Module IV: Substitute Decision-Making vs. Supported Decision-Making

Implications of Article 12 of the CRPD in people’s live
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Welcome!

Goals
For this Session

1. 
2. 
3. 
Goal 1

➢ To reflect on the ways societies value and legally recognize specific ways of making decisions about our lives.

➢ Discussion Period

Goal 2

➢ To discuss the implications of substitute decision-making vs. supported decision-making.

➢ Discussion Period
Goal 3

- To identify challenges and benefits of supported decision-making in daily life.

- Discussion Period

Goal 1

To reflect on the ways societies value and legally recognize specific ways of making decisions about our lives.

- What type of decisions
- Who can make those decisions
- Why can they make decisions
Think of a time in which you felt that a decision you made was not acknowledged or respected.

Reflect on the following questions:

- What type of decision did you make? (Health, personal, financial, etc.)
- What was the position of the person or persons who did not respect your decisions?
- Did they have any kind of authority? Could they override your decision? Where did their power come from?
- How did you know that your decision was not acknowledged or respected?
- Did you have any recourse to challenge their position? If so, did you use it? Did it work? Why?
What decisions do our legal systems currently recognize?

Traditionally, those that fulfill the following requirements:

- Made by “capable” people under the law
- Made voluntarily
- Made about a lawful object
- Made with a lawful cause

Who are considered “capable” persons under the law?

- Traditionally, adults
- Minors with assisted consent
- Adults considered to be “mentally sound”, meaning they must be able to:
  - Understand relevant information to make a decision
  - Appreciate the foreseeable consequences of a decision
  - Communicate a decision to others
Legal Capacity

- People granted **legal capacity** have the power to create, modify, or extinguish legal relationships.

Who are “incapable” under the law?

- Minors
- Adults who are not considered “mentally sound”. This generally includes:
  - People with intellectual/psychosocial disabilities
  - In some places, Deaf persons
What changes with the Convention?

- Under article 12 of the Convention, everyone is capable under the law and the center of legal capacity is the “WILL and PREFERENCES” of the person.
- It is no longer the capacity to understand.

Questions, Comments?

- Please write your questions or comments in the chat window.
- The facilitator will attempt to address them fully.
Goal 2

To discuss the implications of substitute decision-making vs. supported decision-making.

- Consequences of substitution
- Alternatives
- Kinds of supports

What are the consequences of being deemed “legally incapable”?

- Although you are entitled to rights, you cannot act on them without a third person
- That third person is recognized by the legal system as the guardian or tutor and only them are allowed to make decisions about the person deemed incapable.
- This is called “substitute decision-making”
What are some of the effects of substitute decision-making?

- **Financial** – The guardian is legally allowed to make all financial decisions on behalf of the person under guardianship.
- **Health** – The guardian is the only person allowed to sign informed consent for medical procedures.
- **Education** – The guardian decides whether the person can access an educational institution.
- **Residence and mobility** – The guardian is legally allowed to make residential arrangements for the person including institutionalization.

What are some of the effects of substitute decision-making?

- **Family choices** – A person under guardianship is not generally allowed to make choices such as partnering or marrying someone without previous authorization.
- **Employment** – The guardian must sign any employment contract.
- **Political rights** – Generally, people under guardianship are disenfranchised and cannot vote or run for office.
- **Recreation** – The guardian must sign enrollment in any organized activities, such as sports, or recreational activities.
Poll

- Were you aware of all these consequences?
  - YES
  - NO

So what’s the alternative?

- Article 12 of CRPD recognizes full legal capacity of all persons with disabilities.
- Guarantees supports for people to exercise their legal capacity.
- Ensures safeguards against abuse

**THIS IS CALLED:**

Supported Decision Making
Reflection Activity

Think of the kind of support you would need or have needed to make the following decisions as part of your own life project:

- Choose a college
- Pick a city to live in
- Buy a house
- Decide where to go on vacation
- Decide where to work
- Undergo chemotherapy or radiotherapy after a diagnosis of cancer
- Choose a contraceptive method
- Hire a lawyer

Poll

- Click the box named “ALL” if you would need support from someone else to make all of those decisions.
- Click the box named “SOME” if you would need support for some of those decisions.
- Click the box named “NONE” if you would need no support to make any of those decisions.
A new formula for legal capacity

abilities + supports + accommodation + legal status = Legal Capacity

The ability to be known as a person by others

An individual is recognized by others, as being the same person through time – this is the capacity to be known by others as a full person – with a life story, an ‘identity’ that can be narrated through time.
Questions, Comments?

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- The facilitator will attempt to address them fully.

Goal 3

- To identify challenges and benefits of supported decision-making in daily life.
- Implications
What does supported decision-making look like?

- Basically we all need some kind of support to make decisions about our life projects. The difference is in the intensity and the nature of the supports we need.
- Supported decision-making means that the person with a disability is always at the center of choosing their life project.
- Families, institutions and systems have to ensure that those choices are recognized and implemented without disability-based discrimination.

A new formula for legal capacity

abilities + supports + accommodation + legal status = Legal Capacity
What kinds of supports?

- Technological
- Communicational—Easy reading.
- Interpreters
- Representatives—People given specific, limited power.
- Facilitators—People who intervene for limited time and specific measures.

Challenges

- A model that welcomes risks and mistakes to advance autonomy
- There have to be clear understandings of who is liable for consequences of decisions when interpreters, representatives or facilitators are involved
- Safeguards against abuse cannot default to substitute decision-making
- Can you think of any others?
Questions

- What does this look like in your own context?
- What changes would have to take place institutionally and legally in your country to ensure full legal capacity of people with disabilities?
- What practices do you know of in your community that are examples of supported decision-making?

Thank you!

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