**Side event on Legal Capacity organised by the**

**World Network of Users and Survivors of Psychiatry**

11th session of the CRPD Committee

9 – 10am, 8April 2014

Chair: Tina Minkowitz, World Network of Users and Survivors of Psychiatry

Speakers: Tina Minkowitz

 Alberto Vasquez

On 8 April 2014, a side event on legal capacity was held during the 11th session of the Committee on the Rights of Persons with Disabilities.**[[1]](#footnote-1)\***

Tina Minkowitz from the World Network of Users and Survivors of Psychiatry (WNUSP) opened the floor with her statement. She first expressed her satisfaction to see that the General Comments approach legal capacity from an equality approach. She then discussed different points; first, the importance of promoting awareness of legal capacity in everyday life, that needs to be distinguished from mental capacity. Second, she advocated for the elimination of legal provisions and legal doctrines that discriminate based on disability with regard to legal capacity, including the provisions on guardianship, voting rights, etc. Third, she pointed out the need to ensure that public and private actors involved in the exercise of legal capacity are prohibited from using a status-based approach to invalidate decisions made by persons with disabilities. Fourth, establishing mechanisms to provide access to formal and informal support and to establish and enforce the duties of supporters. Fifth, she pointed out that measures to prevent abuse and exploitation should not be under the Article 12 but under the framework of the Article 16. Sixth, the support for the exercise of legal capacity should not be directed by health professionals and should not be subject to an assessment by health professionals. She stressed the importance to move away from the medical and social welfare models of disability to proceed to a human rights and non-discrimination model. She further enumerated some of the priority issues reflected in the WNUSP submission.She finished her statement by highlighting the fact that the answer is to center persons with disabilities in the legal system with full and equal rights and freedoms, and to change the laws and the culture so that discrimination and abuse are no longer tolerated.

Alberto Vasquez a member of the World Network of Users and Survivors of Psychiatry (WNUSP) opened his intervention by highlighting that legal harmonisation is a fundamental aspect of the implementation of Article 12. He mentions that thanks to the efforts of civil society, many countries have started law reform processes for reviewing their guardianship laws and civil codes. In the case of Peru, the State passed a new General Disability Act in 2012, which reaffirms that all persons with disabilities have legal capacity, and establishes that the Civil Code must be amended to regulate the access to support systems and reasonable accommodation required for decision-making. Therefore, a new act ordered the creation of a Special Committee within the Peruvian Congress which was established earlier this year. The Committee includes representatives from DPOs.

He stressed the challenges for implementing a successful reform. First, legal capacity is informally denied within families and communities and second, there is a lack of specific guidelines on how to implement a supported decision-making regime. In this context, the draft General Comment on Article 12 is welcome. Firstly, it provides continuity and support to the work undertaken by many DPOs based on the Committee’s first Concluding Observations. Secondly, it represents an endorsement to countries that have already initiated a law reform process of guardianship regimes, as well as an opportunity to provide them with technical orientation and support for addressing the more complex aspects of the paradigm shift. Thirdly, it is needed in order to clarify general obligations derived from the different components of Article 12 and its connections with other articles of the CRPD. In this context, he expressed support to the approach taken by the Committee on the synergy between Article 12 and 19. He expressed his belief that ‘community-based support regimes’ should be favoured, encouraged and recognised.

**Questions and remarks from the Committee members**

Carlos Rios Espinosa pointed out the importance to link Article 12 with Article 8 and also that it is important to continue with the discussion on legal capacity in the criminal context, because it is very complex and has not been implemented in all countries in all its scope.

Theresia Deneger thanked the WNUSP for the submissions to the General Comments, in particular the work carried out by Tina Minkowitz.

Diane Mulligan highlighted the need to change the mindset of people in order to implement Article 12. She was also interested to know how they anticipate using Article 12 in daily life in social settings and awareness raising. She also asked how we could use Article 12 to reach those voiceless people who are not users and survivors of psychiatry because they do not have access to these services.

Edah Maina pointed out that when we talk about these violations, it is in the rehabilitation institutions of persons with psychosocial disabilities and adults with intellectual disabilities where the violations take place. She thus asked to what extent they are planning to include that particular group of people on board. She also asked if they were targeting people in universities, because this is the place where people have money to invest in different approach?

Monthian Buntan asked why the measures to safeguard should be treated under Article 16 rather than Article 12 of the Convention? It appeared to him that the Article 12 (4) discusses the measures to safeguards. In that regard, he would like to ask the panelists to make a distinction between the Article 12(4) and the Article 16. He additionally asked if there were any good example of step-by-step processes to remove the guardianship system?

Alberto Vasquez replied to Diane Mulligan’s question. He pointed out that there is a lack of interest from the society and the government. He also mentioned a lack of general services, but pointed out that the problem is more related to social inclusion. He mentioned that it can be seen as an opportunity to create new services under a human rights-based approach.

Tina Minkowitz explained that we should see the measure to safeguard under Article 16 when it concerns preventing abuse and exploitation; too often safeguard measures have been seen as a way to prevent and protect persons with disabilities from abuse and exploitation.

Time ran out during the event and outstanding questions were addressed bilaterally.

1. \* This summary compilation is provided by the IDA secretariat and is not an official record of the proceedings. The review was webcast live and [archived](http://www.treatybodywebcast.org/crpd-11-side-event-on-legal-capacity-organized-by-wnusp-english-audio/) for subsequent viewing. [↑](#footnote-ref-1)