O'NEILL INSTITUTE
GEORGETOWN LAW
CENTER FOR HEALTH & HUMAN RIGHTS

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1. Introduction

The Center for Health and Human Rights of the O'Neill Institute for National and Global Health Law at Georgetown University Law Center respectfully submits the following contribution to inform the OHCHR's thematic study on the twentieth anniversary of the adoption of the Convention on the Rights of Persons with Disabilities (CRPD) to be presented at the sixty-fourth session of the Human Rights Council.

The O'Neill Institute is a non-profit institution located at Georgetown University in Washington, D.C. Its mission is to conduct rigorous research to identify solutions to pressing national and international health concerns. The Center for Health and Human Rights (CHHR), one of the areas of work within the O'Neill Institute, works to improve health through academic research that focuses on the intersection of health and national and international human rights law. A key facet of our work involves engagement in domestic and international standard-setting processes to advance health, justice, and equity in all its dimensions through the strategic use of human rights legal frameworks.

Specifically, in this submission, we present concrete examples—including good practices, challenges, and lessons learned—from different countries that illustrate the implementation challenges and the impact of the development of human rights standards and norms under the CRPD over the past twenty years. In particular, we focus on the persistence of biases and stereotypes that affect persons with disabilities in health-care settings and their impact on the full realization of their rights to life (Article 10), health (Article 25), equality and non-discrimination (Article 5), equal recognition before the law and legal capacity (Article 12) and respect for home and the family (Article 23).

Our submission is structured as follows. First, we examine the persistence of stereotypes and biases that affect the rights to health and equality and non-discrimination of persons with disabilities. Second, as a case study, we focus on the allocation of critical care resources during the COVID-19 pandemic and provide concrete examples of how different countries addressed this issue, specifically affecting the rights of people with disabilities. Third, we examine the practice of sterilization of

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women and girls with disabilities as another example of how stereotypes and discriminatory assumptions can affect their rights to health, autonomy, and other fundamental rights.

2. The persistence of stereotypes and biases that impact the right to health of people with disabilities

Ableism and negative cultural and social preconceptions of people with disabilities consider disability as a misfortune necessarily associated with suffering and disadvantage, and as inherently diminishing the value of human life[1]. The health sector is not exempt, and literature has reported the existence of conscious and unconscious biases against people with disabilities among health professionals, based on notions of their quality of life and capacity for decision making[2]. These biases and stereotypes can affect their right to health in different aspects, including the dimensions of prevention, diagnosis, treatment, and autonomy. They can also significantly restrict their decision-making power, limit access to health services and undermine the quality of care they receive.

Disability-related stereotypes should also be understood as determinants of health, recognizing that they shape social norms, roles, and power relations that influence exposure to health risks, health-related behaviors, and access to healthcare services. In this regard, for example, the Committee on the Elimination of Racial Discrimination has recognized that racial discrimination constitutes both a distinct health risk and a structural determinant of health, as it "produces and exacerbates health inequities, leading to, or increasing the incidence of, preventable disease and death."[3] This is also applicable to other groups that historically have faced biases and stereotypes, including people with disabilities.

The following are some of the most common stereotypes affecting the right to health of people with disabilities:

- **Quality of life bias:** This stereotype is rooted in a notion that assumes persons with disabilities cannot have a good quality of life or live happy and fulfilling lives[4]. This is described in the literature

[1] Jackie Leach Scully, "*Disability, Disablism, and COVID-19 Pandemic Triage",* J Bioeth Inq. 2020; 17(4): 601–605, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7445721/

[2] See for examples: Elizabeth N. Chapman, Anna Kaatz, Molly Carnes, et al, "Physicians and Implicit Bias: How Doctors May Unwittingly Perpetuate Health Care Disparities", J Gen Intern Med. 2013 Nov; 28(11): 1504–1510. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3797360/ Tom Shakespeare, Lisa I. Iezzoni & Nora E. Groce, "Disability and the Training of Health Professionals", *The Lancet, 374(9704),*(noviembre, *2009): 1815–1816.* National Council on Disability, "*Medical Futility and Disability Bias"*, 29 (noviembre, 2019), [https://perma.cc/MY63-33FZ] P.A. Ubel et al., "Misimagining the unimaginable: The disability paradox and health care decision making," *Health Psychology* 24, no. 4s (julio, 2005): S57-62.

[3] CERD Committee, General recommendation No. 37 (2024) on equality and freedom from racial discrimination in the enjoyment of the right to health, CERD/C/GC/37.

[4] Ron Amundson, "Quality of Life, Disability, and Hedonic Psychology", *Journal for the Theory of Social Behavior* 40, (november, 2010)

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as the "disability paradox", as research shows people with disabilities report a good or high quality of life[5]. Biased assessments about the quality of life of people with disabilities have affected organ transplant practices, as it is assumed that having a disability will impact "the likelihood of transplant success"[6]. Moreover, as we will explain in the following section, medical care in contexts of medical emergencies or resource scarcity can be denied or deprioritized under notions of bad quality of life.

- **The fragility bias:** People with disabilities are often portrayed as extremely fragile. This notion conceives that they often suffer more or have more severe symptoms than non-disabled persons with the same presenting medical facts[7]. This stereotype fuels "clinical pessimism," leading physicians to withdraw or withhold care more quickly[8]. Some authors have pointed that this bias has impacted the concept of "futility" in medical decisions, as in many instances people with disabilities are "prematurely attempted to force palliative or hospice care", among other decisions[9].

This notion especially affects older people with cognitive disabilities such as Alzheimer's disease and other dementias. Research has shown that negative perceptions of older people with disabilities can exclude them from full and equal access to universal health care[10]. Moreover, medical treatments and interventions are often perceived as futile or unnecessary under the assumption that "nothing can be done" for their health[11].

- **They are non-compliant or unable to follow medical advice:** They are assumed to be incapable of understanding the course of treatment or properly following medical instructions. This stereotype leads to inappropriate or insufficient follow-up or cases of malpractice. Specifically, the belief that women with disabilities are "non-compliant" can result in lower-quality obstetric care, as they are often not provided with the full range of treatment options or the information needed

[5] Ubel PA, Loewenstein G, Schwarz N, Smith D. "Misimagining the unimaginable: the disability paradox and health care decision making". *Health Psychol.* 2005 Jul;24(4S):S57-62. doi: 10.1037/0278-6133.24.4.S57. Also see: Iezzoni LI, Rao SR, Ressalam J, BolcicJankovic D, Agaronnik ND, Donelan K, Lagu T, Campbell EG (2020). 'Physicians' Perceptions of People with Disability and their Health Care', Health Affairs. 40(2):297-306. Jackie Leach Scully , "Disability, Disablism, and COVID-19 Pandemic Triage",J Bioeth Inq. 2020 Aug 25;17(4):601–605. Albrecht GL and Devlieger PJ (1999). 'The disability paradox: high quality of life against all odds'. Social Science & Medicine, 48: 977-988.

[6] Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, "Report of the Special Rapporteur on the Rights of Persons with Disabilities, A/HRC/43/41, https://docs.un.org/en/A/HRC/43/41 para 34.

[7] Sultan Haque, O., et al., "COVID-19 Clinical Bias, Persons with Disabilities, and Human Rights", *Health and Human Rights Journal*, Volume 22, Num. 2 (2020).

[8] Jackie Leach Scully, "Disability, Disablism, and COVID-19 Pandemic Triage",J Bioeth Inq. 2020 Aug 25;17(4):601–605. Also see: Sultan Haque, O., et al., "COVID-19 Clinical Bias, Persons with Disabilities, and Human Rights", *Health and Human Rights Journal*, Volume 22, Num. 2 (2020).

[9] National Council on Disability, "Medical Futility and Disability Bias: Part of the Bioethics and Disability Series", 29 (November, 2019), https://perma.cc/MY63-33FZ.

[10] Special Rapporteur on the Rights of Persons with Disabilities, The situation of older persons with disabilities (2019) UN Doc. A/74/186.

[11] Special Rapporteur on the Rights of Persons with Disabilities, The situation of older persons with disabilities (2019) UN Doc. A/74/186. Also see: National Council on Disability, "Medical Futility and Disability Bias: Part of the Bioethics and Disability Series", 29 (November, 2019), https://perma.cc/MY63-33FZ.

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throughout pregnancy and in the event of complications[12]. It has been reported that people with intellectual and psychosocial disabilities are less likely to be considered "good candidates" for organ transplant as it is assumed they are not able to comply or follow a post-transplant care regime[13].

- **They are unreliable:** People with disabilities are often perceived as incapable of providing reliable information about their own health and symptoms. They may be viewed as untrustworthy, as exaggerating their experiences, or as lacking the cognitive capacity to articulate their needs. These assumptions can contribute to inadequate assessments and misdiagnosis. For example, health-care professionals may disregard or minimize the physical symptoms reported by people with psychosocial disabilities[14]. Such assumptions can result in the dismissal of people's experiences and testimony in health-care settings, constituting a form of "testimonial injustice"[15]. When patients are perceived as unreliable, health professionals may also seek to "double-check" information with family members or caregivers rather than relying on the patient's own account, potentially undermining confidentiality and disrupting the timing and course of care. In the case of people with psychosocial disabilities, physicians often assume that they are "less capable of engaging in shared decision-making," reinforcing paternalistic approaches to treatment and decision-making[16].

This bias can especially affect women with certain disabilities. Research has shown that older women with intellectual disabilities, particularly those with dementia or Alzheimer's disease, may experience hidden forms of violence, including sexual violence in health-care settings and nursing homes, in part because they are regarded as "poor witnesses" due to presumed memory or cognitive

[12] European Disability Forum (EDF), Position paper on "Violence against Women and Girls with Disabilities in the European Union" (2021).
[13] Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, "Report of the Special Rapporteur on the Rights of Persons with Disabilities, A/HRC/43/41, https://docs.un.org/en/A/HRC/43/41 para 34. Citing: See Katherine L. Cahn-Fuller and Brendan Parent, "Transplant eligibility for patients with affective and psychotic disorders: a review of practices and a call for justice", BMC Medical Ethics, vol. 18 (2017); Alexander N. Goel and others, "Heart transplantation in children with intellectual disability: an analysis of the UNOS database", Pediatric transplantation, vol. 21, No. 2 (March 2017).
[14] Hefer G, Henderson C, Howard LM, Murray J, Thornicroft G. Diagnostic overshadowing and other challenges involved in the diagnostic process of patients with mental illness who present in emergency departments with physical symptoms—a qualitative study. Plos One. 2014;9:e111682. doi: 10.1371/journal.pone.0111682. Citen in: Faissner M, Juckel G, Gather J. Testimoniale Ungerechtigkeit gegenüber Menschen mit psychischer Erkrankung in der Gesundheitsversorgung. Eine konzeptionelle und ethische Analyse [Testimonial injustice against people with mental disorders in health care. A conceptual and ethical analysis].Epub 2021 Nov 16.
[15] Faissner M, Juckel G, Gather J. Testimoniale Ungerechtigkeit gegenüber Menschen mit psychischer Erkrankung in der Gesundheitsversorgung. Eine konzeptionelle und ethische Analyse [Testimonial injustice against people with mental disorders in health care. A conceptual and ethical analysis].Epub 2021 Nov 16. PMID: 34803235; PMCID: PMC8594649.Williams, H., & Jobe, A. (2025). Testimonial injustice: exploring 'credibility' as a barrier to justice for people with learning disabilities/autism who report sexual violence. *Disability & Society*, *40*(4), 1061–1083. https://doi.org/10.1080/09687599.2024.2323455
[16] See for example: Zisman-Ilani Y, Roth RM, Mistler LA. Time to support extensive implementation of shared decision making in psychiatry. JAMA Psychiatry. 2021 doi: 10.1001/jamapsychiatry.2021.2247

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limitations[17]. Other women and girls with intellectual disabilities also face "credibility barriers" when reporting sexual violence[18].

- **They cannot make decisions and have bad judgment:** This bias assumes that persons with disabilities are unable to make decisions or provide informed consent. It portrays them as incapable of acting according to their own desires and preferences in the context of health care[19]. This assumption is reinforced by historical guardianship and conservatorship regimes that in many countries have denied people with disabilities the right to exercise their legal capacity. Health services often ask family members or caregivers to provide informed consent on their behalf. This includes different medical procedures, including forms of contraception, abortion, and hysterectomies. This bias leads medical teams to violate medical patient confidentiality and disrespect privacy in health settings[20]. Moreover, persons with disabilities are often regarded as incapable of making "good" or "responsible" decisions about their health. This perception is frequently used to justify others making decisions on their behalf, supposedly in their "best interest.", leading to the substitution of their informed consent[21]. Health decisions made in their "best interest" lead to paternalistic attitudes that usually prevent them from exercising their autonomy, especially in sexual and reproductive health[22].

- **They are unfit to be parents:** This stereotype is rooted in eugenics, which framed certain people as unfit to reproduce because they were believed to contribute to the "degeneration" of society. After the Holocaust and the collapse of the eugenics movement, this narrative shifted into questioning how "fit" certain women were for motherhood. This stereotype can have different consequences, including high rates of forced contraception, sterilization, or abortion. Health professionals frequently prescribe contraceptives without women with disabilities knowledge or request or exert undue influence over their decisions[23].

- **They are asexual or hypersexual:** Persons with disabilities are often portrayed as innocent, eternal children or "angels." This construction is rooted in religious interpretations of disability and disproportionately affects women and girls with intellectual disabilities. The stereotype that women

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[17] Special Rapporteur on the Rights of Persons with Disabilities, The situation of older persons with disabilities (2019) UN Doc. A/74/186, para 37.
[18] Williams, H., & Jobe, A. (2025). Testimonial injustice: exploring 'credibility' as a barrier to justice for people with learning disabilities/autism who report sexual violence. *Disability & Society*, *40*(4), 1061–1083. https://doi.org/10.1080/09687599.2024.2323455
[19] Sultan Haque, O., et al., "COVID-19 Clinical Bias, Persons with Disabilities, and Human Rights", *Health and Human Rights Journal*, Volume 22, Num. 2 (2020).
[20] Special Rapporteur on the Rights of Persons with Disabilities, Sexual and reproductive health and rights of girls and young people with disabilities (2017) UN Doc. a/72/133.
[21] Special Rapporteur on the Rights of Persons with Disabilities, Thematic study on the impact of ableism in medical and scientific practice (2019), UN Doc. A/HRC/43/41, para 56.
[22] Ibid.
[23] Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities (2016), CRPD/C/GC/3. Also see: Special Rapporteur on the Rights of Persons with Disabilities, Sexual and reproductive health and rights of girls and young people with disabilities (2017) UN Doc. a/72/133.

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with disabilities are asexual often results in the denial of sexual and reproductive health information and services[24]. They are frequently excluded from comprehensive sexuality education and are not provided with counseling on sexual violence, contraception, or related topics. This exclusion is justified through the assumption that addressing these issues with them is "unnecessary." Their sexual activity is also commonly portrayed as inherently coercive, and they are often presumed to be incapable of giving sexual consent. As a result, health services may report any instance in which a woman with a disability discloses sexual activity, based on the assumption that she cannot consent to sexual relations[25].

On the other hand, persons with disabilities can also be portrayed as hypersexual and incapable of controlling their sexual desires[26]. This stereotype usually affects women with psychosocial disabilities and specific collectives, such as women of short stature or men with intellectual disabilities. Some women with disabilities are assumed to be promiscuous, which can lead to practices such as forced contraception and sterilization as a way of "preventing their reproduction". In institutional settings, such as psychiatric hospitals or facilities for persons with disabilities, sexual violence has been widely reported and is often minimized, considered "normal" or justified under this stereotype[27].

2. Deprioritization of persons with disabilities during the COVID-19 pandemic

The persistence of biases and stereotypes against persons with disabilities in health-care settings became particularly visible during the COVID-19 pandemic. The lack of preparedness for scarcity scenarios resulted in the rapid development and adoption of unstandardized protocols and guidelines at different levels. Many of these protocols incorporated problematic criteria, including "remaining life expectancy," "social functioning," and assumptions about an individual's quality of life.

The World Health Organization (WHO) and the Pan American Health Organization (PAHO) have emphasized the importance of integrating procedural safeguards into the development of prioritization criteria and guidelines during emergencies, including anticipation, transparency, inclusiveness in decision-making, consistency, and accountability[28]. As early as 2016, the WHO

[24] Special Rapporteur on the Rights of Persons with Disabilities, Sexual and reproductive health and rights of girls and young people with disabilities (2017) UN Doc. a/72/133.
[25] European Disability Forum Position Paper, position paper on gender stereotypes against women with disabilities, (2025).
[26] Special Rapporteur on the Rights of Persons with Disabilities, Sexual and reproductive health and rights of girls and young people with disabilities (2017) UN Doc. a/72/133.
[27] Wieberneit M, Thal S, Clare J, Notebaert L, Tubex H. Silenced Survivors: A Systematic Review of the Barriers to Reporting, Investigating, Prosecuting, and Sentencing of Adult Female Rape and Sexual Assault. Trauma Violence Abuse. 2024 Dec;25(5):3742-3757.
[28] WHO, "Ethics and COVID-19: resource allocation and priority-setting", https://www.who.int/docs/default-source/blue-print/ethics-and-covid-19-resource-allocation-and-priority-setting.pdf?sfvrsn=4c14e95c_1 . PAHO, "Ethics guidance for the use of scarce resources in the delivery of critical health care during the COVID-19 pandemic", https://iris.paho.org/server/api/core/bitstreams/693e5ee5-40f7-42cf-a96c-2aa86a058bd4/content

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highlighted the importance of preparing for situations of scarcity and developing guidelines to promote consistency in rationing decisions. Such preparation should include open and transparent processes involving broad stakeholder participation[29].

In addition to these procedural safeguards, various United Nations authorities have highlighted the risk of discrimination against older persons and persons with disabilities in situations of scarcity. The Committee on the Rights of Persons with Disabilities and the Special Envoy of the UN Secretary-General on Disability and Accessibility called on States to "prevent discriminatory denial of health care or life-saving services" to persons with disabilities" [30]. The Special Envoy and the United Nations Independent Expert on the enjoyment of all human rights by older persons further emphasized that the lives of persons with disabilities and older persons are of equal value and that triage measures must not rely on criteria related to a person's disability or age[31]. Similarly, the Office of the United Nations High Commissioner for Human Rights highlighted that persons with disabilities faced not only a higher risk of contracting COVID-19, developing complications, and dying from the disease, but also an increased risk of discrimination in accessing health systems due to negative stereotypes concerning the value of their lives[32].The Special Rapporteur on the rights of persons with disabilities stressed that States must "establish clear protocols for public health emergencies to ensure that, when medical resources are scarce, access to healthcare, including life-saving measures, does not discriminate against people with disabilities." [33] Likewise, the Inter-American Commission on Human Rights (IACHR) warned of the disproportionate impact that triage measures may have on fundamental rights, including the rights to life and health, and emphasized the importance of applying the principles of equality and non-discrimination[34].

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[29] WHO, "Guidance For Managing Ethical Issues In Infectious Disease Outbreaks", 2016, https://iris.who.int/server/api/core/bitstreams/fdc5c6a0-abba-4dcd-a3e4-df7bc52dc2c3/content

[30] The Committee on the Rights of Persons with Disabilities and the Special Envoy of the UNSG on Disability and Accessibility , "Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility", 2020, https://www.ohchr.org/en/statements-and-speeches/2020/04/joint-statement-persons-disabilities-and-covid-19-chair-united?LangID=E&NewsID=25765

[31] Prof. María Soledad Cisternas Reyes, Special Envoy of the United Nations Secretary-General on Disability and Accessibility AND Ms. Rosa Kornfeld-Matte United Nations Independent Expert on the enjoyment of all human rights by older persons, 'The right to life of persons with disabilities and older persons infected by Covid-19", 2020, https://www.ohchr.org/en/statements-and-speeches/2020/04/right-life-persons-disabilities-and-older-persons-infected-covid-19?LangID=E&NewsID=25829

[32] Office of the United Nations High Commissioner for Human Rights, "Covid-19 and the rights of persons with disabilities: guidance", 2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/COVID-19/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf

[33] Catalina Devandas, Special Rapporteur on the rights of persons with disabilities, "COVID-19: Who is protecting the people with disabilities?", 2020, https://www.ohchr.org/en/press-releases/2020/03/covid-19-who-protecting-people-disabilities-un-rights-expert?LangID=E&NewsID=25725

[34] IACHR, Resolution No. 4/2020 on Human Rights of Persons with Covid-19, adopted on july 27, 2020, available at: https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-4-20-es.pdf

Despite these warnings from UN mechanisms and the IACHR, as well as the adoption of formal rules in some countries expressly prohibiting discrimination, biases, stereotypes, and stigma continued to operate to the detriment of persons with disabilities during the pandemic. At the peak of the COVID-19 crisis, persons with disabilities faced significant risks of discrimination when decisions had to be made about the allocation of scarce health-care resources. The scarcity of resources and the scale of the pandemic required the use of "ethical triage"—that is, the rationing and prioritization of access to intensive care and other life-sustaining treatments, services, or supplies. Such decisions can have profound consequences for individuals whose needs are not prioritized, including by denying them access to potentially life-saving health care. States should therefore adopt measures to anticipate and, where possible, prevent situations requiring prioritization. Where prioritization becomes unavoidable, it should be treated as a measure of last resort and implemented in accordance with strict human rights standards, including the principles of equality and non-discrimination.

Our Center worked closely with two case studies (Chile and Colombia) of this situation that illustrate the nature and scope of the problem, as well as it's the different implications. Both experiences illustrate the difficulties of protecting and guaranteeing the rights of persons with disabilities in crisis contexts, as well as broader structural challenges within health systems. In both countries, specific concerns regarding discrimination against persons with disabilities were documented, while authorities sought to develop or implement protocols and guidelines establishing criteria for prioritizing access to scarce health-care resources.

Chile

As in other countries, in Chile the need to prioritize resources in the face of an expected shortage at the peak of the pandemic was discussed. In April 2020, the Chilean Ministry of Health published the "Recommendations for Healthcare Ethics Committees in Supporting Ethical Decision-Making by Healthcare Teams in the Context of the COVID-19 Pandemic."[35] There, the Ministry advised Ethics Committees to consider the criterion of "maximum benefit for the greatest number of people, in order to save as many lives as possible, maximizing the likelihood of survival to hospital discharge and maximizing the number of life-years," also mentioning the criterion of "effective utility of the intervention." While the Ministry warned that "direct discrimination based solely on criteria such as age or disability is neither ethically nor legally justified," the recommendations do not rule out the use of age or disability as criteria to guide strategies and resource allocation decisions. Also, in April 2020, the rector of the Catholic University noted the importance of Ethics Committees,[36] and the University's Bioethics Center issued recommendations rejecting the use of criteria such as "the

[35] Advisory Committee on Clinical Ethics of the Ministry of Health of Chile, "Recommendations for Clinical Ethics Committees in Supporting Ethical Decision-Making by Healthcare Teams in the Context of the COVID-19 Pandemic," April 9, 2020.https://www.nefro.cl/covid/img/noticias/RECOMENDACIONES_PARA_LOS_CEA_COVID-19.pdf
[36] Pontifical Catholic University of Chile, School of Medicine, "Ethical Guidelines for the Care of Patients in a Pandemic Situation," April 6, 2020.https://facultadmedicina.uc.cl/wp-content/uploads/2020/04/Lineamientos-eeticos-en-la-atencion-de-pacientes-en-una-situacioon-de-pandemia-.pdf.pdf

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greatest benefit to the greatest number," "the youngest," and "the most convenient." The Bioethics Center emphasized the need for anticipation: "the difference in patient management should be based on objective clinical criteria, reducing uncertainty, and on previously designed protocols for procedures and decision-making. This seeks to reduce any arbitrary differentiation."[37]

Beyond the recommendations of these guidelines and their specific application, in the first half of 2020 several cases came to light of people with disabilities who were allegedly not prioritized or were relegated in their access to intensive care services.

The most relevant case was that of Oscar Walter, a 38-year-old man with Down syndrome who was treated for Covid-19 at the Félix Bulnes public hospital in May 2020. His family reported experiencing various barriers during his care, including neglect and barriers to accompanying and supporting him during his hospitalization. Oscar's family alleges that, because of his disability, he was not prioritized for critical care, which resulted in his death. While others were admitted to the critical care area, Oscar waited five days in the Emergency Room with an oxygen mask. Because he was not connected to a monitor, he died there without the healthcare staff noticing. The family even reported that when they were informed of his death, the healthcare staff told them they should be grateful, that Oscar had lived many years and had exceeded the life expectancy for people with Down syndrome.[38] The family sued the Hospital and the Ministry of Public Health[39]. In July 2026 the 29th Civil Court of Santiago, issued a landmark decision upholding the claim for damages filed by his family. The judge established that the care Oscar received fell short of expectations, and that he was a victim of discrimination because of his disability. The judge ordered the Chilean State not only to pay compensation to Oscar Walter's family, but also to hold an official ceremony offering a public apology to the family and to ensure that its officials receive training on the human rights of persons with disabilities.[40]

The case of Yerka Morales, a 40-year-old woman with Down syndrome, also came to light about a month later. Yerka's sister told the press that the Padre Hurtado hospital staff told them they would have "to wait because priority was being given to young people, not adults or people with

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[37] M. Alejandra Carrasco et al., Center for Bioethics, School of Medicine, Pontifical Catholic University of Chile, "Ethical Guidance on the So-Called 'Last Bed Problem,'" April 7, 2020.https://facultadmedicina.uc.cl/noticias/orientaciones-eticas-ante-el-llamado-problema-de-la-ultima-cama/

[38] BioBioChile, "Family Claims That Man with COVID-19 Died After Being Denied Access to a Ventilator Because He Had Down Syndrome," June 3, 2020, https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2020/06/03/familia-acuso-hombre-covid-19-murio-tras-no-acceder-ventilador-sindrome-down.shtml

[39] Oscar's family has been supported pro bono in this process by the law firm Colombara Estrategia Legal and the Center for Health and Human Rights of O'Neill Institute for National and Global Health Law at Georgetown Law, who represent them in the lawsuit initiated in 2023. See: https://oneill.law.georgetown.edu/press/the-oneill-institutes-hhri-and-colombara-legal-strategy-law-firm-demand-justice-from-the-chilean-state-on-behalf-of-the-family-of-oscar-walter/

[40] O'Neill Institute for National and Global Health Law, "Chilean Court Finds Hospital Discriminated Against Oscar Walter Due to his Intellectual Disability During the COVID-19 Pandemic and Orders Reparations for his Family", July 8, 2026, https://oneill.law.georgetown.edu/press/chilean-court-finds-hospital-discriminated-against-oscar-walter-due-to-his-intellectual-disability-during-the-covid-19-pandemic-and-orders-reparations-for-his-family/

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disabilities."[41] Media pressure led to the intervention of Chile's National Disability Service, which confirmed that "she is receiving equal care and we are in constant contact with her family."[42] Similarly, in June 2020, the press reported the case of Esteban, a 19-year-old with chronic bronchopulmonary dysplasia, epilepsy, and cerebral palsy. Esteban required a ventilator, and his mother reported that medical staff at Félix Bulnes Hospital informed her that he wouldn't be a priority, by any hospital, "because they prioritize people without disabilities." Furthermore, they were allegedly made to sign a do-not-resuscitate and do-not-intubate authorization for their son. Once again, the National Disability Service had to intervene, claiming the invalidity of the documentation signed by the family.[43]

In this context, civil society organizations demanded that the Ministry of Health address the risks of discrimination faced by personswith disabilities, calling for clear protocols for triage and prioritization procedures. The organizations expressed the need for differentiated and clear protocols "to prevent serious situations like the one that recently occurred with Óscar Walter."[44]

In response to public complaints and the case of Oscar Walter, in June 2020 SENADIS published "Recommendations for the Care of People with Disabilities in Health Services during the COVID-19 Pandemic." There, it warned that "The presence of a disability should never justify a limitation of therapeutic effort" and that in clinical practice decisions must be based strictly on medical criteria and not on value judgments or stereotypes. SENADIS also warned that people with intellectual disabilities may face barriers in understanding and adapting to new situations, so services should provide them with the reasonable accommodations they need during the emergency care.[45] In July 2020, the Ministry of Health published the document "Special considerations in the management and treatment of people with disabilities during the SARS-CoV-2 pandemic", which included

[41] Gloria T., "Family Accuses Padre Hurtado Hospital of Discrimination: 'The Doctor Said That Young People Are Being Prioritized, Not Older People or People with Disabilities,'" Radio Agricultura, May 28, 2020.https://www.radioagricultura.cl/noticias/nacional/familia-acusa-discriminacion-del-hospital-padre-hurtado-el-doctor-dijo-que-se-esta-dando-prioridad-a-gente-joven-no-a-gente-adulta-ni-gente-con-discapacidad_20200528/ ; Felipe Delgado, BioBioChile, "Family Claims That Man with COVID-19 Died After Being Denied Access to a Ventilator Because He Had Down Syndrome," June 3, 2020.https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2020/06/03/familia-acuso-hombre-covid-19-murio-tras-no-acceder-ventilador-sindrome-down.shtml

[42] SENADIS, May 28, 2020.https://x.com/senadis_gob/status/1266166909264957442?s=20

[43] Gonzalo Miranda, "Félix Bulnes Hospital Faces New Discrimination Complaint for Denying Care to a Patient with a Disability," ADN Radio, June 16, 2020. https://www.adnradio.cl/nacional/2020/06/16/nueva-denuncia-por-discriminacion-recibio-el-hospital-felix-bulnes-por-negar-atencion-a-paciente-en-situacion-de-discapacidad.html

[44] Correcaminos Disability Organization, Chilean Alliance of Patient Organizations, Human Rights Chair, Office of Outreach and Communications, University of Chile, et al., "Public Statement: Care for People with Disabilities in the Context of the COVID-19 Pandemic," June 2020., https://www.uchile.cl/noticias/164418/declaracion-sobre-la-atencion-de-personas-con-discapacidad-en-pandemia

[45] National Disability Service of Chile (SENADIS), "Recommendations for the Care of People with Disabilities in the Context of the COVID-19 Pandemic," June 2020https://www.senadis.gob.cl/sala_prensa/d/noticias/8226/recomendaciones-para-la-atencion-de-personas-con-discapacidad-en-el-contexto-de-la-pandemia-por-covid-19

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recommendations both in terms of decisions and prioritization criteria, as well as support and reasonable adjustments for the care of people with disabilities.[46]

The case of Chile illustrates the importance of proactive measures and anticipation, since, although the government eventually issued documents expressly prohibiting discrimination against persons with disabilities, this only took place after cases of discrimination had already come to light. Similarly, it highlights the importance of having accountability mechanisms that allow people to identify and report cases of potential discrimination, enabling authorities to act preventively.

Colombia

In Colombia, in response to the scarcity of available critical care resources caused by the Covid-19 pandemic, some departmental and municipal authorities, as well as clinics and hospitals, announced at various times the implementation of "ethical triage" or prioritization exercises.

In March 2020, the Ministry of Health published the "General Recommendations for Ethical Decision-Making in Health Services during the COVID-19 Pandemic," a non-binding guide.[47] The document did not clearly establish when prioritization should be activated, nor did it provide a clear directive stating that it should not be performed without having exhausted all possibilities for referring patients to other facilities. In its recommendations, the Ministry indicated that hospital protocols should utilize predetermined variables such as "age, comorbidities, the likelihood of survival without illness, the likelihood of survival with illness, the severity of the condition, and the possibility of prolonged support requirements", while cautioning that "none of these variables, under any circumstances, should be the sole element used to define treatment."[48]

Lacking detailed national guidelines, several local jurisdictions developed guidelines with problematic criteria[49]. Some of these guidelines considered age, disability, and/or the existence of certain diseases in the abstract as potential tie-breaking criteria for denying access to an ICU or choosing one person over another in prioritization when short-term survival prospects were comparable. They also recommended, among other things, using a long-term survival criterion by including comorbidities in the assessment that may imply a survival rate of less than 10 years and the possibility of a person's "recovery and subsequent functional reintegration into society"[50]. The guidelines also suggested the

[46] Ministry of Health of Chile, "Considerations for the Management and Treatment of People with Disabilities During the SARS-CoV-2 Pandemic," 2020.https://www.minsal.cl/wp-content/uploads/2020/07/ConsideracionesPersonasconDiscapacidad130720.pdf
[47] Colombian Minister of Health and Social Protection, ""General Recommendations for Ethical Decision-Making in Health Services During the COVID-19 Pandemic", March of 2020.
[48] Colombian Minister of Health and Social Protection, ""General Recommendations for Ethical Decision-Making in Health Services During the COVID-19 Pandemic"", March of 2020.
[49] See for example: the protocols of the Bioethics Committee of the Mayor's Office of Medellín and the Foscal International Clinic of Bucaramanga https://www.medellin.gov.co/irj/go/km/docs/pccdesign/medellin/Temas/Salud_0/Programas/Shared%20Content/Documentos/2020/doc_bioetica%20copia%20triage.pdf
[50] Ibid.

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use of medical scales such as the "fragility scale" that allowed the direct consideration of people´s requirement for supports, conditions such as dementia, among others.

These guidelines enabled the use of criteria that allow for direct and indirect discrimination against persons with disabilities. It also enabled decision-making based on conscious or unconscious biases or preconceived ideas about persons with disabilities, particularly when the referred scales require "quality of life" assessments. As explained in the first section of this document, the pre-conceived idea of health professionals that people with disabilities have a lower quality of life has been clearly documented and have a direct impact on clinical decisions.

In this context, and given the threat posed by discriminatory protocols, a group of 25 persons with disabilities, over 60 years of age, and/or with chronic illnesses filed a tutela action alleging the violation of their rights to life, health, equality and non-discrimination, and the right to health information[51]. The group of plaintiffs were supported by the Center for Health and Human Rights and a PAIIS, a Colombian legal clinic, and asked the Constitutional Court to order the Ministry to develop clear guidelines, generated in a participatory and transparent manner, that would clarify the criteria to be used in prioritizing life-support resources during public health scarcity and crises[52]. This aligns with the principles of anticipation and planning in public health contexts, which aim to prevent future improvisation.

In July 2023, the Court granted the action and ordered the Ministry of Health to regulate so-called "ethical triage" during health emergencies in the country, allowing the participation of civil society and people with disabilities. The Court recognized that the Ministry failed to regulate prioritization decisions for access to health services during the COVID-19 pandemic, jeopardizing the rights to health and to equality and nondiscrimination of the users of the Colombian health system, particularly affecting the rights of older people and people with disabilities[53].

On December 26, 2025, the Ministry of Health adopted the administrative Resolution 2720 of 2025 that adopted a "General Technical, Ethical, and Legal Framework for the Prioritization and Allocation of Scarce Health Resources in Exceptional Situations"[54]. While the Resolution constitutes an important precedent in Colombia by establishing guidelines for prioritization in situations of scarcity, it still allows the use of criteria that may give rise to discrimination, lacks key definitions, and maintains significant omissions regarding monitoring and oversight of prioritization processes.

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[51] El Tiempo, "Court Considers Legal Action Seeking Clear Rules for ICU Prioritization"", February 7, 2022, https://www.eltiempo.com/justicia/cortes/covid-corte-estudia-tutela-sobre-reglas-claras-para-uso-de-uci-649830

[52] O'Neill Institute for National and Global Health Law, Colombia Rules in Favor of Individuals Supported by the O'Neill Institute's Health and Human Rights Initiative and PAIIS on Ethical Triage During Health Emergencies, July 28, 2023, https://oneill.law.georgetown.edu/press/colombia-rules-in-favor-of-individuals-supported-by-the-oneill-institutes-health-and-human-rights-initiative-and-paiis-on-ethical-triage-during-health-emergencies/

[53] Constitutional Court of Colombia, ruling T-237 of 2023.

[54] Minister of Health and Social Protection of Colombia, Resolution 2720 of 2025, "Adopting the General Technical, Ethical, and Legal Framework for the Prioritization and Allocation of Scarce Health Resources in Exceptional Situations"

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The Resolution continues to allow the use of age and disability when combined with other factors. Although it excludes the isolated use of these categories, it allows for their consideration alongside other criteria, which may likewise result in discriminatory outcomes. This approach directly contradicts the Constitutional Court's ruling, which referred to the "mere consideration of variables" capable of generating age and disability discrimination, rather than limiting its prohibition to their isolated application.

The Colombian illustrates that the formal prohibition of discrimination against persons with disabilities in the national legal framework, including health regulations, is insufficient to prevent discrimination in the context of healthcare. Moreover, it shows that such formal prohibition can coexist with indirect, covert or implicit forms of discrimination entrenched in both norms and practices. Another lesson learned from this case and specifically of the difficulties in the implementation of the ruling, is the need to build bridges between the legal, medical and bioethical communities so that human rights are not understood as an invasion on medical autonomy but as a legal framework that can support better and more equitable health outcomes.

Other experiences in the world

Similarly to the process in Colombia, in Germany, the protection of persons with disabilities during the pandemic reached the Federal Constitutional Court in 2020. In their complaint, nine individuals with disabilities argued that legislators had not taken sufficient measures to protect them from discrimination in potential pandemic triage situations, thereby violating Article 3(3) of the Basic Law. The plaintiffs primarily contended that allocation frameworks should be based on international consensus or, at least, on legally binding frameworks[55]. The German Constitutional Court agreed, ruling that the lack of extra-statutory safeguards for disabled persons left them more disadvantaged. To rectify the situation, the Court instructed the Parliament to legislate binding protection for people with disabilities "as soon as possible" under Article 3(3)[56]. In response, the Bundestag passed the Triagegesetz in November 2022. The law specified that allocation must rely on the current and short-term probability of survival in the acute medical condition, while barring disability, frailty, age, or underlying chronic illnesses from being used to determine acute survival probability. To further reduce the risk of bias, the legislation requires multi-physician approval and bans ex-post triage, the withdrawal of intensive care resources from one patient to another[57].

Other countries have discussed the prioritization criteria during emergencies using other mechanisms. For example, the Bioethics Committee of the Republic of San Marino and of Spain

[55] "The Bundestag approves the law on the Federal Constitutional Court's " triage decision".", https://www.bundestag.de/dokumente/textarchiv/2022/kw45-de-infektionsschutzgesetz-917438
[56] "Federal Constitutional Court overturns triage regulation of the Infection Protection Act – consequences also for criminal liability risks", https://www.heuking.de/en/news-events/newsletter-articles/detail/federal-constitutional-court-overturns-triage-regulation-of-the-infection-protection-act-consequences-also-for-criminal-liability-risks.html
[57] "The Bundestag approves the law on the Federal Constitutional Court's " triage decision".", https://www.bundestag.de/dokumente/textarchiv/2022/kw45-de-infektionsschutzgesetz-917438

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specifically rejected criteria that could led to discrimination based on disability and/or age, including concepts such as "social functionality"[58]. The Swedish Council on Medical Ethics recommended the inclusion of various stakeholders and an open dialogue to guarantee social acceptance of the criteria[59]. In the same line, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) published a bulletin warning health authorities about discrimination on the basis of disability in the context of crisis standards of care and resource allocation decisions that use concepts such as "quality-of life assessments" or judgements about a person's "worth" due to age or disability[60].

A remaining challenge

Even in jurisdictions with established human rights protection frameworks, where the CRPD is part of their legal systems and anti-discrimination laws exist, the full exercise and enjoyment of the rights of persons with disabilities remains a challenge in times of crisis. The different types of responses shown in the previous examples demonstrate that discrimination stems both from a lack of clear and effective regulations on resource prioritization in situations of scarcity and from the use of criteria that can generate discriminatory outcomes. Therefore, prioritization guidelines in contexts of scarcity should explicitly prohibit the direct or indirect, explicit or implicit, use of categories such as age and disability, as well as criteria that might appear objective but can conceal discriminatory assumptions[61]. The use of such criteria is contrary to the principle of non-discrimination established in international human rights treaties and can severely restrict the rights to health and equality and non-discrimination of persons with disabilities.

Regarding the prohibition on using "sole criteria such as age or disability," it is worth noting that, as the CRPD has warned, discrimination can operate covertly or implicitly, or in combination with other "objective" elements[62]. Furthermore, the IACHR has referred to the "contaminating effect" of

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[58] Republic of San Marino National Bioethics Committee, "Answer to the request urgent opinion on ethical issues regarding to the use of invasive assisted ventilation in patients with disabilities in relation to the Covidid-19 pandemic", file:///Users/nataliaacevedo/Downloads/2020_2116023STATEMENTCSB_COV%20(1).pdf Also see: Comité de Bioética de España, "Informe del comité de bioética de españa sobre los aspectos bioéticos de la priorización de recursos sanitarios en el contexto de la crisis del coronavirus", https://comitedebioetica.isciii.es/wp-content/uploads/2023/10/Informe-CBE-Priorizacion-de-recursos-sanitarios-coronavirus-CBE.pdf

[59] The Swedish Council on Medical Ethics, "Smer 2020:3. Ethical choices in a pandemic", https://smer.se/wp-content/uploads/2020/08/smer-2020_3-english-report_webb.pdf

[60]"Applying HHS's Guidance for States and Health Care Providers on Avoiding Disability-Based Discrimination in Treatment Rationing", https://dredf.org/applying-hhss-guidance-for-states-and-health-care-providers-on-avoiding-disability-based-discrimination-in-treatment-rationing/

[61] This includes the following criteria: ppossibility or better prognosis for long-term survival; the greatest likelihood of survival; life expectancy; saving the greatest number of years; remaining years of life; social functioning; the possibility of disease-free survival; the greatest chances of rehabilitation; the need for prolonged support requirements; any reference to quality of life; assessments of people's functional status, including references to their cognition, their "dependence" on other people or resources, any reference to limited language or speech, incontinence, or the level of support they require.

[62] Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and nondiscrimination, CRPD/C/GC/6, para 18-22.

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using prohibited categories, while the Inter-American Court of Human Rights has indicated that, for discrimination to occur, it is not necessary for a prohibited criterion to be the sole element of an allegedly discriminatory action[63]. The prohibition on using age or disability as sole criteria therefore does not eliminate the risk of discrimination when these categories are not explicit or exclusive.

Public health crises and emergencies are likely to become increasingly frequent due to emerging infectious diseases, the climate crisis, armed conflicts, and the reduction of humanitarian aid around the world. While there are no perfect solutions for prioritizing resources in situations of scarcity, there are ways to avoid criteria that directly or indirectly discriminate against persons with disabilities. Therefore, the use of "short-term survival," based on a strict analysis of each patient's clinical condition, could be considered as one approach to prioritization that may reduce the risk of discrimination in healthcare. Furthermore, procedural safeguards are essential to guarantee transparent and participatory processes, consistent decision-making, and accountability mechanisms.

3. The non-consented sterilization of women and girls with disabilities

Ideas around persons with disabilities-particularly women and girls- and their sexuality and "unfitness" to become mothers mentioned in the first part of this text, have led to direct consequences such as practices of non-consented sterilization. At the international level, various human rights mechanisms have assessed the practice of non-consensual sterilization of women and girls with disabilities considering the main international human rights treaties. There is a consensus that this practice is incompatible with human rights and has a negative impact on the rights to health, integrity, dignity, autonomy, equality and non-discrimination, freedom from gender-based violence, and freedom from torture and other cruel, inhuman, or degrading treatment[64].

Specifically, CRPD Committee has consistently recognized non-consensual sterilization of women and girls with disabilities as incompatible with the Convention and as a violation of multiple rights, including equality and non-discrimination, legal capacity, bodily integrity, freedom from violence and cruel, inhuman or degrading treatment, and sexual and reproductive health and autonomy[65]. Specifically, in article 23 that recognizes respect for home and family, the CRPD recognizes the right

[63] IACHR, Report No. 176/10, Cases 12.576, 12.611 and 12.612, Merits, Segundo Aniceto Norín Catrimán, Juan Patricio Marileo Saravia, Víctor Ancalaf Llaupe and Others, Merits, Chile, November 5, 2010, paras. 203–204; I/A Court H.R., Case of Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C No. 254, para. 94.

[64] See for example: United Nations, CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, July 26, 2017. Human Rights Committee, General Comment No. 28 on the equality of rights between men and women, 68th session, 2000. Committee on Economic, Social and Cultural Rights, General Comment No. 5 on persons with disabilities, 11th session (1994). Committee on the Rights of the Child, General Comment No. 9 on the rights of children with disabilities, CRC/C/GC/9, February 27, 2007. Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, April 18, 2011.

[65] Convention on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=uQISZDiEmrrpAnYEKxn7OhtxkxtmB5efggTOqd42kpisltNVT7XikQXLmCIhNm4DeCZJzJjLvgMEx0qyF026MQ%3D%3D

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of Persons with disabilities, including children, retain their fertility on an equal basis with others.In its General Comments and concluding observations to States, the Committee has also highlighted the risks faced by women and girls with intellectual and psychosocial disabilities, especially in contexts of institutionalization and where substitute decision-making regimes remain in place[66].Accordingly, the Committee has consistently called on States to prohibit forced and involuntary sterilization and to eliminate legal and policy frameworks that allow decisions to be made on behalf of persons with disabilities without respecting their will and preferences[67]. It has further urged States to ensure access to appropriate support, reasonable accommodations, and accessible information so that women and girls with disabilities can exercise their legal capacity and provide free and informed consent to sexual and reproductive health decisions, as well as to strengthen safeguards, data collection, and awareness-raising measures to prevent these practices[68].

Although international human rights standards have unequivocally condemned the non-consensual sterilization of persons with disabilities, the practice remains widespread and is deeply rooted in the historical legacy of eugenics[69]. During the first half of the twentieth century, eugenic movements promoted the control of reproduction to prevent the birth of people considered "unfit" and to promote the perceived improvement of society and the population. While eugenic policies varied across regions, they included compulsory sterilization, eugenic abortion, and the institutionalization of persons considered unfit[70]. Although eugenic ideas are now widely discredited, their underlying assumptions about the reproductive "fitness" of persons with disabilities continue to influence

[66] Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), CRPD/C/GC/1, file:///Users/nataliaacevedo/Downloads/G1403120.pdf. Also see: General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3.

[67] United Nations, Committee on the Rights of Persons with Disabilities, concluding observations on: Bahrain, CRPD/C/BHR/CO/R.1-2 (2024); Zambia, CRPD/C/ZMB/CO/1 (2024); Malawi, CRPD/C/MWI/CO/1-2 (2023); Austria, CRPD/C/AUT/CO/2-3 (2023); Mongolia, CRPD/C/MNG/CO/2-3 (2023); Andorra, CRPD/C/AND/CO/1 (2023); Germany, CRPD/C/DEU/CO/2-3 (2023); Georgia, CRPD/C/GEO/CO/1 (2023); Tunisia, CRPD/C/TUN/CO/2-3 (2023); Angola, CRPD/C/AGO/CO/1 (2023); Peru, CRPD/C/PER/CO/2-3 (2023); Bangladesh, CRPD/C/BGD/CO/1 (2022); Japan, CRPD/C/JPN/CO/1 (2022); Singapore, CRPD/C/SGP/CO/1 (2022); Republic of Korea, CRPD/C/KOR/CO/2-3 (2022); New Zealand, CRPD/C/NZL/CO/2-3 (2022); Venezuela, CRPD/C/VEN/CO/1 (2022); Mexico, CRPD/C/MEX/CO/2-3 (2022); Switzerland, CRPD/C/CHE/CO/1 (2022); France, CRPD/C/FRA/CO/1 (2021); Ecuador, CRPD/C/ECU/CO/2-3 (2019); Kuwait, CRPD/C/KWT/CO/1 (2019); El Salvador, CRPD/C/SLV/CO/2-3 (2019); Spain, CRPD/C/ESP/CO/2-3 (2019); Cuba, CRPD/C/CUB/CO/1 (2019); Poland, CRPD/C/POL/CO/1 (CRPD 2018); Panama, CRPD/C/PAN/CO/1 (2017); Montenegro, CRPD/C/PAN/CO/1 (CRPD 2017); and Bolivia, CRPD/C/BOL/CO/1 (2016).

[68] Ibid.

[69] Open Society Foundations, "Against Her Will: Forced and Coerced Sterilization of Women Worldwide", sep 2011. También ver: Human Rights Watch "Sterilization od Women and Girls with disabilities", Nov 2011, https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities. Also see: L. Servais, R. Leach, D. Jacques y J. P. Roussaux, "Sterilisation of intellectually disabled women", European Psychiatry, vol. 19, núm. 7 (noviembre de 2004); L. Lennerhed, "Sterilisation on eugenic grounds in Europe in the 1930s: news in 1997 but why?", Reproductive Health Matters, vol. 5, núm. 10 (noviembre de 1997).

[70] Wendy Kline, Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom (Berkeley: University of California Press, 2001). Randall Hansen & Desmond King, Sterilized by the State. Eugenics, race and the population scare in Twentieth North America (New York: Cambridge University Press, 2013). Philip R. Reilly, The Surgical Solution. A History of Involuntary Sterilization in the United States (Baltimore: The Johns University Press, 1991).

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contemporary practices and legal frameworks[71]. Sterilization without the person's consent may still be authorized in some jurisdictions at the request of family members, caregivers, or health professionals, often justified based on the person's "best interests", well-being, quality of life, or perceived vulnerability to sexual violence[72].

An analysis of judicial decisions from Canada, the United States, Colombia, Spain, Argentina, and Mexico identify three recurring paradigms used to justify the sterilization of women with disabilities[73]. The protection paradigm frames sterilization as a means of protecting women and girls from the consequences of sexual violence, while failing to address the violence itself and instead treating it as inevitable. The caregiving-burden paradigm emphasizes the perceived benefits of sterilization in reducing the responsibilities associated with caring for persons with disabilities. Finally, the social value and ableism paradigm reflects assumptions that persons with disabilities have diminished quality of life or are less suited to parenthood, and that restricting their reproduction may serve the interests of society[74]. Together, these paradigms illustrate how contemporary justifications for sterilization may reproduce elements of ableism, particularly when reproductive decisions are based on assumptions about disability rather than respect for the individual's autonomy and equal rights. In countries where sterilization based on substituted decision-making remains permissible following judicial authorization, courts often rely on medical expert opinions and frame their reasoning within the previously identified paradigms to justify the procedure[75].

Considering these concerns, protecting the rights to health, bodily integrity, and autonomy of women and girls with disabilities requires States to review their sterilization laws and policies to prohibit non-consensual sterilization and contraception. States must also guarantee access to supported decision-making mechanisms in sexual and reproductive health, together with appropriate safeguards to ensure that women and girls with disabilities can exercise their right to free and informed consent to health-care interventions and make decisions about their sexual and reproductive lives on an equal basis with others. This necessarily requires States to review their legal capacity frameworks and address related barriers, including by ensuring access to comprehensive sexuality education and accessible information on health and sexual and reproductive rights.

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[71] Ibid.
[72] Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar,, "Sexual and reproductive health and rights of girls and young women with disabilities", A/72/133 , https://docs.un.org/en/A/72/133 , para 30. Ibid. Also see: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, https://docs.un.org/en/A/HRC/22/53 para 32 and 48.
[73] Natalia Acevedo Guerrero, "An Approach to the Supported Decision-Making Model for Sexual and Reproductive Health Decisions by Persons with Disabilities." In: *Sexual and Reproductive Rights and the Judiciary in Latin America* (Mexico City: Federal Judiciary Council and the O'Neill Institute for National and Global Health Law at Georgetown University, 2022), p 95-11, *https://www.cjf.gob.mx/micrositios/dgdhigai/resources/publicaciones/derechosSexualesReproductivosPoderJudicialAmericaLatina.pdf*
[74] Ibid.
[75] Ibid.

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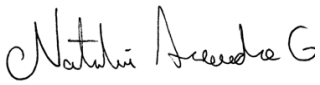
The case studies presented in this document demonstrate that persons with disabilities continue to face discrimination in the context of healthcare. This discrimination is reflected in deeply rooted norms and practices that are sustained by concious and unconscious stereotypes, biases, and prejudices concerning persons with disabilities. As the implementation of the CRPD is assessed 20 years after its adoption, we call for this persistent discrimination in healthcare to be made visible and recognized as a key outstanding challenge that affects the enjoyment of multiple rights recognized under the Convention.

Respectfully,

Silvia Serrano-Guzmán
Co-Director, Center for Health and Human Rights
O'Neill Institute for National and Global Health Law, Georgetown University Law Center



Natalia Acevedo Guerrero
Senior Consultant
Center for Health and Human Rights
O'Neill Institute for National and Global Health Law, Georgetown University Law Center

Andrés López Cabello
Consultant
Center for Health and Human Rights
O'Neill Institute for National and Global Health Law, Georgetown University Law Center

LAWONEILLINSTITUTE@GEORGETOWN.EDU
600 NEW JERSEY AVENUE NW
WASHINGTON, DISTRICT OF COLUMBIA 20001
ONEILL.LAW.GEORGETOWN.EDU