
Advocacy for legal education in Colombia

➔ By Profamilia, Fundamental Colombia, ASDOWN, and University Los Andes' Action Program for Equality and Social Inclusion (PAIS), Colombia



Topic area: Protecting women and girls with disabilities from forced sterilization.

Background

Although Colombia ratified the Convention on the Rights of Persons with Disabilities (CRPD), it has not complied with CRPD article 12. Many persons with intellectual or psychosocial disabilities have been declared legally incapable through a judge's decision, and thus have been appointed a legal representative or legal guardian. Before this practice began the legal representatives or guardians had the right to decide to sterilize the person whom she or he represented. Sterilization was often performed as a form of "protecting" the person with disabilities against sexual abuse, or this was the argument often used for this type of intervention.

Once Colombia ratified the CRPD and became a State party, the practice promoting organizations started questioning the legality of forced sterilization. The coalition decided to legally challenge forced sterilization, using CRPD article 12 and 17 as legal framework and arguments.

What happened?

PROFAMILIA, as a nationally acknowledged organization providing sexual and reproductive health services, received requests from the guardians of women and girls with intellectual or psychosocial disabilities to sterilize them, arguing that the sterilization would “protect” them from sexual abuse or violence.

PROFAMILIA sought the advice from the University Los Andes’ Action Program for Equality and social Inclusion (PAIS is the Spanish acronym) legal clinic, and together liaised with two organizations of persons with disabilities—ASDOWN (Colombian association of persons with Down syndrome) and Fundamental Colombia (an organization of persons with psychosocial disabilities). The coalition designed an advocacy strategy which included: awareness raising activities aimed at health professionals

and practitioners, judges and judicial staff, families of persons with disabilities and persons with disabilities themselves; a legal strategy aimed at challenging denial of legal capacity and forced sterilization based on this criteria; promoting the autonomy and respect of the will and preferences of persons with disabilities; and promoting choices in sexual and reproductive health services.

The legal strategy including discussions with judges who had declared persons with disabilities as legally incapable, informing them about the CRPD, particularly the scope of article 12 (Equal recognition before the law), and article 17 (Protecting the integrity of the person). The outcome of these actions, in addition to legally challenging all legal provisions allowing for the restriction of legal capacity in persons with disabilities, was a decision of the court to allow forced sterilization only in cases when this medical intervention had been authorized by a judge’s order.

In addition, health professionals and practitioners were informed of this decision, consequently the protocols for the sterilization of persons with disabilities was modified.

When inquiring about any changes in the number of sterilizations undertaken in persons with disabilities, the practice

“holders” were unable to provide these figures, due to the fact that sterilizations to persons with disabilities had not registered as such. However, they acknowledge the numbers of sterilizations have decreased. The project team realized that it is important to teach young women and girls with intellectual or psychosocial disabilities about sexual and reproductive rights. Trainings were also aimed at the families of persons with disabilities, many of whom still believed that sterilization, particularly of women and girls with disabilities, would “protect” them from sexual abuse and violence. Awareness raising, not only about sexual and reproductive rights and prevention of sexual violence, but also about autonomy and supported decision making is fundamental for long term change.

What worked?

The leadership of the coalition was instrumental: PAIS’ Director, the Colombian lawyer Andrea Parra, has been an intense activist for the rights of persons with disabilities, advocating at the highest judicial levels, including Colombia’s Constitutional Court. Andrea Parra is not a person with a disability, but she has become part of the disability movement in the country, getting involved in many of the legal and political advocacy actions promoted by organizations of persons with disabilities, at national and regional level with a case at the Inter-American Human Rights Commission. Another key factor was the leadership of the two organizations of persons with disabilities involved in this practice. ASDOWN and Fundamental Colombia have played key roles in many advocacy efforts, especially since they represent persons with disabilities who are among the most marginalised.

As a health service provider, PROFAMILIA became fully involved in protecting the rights of persons with disabilities, shifting from the medical model of disability to the human rights model of disability. With 33 offices nationwide and widespread acknowledgement from Colombian society as a leader in

providing sexual and reproductive health services, its scope and outreach capacity enabled it to lead this practice.

What changed?

- Now forced sterilization of women and girls with disabilities who have been declared legally incapable can only be undertaken with a judge's order.
- There is an advancement in prohibiting forced sterilization of women and girls with disabilities, although not banned completely.
- There is more awareness amongst judges and professionals in the judicial system that CRPD harmonization requires the restoration of full legal capacity for all persons with disabilities, including those with intellectual and psychosocial disabilities, and the elimination of all legal regimes that allow for substituted decision making and guardianship.
- Health professionals and practitioners, in particular those providing sexual and reproductive health services, have increased their awareness that sterilization is not the solution to prevent sexual abuse and violence against women and girls with disabilities. On the contrary, women and girls who have been sterilized are at a higher risk of being sexually abused.

What did we learn?

CRPD compliance has not been achieved, legal harmonization is still pending in relation to the articles involved in this practice, in particular, articles 12, 13, 16, 17 and 23. There is still a big challenge in achieving full recognition of legal capacity in all persons with disabilities, but particularly for persons with intellectual or psychosocial disabilities. Forced sterilization (through a judge's order) may still happen as long as cases concerning legal capacity are still pending. It is an enormous challenge to achieve a change in attitudes toward fully respecting the autonomy, will and preferences of persons

with disabilities and their right to decide for themselves. Another challenge is addressing the huge misconception that sterilization may "protect" women and girls with disabilities from sexual abuse and violence.

Data should be disaggregated by type of impairment to understand if particular groups are being targeted or discriminated against. It is important to know how many persons with disabilities have been declared legally incapable, and whether they were sterilized following declarations of their legal incapacity. There is a need for more DPOs to get involved in the legal harmonization of CRPD (especially article 12), specially challenging the legal regimes that allow for substituted decision making of persons with disabilities. There needs to be more awareness among judges, health professionals and the families of persons with disabilities, that forced sterilization is a human rights violation under CRPD article 17 and the Convention Against Torture. People need to understand that sterilization does not protect persons with disabilities from sexual abuse or violence. "I was never heard and never taken into account. Nobody asked me what I thought. But now, I know I can say what I think and if I don't like something that's happening, I can say it." Sonia Restrepo, young woman with intellectual disability. "I am aware that women and girls with disabilities must lead these processes." Monica Cortes, President of ASDOWN.

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