

Amalia Gamio

Humanistic Justice in Practice

1

- Facts
- Tools
- What to do
- Example

2

FACTS

General Comment No 3 in regard with article 6 (Women and girls with disabilities) of the Convention and its relation to article 13 Access to justice

- They face barriers to accessing justice, including with regard to exploitation, violence and abuse lack of procedural and reasonable accommodations
- lead to their credibility being doubted and their accusations being dismissed
- Negative attitudes in the implementation of procedures may intimidate victims or discourage them from pursuing justice.


3

Examples of such attitudes:

Complicated or degrading reporting procedures,

The referral of victims to social services rather than the provision of legal remedies

Dismissive attitudes by the police or other law enforcement agencies

Impunity and to the invisibility of the issue  violence lasting for extended periods of time

They also fear reporting violence, exploitation or abuse because they are concerned that they may lose the support required from caregivers

4

- For centuries, psychosocial disability has intertwined two sciences: medicine and law.
- To be exempted from judicial responsibility and confined in institutions to "prevent them from attacking" the social order reinforcing the link between psychosocial disability and criminality,
- Person is considered unimputable, accordingly, is considered socially but not criminally responsible, results in the loss of his/her legal capacity, violates the effectiveness of access to justice
- Arbitrary detention is also a common practice
- Medical expertise persists for persons with psychosocial or intellectual disabilities, in addition to the fact that it involves following this medicalized approach to disability

5

TOOLS

Understanding, information and rising awareness first and foremost

- Article 13 CRPD
- Guidelines Art 14
- International Principles and Guidelines on Access to Justice for Persons with Disabilities. 2020 UN, Special Rapporteur, CRPD AND EE
- Guidelines of DI
- Implement the figure of the legal advisor Supporting the person with a disability throughout the police investigation.
- Restorative justice

6

Article 13 Access to justice

- Transmission of information in an understandable and accessible manner;
- Recognition of different forms of communication and adaptation to their use;
- Physical accessibility at all stages of the process;
- Financial support in the case of legal aid, if appropriate;
- Training law enforcement officials;
- Raising awareness.

Appropriate training should include:

- ❖ The complexities of intersectionality;
- ❖ The diversity of persons with disabilities and what each requires;
- ❖ Individual autonomy;

7

Guidelines Article 14

- Reaffirms that the right to liberty and security of person is one of the most valuable rights that individuals can exercise, closely related to article 12 of the Convention.
- Does not allow for exceptions whereby a person may be deprived of his or her liberty:
 - ❖ on the grounds of actual or perceived impairment
 - ❖ on the basis of the perceived danger they may pose to themselves or others
 - ❖ for medical care,

All this actions are contrary to Article 14 of the Convention;

8

- The Committee has established that declarations of unfitness to appear in court and of unfitness to stand trial in criminal justice systems, as well as the imprisonment of persons with disabilities on the basis of such declarations, contravene article 14 of the Convention because they deprive the individual of his or her right to due process and the safeguards applicable to any accused person.
- The Committee urges the State party to remove such statements from the criminal justice system,

9



**Principios y directrices
internacionales sobre el
acceso a la justicia para las
personas con discapacidad**

10

(DRAFT) GUIDELINES ON
DEINSTITUTIONALIZATION,
INCLUDING IN EMERGENCIES

11

Implement the figure of the legal advisor supporting the person with a disability

- Informing the interrogator of the person's disability, its implications in the interrogation and the correct way to interrogate.
- Helping to interrogate persons with psychosocial disabilities or severe communication problems; they communicate with them, explain their skills to lawyers and teach them how to use these skills during court proceedings to ensure coherent testimony.
- They advise lawyers to contact them when representing persons with disabilities.
- They suggest alternatives to deprivation of liberty.
- Conduct pre-trial tours of the courthouse with persons with disabilities to make the space familiar and less frightening.
- Provide support to the person with a disability throughout the judicial process, explaining the different stages of the process.
- They make requests to the court to make certain accommodations for the benefit of witnesses with disabilities.
- If requested by the Police or the Prosecutor's Office, they provide expert opinions on the nature of the disability and its influence on cross-examination and testimony.

12



13

Restorative justice

Applied to countries that have perpetrated massive, systematic and widespread human rights violations during situations of conflict and war, where the normal justice system cannot provide an adequate response, without the doubt, it must be applied to persons with disabilities. They have been subject to control, denial of their rights and oppression, who even in the 21st century are segregated in institutions of all kinds, covering up serious violations of their rights.

14

WHAT TO DO

- ✓ Raising awareness at all levels
- ✓ Train justice personnel with gender and age approach
- ✓ Apply the tools at hand in a determined, holistic but firm manner.

One case received and processed by the CRPD. Case from Tanzania- Another tool

15

Conclusion

We need a society and legislation that recognize that persons with disabilities are subjects of rights and obligations and not objects that cannot take their own decisions.

Thank you for your attention

amaliagamio@yahoo.com.mx

16