

Legal Capacity in CRPD and its Implications for Older Persons

Tina Minkowitz

International Disability Alliance

CRPD Paradigm Shift

- Replace substituted decision-making by supported decision-making
- Supported decision-making respects the autonomy, will and preferences of the person
- Formal equality plus substantive equality
- Meaningful choice – options – life with dignity

Autonomy and Dignity

- “Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices and independence of persons” CRPD Art 3(a)
- “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” UDHR Art 22

Autonomy and Integrity

- “Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians. In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse. However, it is often circumstances external to the individual that render them “powerless”, such as when one’s exercise of decision-making and legal capacity is taken away by discriminatory laws or practices and given to others.”

Special Rapporteur on Torture, A/63/175 para 50.

Challenges

- Financial and abuse and exploitation
- Danger in the street, not able to find home
- Aggression
- Cognitive difficulties
- Needs particular to older stage of life –diversity not limitation of rights
- ...
- How can these concerns be met with support that respects autonomy, dignity and integrity?

Implementing Article 12

- Law reform – legal framework for formal equality plus substantive equality – reasonable accommodation, accessibility, support
- Practices – awareness-raising, new services, changing service systems, support networks including and beyond family
 - Community
 - Peers

Abuse Prevention

- Prevent all forms of violence, exploitation and abuse (Art 16) – information on education of PWD and families on how to recognize and report; recovery/reintegration; prosecution; monitoring of facilities and programs
 - Includes economic abuse
- Prevent abuse in the context of support (Art 12.4)

Legal Capacity and Responsibility

- “All aspects of life” does not exclude criminal, as well as civil responsibility
- OHCHR recommends replacement of insanity defense with disability-neutral concepts of fairness
- Reasonable accommodation could be applicable to issues of responsibility – reasonable modification of rules where not a fundamental alteration

Information/Resources

- tminkowitz@earthlink.net
- www.chrusp.org
- www.wnusp.net
- www.internationaldisabilityalliance.org