

## Conference of State Parties to CRPD (COSP12)

### Side Event

# Ending guardianship to leave no one behind: Implementing the right to legal capacity of people with disabilities in Costa Rica and Peru

12 June 2019, HQ CR-11

9:45 am a 11:00 am

**Organizer:** Permanent Mission of Costa Rica to the UN

**Co-Organizers:** Permanent Mission of Peru to the UN, the Office of the High Commissioner for Human Rights, the Office of the UN Special Rapporteur on the rights of persons with disabilities, the International Disability Alliance (IDA), Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP), Sociedad y Discapacidad (SODIS)

#### **Rationale:**

The right to legal capacity is central to human rights. Often described as the "right to have rights", it articulates the entitlement of every person to be a holder of rights and obligations under the law, which is a necessary precondition for the exercise of all other human rights.

Throughout history, persons with disabilities have been denied or restricted of their legal capacity as both legal standing and legal agency. In most jurisdictions worldwide, many persons with disabilities are commonly put under different substitute decision-making regimes such as guardianship or curatorship, which deny their autonomy and independence, compromising all aspects of life. Persons with disabilities under guardianship, for example, may have no control of the decisions related to their lives, such as entering into a contract, voting or running for office, consenting to or refusing medical treatment, getting married, or choosing where and with whom to live.

Challenges are especially acute for persons with psychosocial and intellectual disabilities, autistic persons, and persons with dementia. Moreover, the intersection between disability and gender results in both aggravated forms of discrimination and specific human rights violations against the right to legal capacity of women with disabilities, particularly in the exercise of sexual and reproductive health and rights.

The Convention on the Rights of Persons with Disabilities represents a significant paradigm shift in relation to the recognition of legal capacity of persons with disabilities. The Convention moves away from medical and paternalistic approaches towards a human rights-based approach. Article 12 of the Convention upholds a universalist understanding of the right to legal capacity recognising that all persons with disabilities enjoy legal capacity on an equal basis with others. Further, the Convention underscores the role of support in the actual implementation of the right to legal capacity. Accordingly, persons with disabilities should be provided access to appropriate support to exercise their legal capacity rather than being restricted in its enjoyment.

Since the adoption of the Convention, several States have completed or initiated legal reforms in relation to the right to legal capacity of persons with disabilities as part of their obligations to the Convention. Costa Rica and Peru are notable examples; they have both formally eliminated from their legal frameworks all forms of guardianship for persons with disabilities. In 2016, Costa Rica adopted Law No 9379 for the Promotion of Personal Autonomy of Persons with Disabilities, which abolished guardianship and created the "guarantor for the equality before the law of persons with disabilities", whose role is to ensure the full enjoyment of legal capacity by persons with disabilities. Similarly, in 2018, Peru adopted Legislative Decree No 1384 which reformed the Civil Code, the Procedural Code and the Notary Act in order to recognize the full and equal legal capacity of all persons with disabilities and to establish a range of options for supported decision-making. Both reforms have been internationally recognised as good practices in the implementation of article 12 of the Convention.

The 2030 Agenda for Sustainable Development commits States and other stakeholders to leave no-one behind as a means to achieving sustainable and inclusive societies, with particular attention to the intersecting aspects of exclusion and discrimination. Legal capacity is inextricably interlinked with the realisation of the Sustainable Development Goals, including Goal 1 on ending poverty, Goal 3 on health, Goal 5 on gender equality, Goal 8 on employment, Goal 10 on reducing inequalities, Goal 16 on peace and justice, and Goal 17 on strengthening partnerships. People with disabilities are amongst the furthest left behind, and within this group, persons under guardianship are the absolute last. Without the recognition of their legal capacity, the 2030 Agenda cannot be achieved.

## Objectives

- Discussing the importance of ending guardianship and other forms of substituted-decision making as a pre-condition to ensure the full and effective inclusion of persons with disabilities.
- Sharing good practices on legal harmonization and implementation of the right to legal capacity of persons with disabilities.
- Exploring different models of supported decision-making in practice.
- Identifying challenges and opportunities on the implementation of the law reforms in Costa Rica and Peru.
- Raising awareness about the importance of the active participation of the disability movement in legal harmonization.
- Strengthening multi-stakeholder dialogue, partnerships and networks (including States, UN, DPOs and civil society) to promote legal reform and realization of the right to legal capacity of persons with disabilities.

## Speakers

Moderator: Catalina Devandas, UN Special Rapporteur on the rights of persons with disabilities

Welcome remarks:

- Ambassador Rodrigo Alberto Carazo, Permanent Representative of Costa Rica to the United Nations
- Ambassador Gustavo Meza-Cuadra, Permanent Representative of Peru to the United Nations

Panellists:

- Ericka Álvarez, President of the Board of Directors of the National Council of Persons with Disabilities of Costa Rica (CONAPDIS)
- Darío Portillo Romero, President of the National Council for the Inclusion of Persons with Disabilities of Peru (CONADIS)

- Jacobo Fernández Álvarez, Deputy Director General of Legislative Policy, Ministry of Justice of España
- Markus Schefer, Member of the Committee on the Rights of Persons with Disabilities
- Tina Minkowitz, Chair of the Center for Human Rights of Users and Survivors of Psychiatry (CHRUSP)