



SEMINÁRIO INTERNACIONAL DE CAPACIDADE JURÍDICA E TOMADA DE DECISÃO APOIADA

DEFESA E GARANTIA DE DIREITOS
APAE DE SÃO PAULO

Apoio:



Realização:



GOVERNO DO ESTADO DE SÃO PAULO
Secretaria dos Direitos da Pessoa com Deficiência



Abolition of coercive paternalistic state interventions in the lives of PWD

This presentation will emphasize the freedom from coercive paternalistic intervention as an essential element of article 12
Viewed in this way, guardianship and nonconsensual interventions in mental health settings are both instances of coercive paternalistic intervention by the state
Also called substitute decision-making regimes in GC1



The right to self-determination and self-defense

Legal capacity is a positive right to initiate legal relationships and accept them – the right to say yes

And

Legal capacity is a negative right to be free from other people's intrusion on one's decision-making, bodily integrity, personal space and freedoms – the right to say no



Free and informed consent/right to refuse

Free and informed consent in health care is a fundamental human right that demonstrates both positive and negative aspects of legal capacity

Right to consent to desired treatment that others may not want you to have

Right to refuse unwanted treatment that others may want you to have



Free and informed consent/right to refuse 2

Despite right to health being classified as economic/social/cultural right, free and informed consent is civil right to legal capacity and integrity

Immediate, not progressive realization

Non-derogable

Exceptions that have been permitted under CESCR GC14 need to be reconsidered in light of CRPD jurisprudence



Forced psychiatric interventions

Forced psychiatric interventions are a particular kind of treatment without consent that is egregious for the following reasons:

The conflation of mental capacity with legal capacity, so as to deprive the person of a fundamental right, is further conflated with the perceived need to treat an illness – the object of the legal act itself represents a threat to the person’s legal capacity (Self-determination and self-defense)



Forced psychiatric interventions 2

In order for states to comply with the CRPD and abolish forced psychiatric interventions, we need to understand that psychosocial disability is not an illness

Medical and non-medical approaches alike – pharmaceuticals, psychotherapy, peer support, cultural healing practices – meet psychosocial needs, not biological ones



Forced psychiatric interventions 3

Depathologizing experiences of intense psychic suffering or openness is essential to provide appropriate support

And

To prohibit and prevent misuse of emergency health powers to initiate forced psychiatric interventions (hospitalization, administering medications, etc., without the person's free and informed consent)



General approach to emergency

Under the CRPD people retain their legal capacity to make decisions at all times including in crisis situations

This includes crisis of psychosocial nature

It also includes medical emergencies

If it is not possible in a medical (not psychiatric) emergency to determine the person's will and preferences medical personnel should be authorized to make a 'best interpretation' and if necessary to follow a default protocol of saving life and health



Psychosocial crisis situations

Situations that have been treated as ‘psychiatric emergencies’ need to be reframed as psychosocial crisis situations

Not medical

Require support and accommodations for the person to get through the crisis according to their own will and preferences

And

Without coercive interventions, which create conflict and great harm, and are contrary to the right to legal capacity



Coercive paternalistic state interventions

Article 12 prohibits the use of ‘best interest’ principle in any determinations regarding adults

Mental health legislation is one example of coercive paternalistic state intervention in the lives of PWD

State authorizes public and private actors to deprive individuals of their liberty and to act against their bodily integrity

These acts amount to arbitrary detention and torture

(Severe suffering inflicted for reasons based on discrimination)



Coercive paternalistic state interventions 2

There may be other mechanisms in a society whereby the state can intervene in the lives of PWD or other groups in situation of vulnerability

E.g., adult protection measures

(Not considering children for now as their relationship to legal capacity needs further development in light of CRPD but remains different than that of adults)

All such measures violate Article 12 if they entail coercion – instead provide supports and accommodation, respect decisions



Summation

Unless we address and eliminate coercive paternalistic interventions by the state in the lives of PWD, any legal capacity reform will be incomplete

This entails depathologizing psychosocial crisis and psychosocial disability and removing these experiences from medical hegemony (reframing mental illness/disorder and not merely adding 'psychosocial disability')



Presenter resources

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www.chrusp.org

<http://absoluteprohibition.org>

<http://crpdcourse.org>



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