, plans and programs as part of the State and the civil society for young people<sup>6</sup>.

<sup>5</sup> The Manual of Disability Evaluation (Manual Unico para la Calificación de la Invalidez) applies to all workers of the public and private sectors. Under this manual a disabled person is who by any cause or any origin (not caused intentionally), lost fifty percent or more of his/her labor capacity.

<sup>6</sup> Article 6 establishes that the State will give special and preferred treatment to young people who are in circumstances of weakness and manifest vulnerability. With such intention it will develop programs to create better living conditions for young Afro-Colombians, indigenous and for those who live in conditions of extreme poverty, and for whom are affected by disabilities.