**Human Rights Initiative: Own Initiative to Challenge Marginalizing Laws and Policies**

**Portfolio Review: CRPD Article 12, Restoring Legal Personhood, 2011 – 2014**

**Overview**

Recognizing legal personhood is a basic right upon which all other rights rest. A web of laws and policies, mirroring social attitudes, however, makes persons with disabilities invisible as equal legal persons before the law. Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD) marks a paradigm shift by recognizing the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life.

This portfolio is about implementing this right. It is an ambitious endeavor—no country in the world currently fully recognizes the legal capacity of people with disabilities. Recognizing legal personhood requires rethinking legal and social constructs premised on the notion that protection of persons with disabilities by necessity trumps autonomy. Guided by Article 12, we have embarked on a journey to understand through practice how autonomy and protection can be balanced so that the rights of people with disabilities are protected.

**Portfolio at a glance**

In May 2011, the Human Rights Initiative convened a roundtable in Vancouver that raised some of the most complex questions on the implementation of CRPD Article 12, on equal recognition before the law and legal capacity. The roundtable was part of a series of conversations the Human Rights Initiative had sponsored over the preceding year involving some of the foremost advocates in the disability rights field with the aim of resolving theoretical differences within the disability rights community over the interpretation of Article 12.

It was the last of such meetings. Following another impasse in the debate, we decided that a different approach was required. Rather than attempting to resolve interpretative questions in the abstract, we realized we must invest in operationalizing Article 12 in a variety of contexts.

Several months later, the Human Rights Initiative convened, in Madrid, “From Theory to Practice: A Workshop to Explore Article 12 Implementation” with all of our grantees and partners promoting this right. The meeting cemented a fundamental shift in our strategy, from conceptual deliberations to supporting national-level reform, including practical models of supported decision-making (whereby, for example, a trusted person, a legal representation agreement, or advance directives augment one’s autonomy in decision-making) as an alternative to guardianship or to the denial of agency in family and community settings. The portfolio of grants reviewed here includes the work we have supported since this meeting.

Since the end of 2011, the Human Rights Initiative has given grants to 35 groups for work to promote CRPD Article 12 at nearly $4 million. In 2014, we are providing close to $1.3 million to 21 groups (including grants that began in 2013); if all the anticipated grants come through in the second half of 2014, the sum will increase to nearly $1.77 million supporting 32 groups. The regional distribution of funding is $450,000 to Central and Eastern Europe, with Latin America and Africa following behind at roughly $250,000 each. Global grants—for regional and international advocates and conveners and experts working with in-country partners—reach $650,000, including two sizeable grants to our strategic partners and movement-builders on legal capacity (Mental Disability Advocacy Center and Inclusion International). Several “outlier” grants go to a legal advocacy group in China and to supported decision-making pilots in the US (the latter is pending). Our support covers the whole gamut of organizations: advocacy and self-advocacy organizations focusing on the rights of persons with disabilities, family organizations, mainstream human rights organizations, academic and research institutes, and university-based legal clinics—reflecting the multi-stakeholder and multi-sectorial approach necessary to bring about change in this field.

**Context**

Just within the last century, women, people of color, and enslaved people were made invisible before the law based on society’s perception of them as helpless, needy, irrational, or deviant. While significant progress has been made in eliminating this invisibility for other groups, persons with disabilities the world over continue to be subject to marginalizing laws and practices that deny legal personhood on the basis of disability. The paternalistic impulse within societies leads to a misguided notion that removing people’s legal capacity is an inevitable necessity in order to protect them from abuse or ‘bad results.’ While some people with disabilities do need support in handling their own affairs (as many of us do), the need for support when associated with disability has traditionally served as a ground for denying legal capacity. Legal systems present a serious impediment to change. So much of establishing and extinguishing legal relationships is conditional upon a capacity test, and persons with disabilities, in particular those with intellectual or psychosocial disabilities, have been traditionally viewed as lacking capacity in certain or all areas of life.

The articulation of the right to equal recognition before the law in the CRPD, which entered into force in 2008, has been a game changer. Countering perceptions that assessments of incapacity can diminish this right, CRPD Article 12 emphasizes not only the right of all persons to enjoy legal capacity and exercise it on an equal basis with others, but also the state’s duty to ensure access to support in doing so.

Recognizing this right requires changing laws and policies—in some countries hundreds of them—which are based on the old paradigm of substitution and ‘knowing what’s best’ for someone else. It requires eliminating court-backed incapacitation mechanisms such as guardianship and limitations on capacity embedded in a myriad of legal fields such as contracts, inheritance, evidence, court procedures, personal status, reproductive health, and voting and political participation. It also requires abolishing community and family practices leading to forced institutionalization, disinheritance, non-consensual sterilization, denial of the opportunity to marry, and, in general, control of individuals’ big and small life decisions.

Yet how to operationalize CRPD Article 12 while minimizing the risk of abuse and protecting legitimate interests of third parties is now the challenge. The stakes are high. Persons with disabilities have long been disempowered to make their own choices, let alone demand systemic change. Families lacking support, fearing for their family member and not knowing of alternatives, have traditionally preferred over-protection. Influential constituencies invested in how legal capacity is currently managed—from the medical, service provision, and legal perspectives—commonly resist change. Psychiatrists’ associations, for example, whose practice is too often premised on the possibility of resorting to forced treatment or confinement based on the combination of a diagnosis and an assessment of incapacity and dangerousness, frequently see changes to the status quo as threatening their ability to, in their view, protect patients from harm. Providers of guardianship services, whose service provision model assumes an eventuality of substituting a person’s decision-making with that of another, are dependent upon legal systems that diminish capacity in favor of substitute decision-making, over providing supports. Likewise, judges and bar associations, working within the confines of limiting laws, may be unable to imagine an alternative that upholds capacity by providing supports.

The journey is further complicated by differences within the disability movement itself about what this right means. While international advocacy organizations representing persons with intellectual disabilities emphasize the provision and legal recognition of support in decision-making, those representing persons with psychosocial disabilities emphasize autonomy and point at the risk of decision-making support paving the way to intervention in one’s autonomy. As roundtables we convened in 2010 and 2011 among movement leaders about the theoretical underpinnings of Article 12 did not yield a breakthrough, we understood that we could more constructively navigate these differences only through practice, and thus shifted our focus to supporting the operationalization of the right to exercise legal capacity.

**Our approach**

How the denial of legal capacity looks varies significantly among countries and regions. In Bulgaria (and other countries where the response to persons with disabilities’ support needs is laden with formal procedures usually ending in segregation), it occurs overwhelmingly through court proceedings in which individuals with disabilities are deemed incapable of taking actions with legal implications and a guardian is appointed. In Zambia (and other countries where lack of support services results in marginalization within communities), courts are rarely invoked for an incapacity declaration. Rather, restrictionsareenacted by families and communities largely undetected by the legal system: individuals with disabilities may be overlooked in family inheritance, treated as “unmarriageable,” and seen to “consent” to psychiatric confinement against their will as long as a family member requested it.

Our portfolio endeavors to operationalize the exercise of legal capacity by all, in multiple geographies, representing varying ways in which legal capacity is compromised. We do this through grant making and operational work supporting: law reform to eliminate infringement of this right and to create an enabling framework for its implementation; policy development to turn reformed legal codes to practical systems; litigation challenging guardianship regimes; establishment of supported decision-making models demonstrating how legal capacity can be upheld for all; research addressing concerns on protection from abuse; advocacy to set international standards paving the way for national reforms; and technical assistance to carry forward this complex work.

Since no system exists that does not resort to denying legal capacity, we do not have an example of a country that we can point to for best practices. Given the complexity of the issue, leading factors in our choice of countries are: the strength of the potential partners; having the right combination of partners, which should include groups directly affected by the issue, groups that have credibility to convene and summon cross-sectorial partners within the disability movement and beyond, and groups having a legal bent (from our experience there will not be one organization covering all three criteria). Since in this area differences among contexts are especially pronounced, we also seek to ensure that the main ways in which legal capacity play out in each of the three regions in which we support disability rights work (Africa, Latin America and Central and Eastern Europe) is represented through our country selection, in order to develop a range of practice appropriate to these diverse contexts.

**Partners**

The Human Rights Initiative is leading the work within the Open Society Foundations in this area. Programming in Eastern and Southern Africa is done in close collaboration, including co-funding, with our colleagues at OSIEA and OSISA. We partner with the Justice Initiative in developing university-based legal clinics that expose law students to ways in which denial of legal capacity plays out in people’s lives. We also have discussed with Justice Initiative colleagues several of their cases in which limitations of clients’ legal capacity figured. In 2014, Open Society Fellowships granted its first fellowship relating to the rights of persons with disabilities to Dr. Michael Bach. Dr. Bach is a strategic partner and is helping inform our strategy on legal capacity (as detailed below as well), enabling him to consolidate his analysis of the processes he is advising into one of the first books on the issue. Legal capacity was a component in the Public Health Program’s campaign against torture in health care settings, and is inextricably linked with deinstitutionalization of persons with disabilities and the right to live in the community—a focus area of the Mental Health Initiative. With the Program’s International Harm Reduction Development Program we are exploring the links between the denial of legal capacity for drug users and persons with disabilities, who are often detained in “therapeutic communities” and subject to forced treatment and involuntary confinement. Legal capacity is implicated in the Open Society Policy Center’s advocacy for U.S. ratification of the CRPD by virtue of being a core right in the treaty, and in US work around voting rights.

Beyond OSF, the *Mental Disability Advocacy Center* was one of the first organizations to use legal advocacy tools to challenge the denial of legal capacity in Central and Eastern Europe. The Center’s litigation before the European Court of Human Rights holding Russia, Bulgaria, and Ukraine, among others, accountable for violations of the right to legal capacity led to the first trickle of precedent-setting jurisprudence (e.g., *Shtukaturov v. Russia*). It also ignited legislative reforms to curb some of the most marginalizing forms of violations of this right, such as the denial of independent access to the court to challenge incapacitation.

*Inclusion International*, the international advocacy organization representing persons with intellectual disabilities and their families, has done impressive groundwork attuning individuals and families to the issue. By advocating before international bodies, Inclusion International helped shape the contours of supported decision-making, one of the most important alternatives to stripping away legal capacity. In June, the group released an excellent report, “Independent but Not Alone—A Global Report on the Right to Decide.” Its merits, and how it caused us to reflect on our portfolio of work, will be described below.

In the past two decades, Dr. Michael Bach, director of the *Institute for Research and Development on Inclusion and Society (Canada)*, has explored conceptual, legal, and practical ways to retain decision-making by individuals with significant disabilities. Following the 2011 Madrid meeting, Dr. Bach helped us recognize the importance of supporting Article 12 projects as intentional multi-sectorial reform processes requiring multi-dimensional interventions. In consultation with our partners, we chose three countries reflecting a diversity of contexts where grantees were interested in upgrading their work toward national-level reform: Bulgaria, Zambia, and Colombia. The processes have yielded much learning, which will be discussed below.

The *Centre for Disability Law and Policy at National University of Ireland*, is a hub of pioneering academic research and advocacy, headed by legal scholar Professor Gerard Quinn (also an advisory board member of the Human Rights Initiative). The Centre, with Dr. Eilionóir Flynn at the helm, is leading the charge to replace Ireland’s incapacity-based legislation with a paradigm of “assisted decision-making,” and coordinating a regional project with Balkan countries and Turkey to promote legal capacity reform. We share material and experiences between this project and those that the Human Rights Initiative is supporting.

The *rights of* *older persons* are gaining momentum as an emerging human rights field. Treaty negotiations are advanced in the inter-American human rights system, and initial conversations are being held on a possible UN treaty on the rights of older persons. We recognize the importance of working with this constituency, many of whom face challenges in exercising their legal capacity at the onset of dementia or other progressive conditions. Without a shared vision between the disability movement and that of older persons for providing the necessary supports and protection without limiting legal capacity, the CRPD’s key accomplishment, recognizing the right to exercise legal capacity by all, could be compromised significantly.

Although persons with disabilities suffer from systemic negation of their legal existence, with a few exceptions, including grantees such as the Bulgarian Helsinki Committee, the Center for Legal and Social Studies (CELS), and Human Rights Watch, most of the *mainstream human rights community* has not yet embraced this as a human rights issue.

This is true also for *donors in the human rights field*. The Open Society Foundations are the only donor with a deliberate strategy on legal capacity. The focus of the few international donors funding disability rights is on general CRPD implementation. This funding may include, but does not prioritize, legal capacity, as is the case the Disability Rights Fund, a donor collaborative which we support for its important work seeding the field. A contributing factor may be the complexity of the issue. Nuanced legal knowledge and strong links with the disability movement are necessary to steer advocacy in line with Article 12. That said, we are beginning to see pockets of interest among some donors. Interestingly, legal capacity has figured in the European Commission’s funding under its Directorate General for Justice and enlargement process by which countries join the European Union, possibly drawing from the emphasis on legal capacity by the EU high level group on disability. We know of several donors funding work in the UK (Nuffield and Wellcome Trust).

**Key accomplishments**

* **Legal capacity removed from the realm of “protection” alone and recognized as a core human right:**

As recently as five years ago, negating legal personhood as a response to the need for support was an undisputed fact of life. Demands by disability communities for reform went only so far as calling for a purging of corruption and abuse from guardianship systems. No tools existed for capturing how vast numbers of people were marginalized and made unequal before the law through legal, social, community, and family practices. The adoption of the CRPD was a milestone in framing the human right imperiled by these laws and practices, but only through education, advocacy, and groundwork, in which the Human Rights Initiative’s conceptual, technical, and convening support played a significant role, has the turnaround from protection to rights occurred, breaking through centuries-old assumptions. Disability communities, even those working in challenging contexts where they lack a net of social services (Kenya or Zambia) or where the state infringes drastically on their autonomy (China), now call for upholding this right. Self-advocacy groups of people with intellectual or psychosocial disabilities, for whom this cause is deeply personal and profoundly liberating, are advocating for this right. Governments acknowledge the need to align their laws and practices accordingly and are held accountable through reporting to the UN CRPD Committee and other human rights mechanisms.

* **New legal foundations developed for challenging the systemic denial of legal capacity:**

Following grantees’ advocacy, the most pernicious forms of legal capacity, such as total erasure as a legal person (plenary guardianship), have been eliminated from the law books in Russia, Latvia, and Croatia. Amendments upholding legal capacity have been proposed in civil code reform in Argentina, Mexico, and Peru. Mechanisms of supported decision-making have been recognized by law in the Czech Republic and in the draft mental health bill in Zambia. In Bulgaria, where the reform process includes advocating with the legal profession, judges have begun rejecting applications for guardianship basing their decisions on CRPD Article 12. In addition to precedent-setting decisions of the European Court of Human Rights, jurisprudence is beginning to emerge through cases litigated by grantees in Mexico, the Czech Republic, and Latvia. The UN CRPD Committee’s recent general comment on Article 12 will help set a standard for the new paradigm.

* **Supported decision-making models demonstrate how people can be supported to have status and control over their lives, property, financial and health care decisions:**

Over the years, we actively pursued the establishment of working models for supporting individuals with significant disabilities in decision-making. These are crucial to grounding law reform efforts and introducing systemic changes. Where grantees sought to promote law reform, we urged them to identify relevant partners and propose developing a model as well. We are working closely with Dr. Bach to provide technical support in the three pilot countries; models are up and running in Bulgaria and are in the planning process in Zambia and Colombia. The most established model we support, in the Czech Republic, is now approaching the end of its third year. In Kenya, we encouraged grantees to develop a model applicable to individuals with psychosocial disabilities to complement an existing one for persons with intellectual disabilities. Following consultations with partners, we expect proposals which introduce such models in Colombia and Argentina, and a project to map existing supports in Peru. We are able to leverage the learning from the more veteran projects by sharing materials developed in Bulgaria, the Czech Republic, and Kenya with other partners, thereby also filling in some of the need for close technical support such as that provided by Dr. Bach, which due to the scarcity of experts and resource limitations we cannot provide to each project.

* **Regional and international civil society networks consolidated to share and increase knowledge:**

Recognizing that building a web of actors and experts across fields, countries, and regions is an integral part of promoting complex national-level reforms, we have convened communities of practice in Central and Eastern Europe, Latin America, and Africa. These networks allow for (at this point) regional learning through peer visits between countries and virtual and in-person convenings.

**Lessons learned**

We have found it helpful to focus on one positive lesson (what should be done) and one negative lesson (what should not be done) gleaned from our work to date.

**A positive lesson we learned is the need to steer national-level projects toward an aligned multi-faceted reform process.** In the first year of our support to the Bulgarian Center for Not-for-Profit Law, the Center worked alone, primarily through a legislative effort. It was only into the second year, after connecting the Center with Dr. Bach in order to infuse the project with more intentionality, that the group mapped out the full range of required changes in legislation, policy, practice, advocacy, service provision, and as well as the need to raise public awareness . Only through this process did the prospect of creating a model of supported decision-making emerge. Our funding in the second and third years supported a collaborative effort among organizations from different sectors. Though not without its challenges, the reform process has gained impressive traction and serves as a model for legal capacity reform.

All this took place as a result of a fortunate turn of events, rather than a premeditated strategy on our part. Other projects we supported focusing on narrower slices of a reform, for example legislative reform in Argentina and developing peer support as a tool for decision-making in Kenya, made interesting strides, but had not consolidated into broader reform processes as we see in Bulgaria.

In sum: It became clear to us that given the systemic legal and social implications of eliminating marginalizing laws and practices in this field and establishing an enabling framework, deliberate reform processes must be initiated. Success is unlikely without tackling multiple fields, such as legislation, practice, and attitudes. The process must be led by civil society, and driven by those directly affected; an academic center, or a mainstream human rights group, and even a disability rights advocacy group, alone, cannot commandeer such a process. At the same time, expertise is essential to provide legal, policy, and technical know-how, and if it is not present at the national level, it is incumbent upon us to figure out with our partners how to fill that role. We learned that without such expertise in the mix, not only the effectiveness of interventions, but how legal capacity is developed in practice, may be compromised.

**On the negative side, we learned that while legal capacity manifests in so many areas of life, not all of them provide useful hooks for reform, and that the mental health law, although seemingly a potent entry point, is a problematic one.** We find it helpful to analyze two entry points that we supported and did not extend to the multi-faceted reform cited above: voting rights and mental health law reform. Our support of the former entry point resulted in limited progress. Our support for the latter demonstrated the potential for negative repercussions ground by misidentifying effective entry points.

We have supported organizations in Tanzania, Rwanda, and Zambia proposing to challenge electoral laws and constitutions that impose flagrant restrictions on persons with disabilities’ right to vote and stand for election on the basis of perceived incapacity, often coined as “unsoundness of mind.” This work has not led to a broader reform on legal capacity, possibly because it is a single-track issue and does not lend itself to broader implications, such as setting up alternative mechanisms of support. Indeed, in accordance with our growing focus on a multi-layered approach, we do not foresee continuing a line of work centered on the right to vote alone. Yet we have found it helpful in eliciting a discussion among diverse actors, because it is tangible, focused, and resonates with core values of universal suffrage and political participation.

Mental health law reform was a different story. Early on in our strategy, several grantees proposed to use the political opening in their countries to reform the typically rights-violating mental health law regulating treatment and institutionalization, to introduce principles of legal capacity and supported decision-making. Initially we supported this approach, preferring that the opportunity be seized and thinking that by ensuring grantees had technical support, they could take on this complex task. This turned out not to be the case, and nowhere more so than in Ghana. Between 2011 and 2012, we provided technical support to an organization of users of mental health services and family members in Ghana advocating on the mental health bill. The organization ended up championing a law that perpetuates most of the previous law’s faults, including open-ended discretion to forced treatment and involuntary confinement. We learned that changing the paradigm on forced treatment and forced psychiatric confinement is one of the most challenging aspects of legal capacity reform, and will first require clarifying the nub of the right to exercise legal capacity, and putting in place mechanisms of supported decision-making and alternative community-based mental health services and supports. Without this practical groundwork, groups will hit a wall of resistance by the medical profession, government ministries, policy-makers, and legislators. Those not steeped in implications of the CRPD for legal capacity may unwittingly settle for procedural changes on informed consent without getting any closer to the recognition or exercise of legal capacity. The new law may be perceived as progressive by virtue of these cosmetic changes, but in effect halt further legal capacity reform consistent with the CRPD.

With the exception of Zambia, which is one of the three pilot countries in our portfolio, we have since refrained from supporting such efforts, which are underway in several countries including Kenya and Uganda. We continued support in Zambia because of the strong partners spearheading the effort and the extraordinary clout they have with relevant ministries, their clarity of vision on the implications of Article 12, their success in embedding the right to legal capacity in the disability rights act (a victory as yet unmatched in most countries around the world), and our ability to engage with the group through the support provided by Dr. Bach and his Institute to the process. This confluence of factors has led to positive results—the latest iteration of the mental health bill includes very interesting language recognizing legal capacity and supported decision-making—but these results are not easily replicable elsewhere, and even in Zambia the bill is still racked with inconsistencies and not guaranteed to pass with the progressive provisions. With Dr. Bach’s ongoing support, the groups are planning supported decision-making pilots. We welcome the move beyond the mental health-focused legislative endeavor toward creating practice on legal capacity.

**Failures and obstacles**

* **Achieving balance in supporting constituencies** – At the same time that we partner closely with the international advocacy organization of persons with intellectual disabilities to promote Article 12 work, strikingly, we have been unable to partner with the parallel international advocacy organization representing persons with psychosocial disabilities. The gap is felt. Absent a strong platform that gives exposure to experience gained in supporting individuals with psychosocial disabilities in decision-making, the field is less developed and fewer resources are available to guide activists on practice.

Leadership and capacity are part of the explanation. Our support to the World Network of Users and Survivors of Psychiatry to build their capacity as a global leader on the rights of persons with psychosocial disabilities has not yielded their engagement in legal capacity reform in a sustained manner. As noted before, there is a difference, at times subtle, between providing support in exercising legal capacity and *intervening* in one’s autonomy, particularly around decision-making by individuals with psychosocial disabilities, where intervention is often motivated by society’s value judgments rather than by the individuals’ request for support. While there are experts within the World Network who are credited with advancing the theoretical underpinnings of Article 12, they have not been involved in translating theory into practice. We hope to strengthen our connection with them and better utilize their experience in supporting our partners, and are encouraged by the strong advocacy by some of the World Network’s national affiliates, such as the group in Kenya.

**Closing the communications gap** – We have not been sufficiently intentional in ensuring that our work is accessible to audiences outside the immediate stakeholders of our projects. Many activists worldwide, including ourselves, have been shaping and reshaping what we mean by Article 12, struggling to create an overarching narrative that can transmit meaningfully its essence and unifying theme, while recognizing the widely varying contexts of this right and its violation. “Legal capacity” has become legalistic shorthand used by many to express the deliberations, associations, findings, realizations, and stories from years of work. Yet none of these are transmitted by using the shorthand. The paradigm shift required by Article 12 is so vast, the protective impulse so strong, and the stakeholders whose mindsets need to be swayed so widespread among lay, professional, legal, and political communities, that conveying succinctly and compellingly to each audience what we are talking about is a task we cannot neglect going forward.

Upon reflection, how to communicate Article 12 to a broader audience has always been incidental to (if at all present in) advocacy to deconstruct the old paradigm and build the infrastructure of the new one. In the few cases where an activity line appeared in a proposal related to “public awareness” or “campaigning,” we checked to make sure the figure was low rather than encourage this line of action. Looking back, and probing that same grantee now—our Bulgarian partners in this case—the reference was to a photography exhibit that centered on individuals supported through the project and their stories of how their lives changed with their decision-making restored. We saw that exhibit during one of our visits. It accompanied an intensive period of convenings with the legal profession, and was highly effective in making the issue real and gripping. But as exhibits go, it was temporary, and is no longer being shown. Other projects we support lack a communications aspect all together, and we have seen presentations by our grantees and partners that leave listeners unmoved, including important conversations with the judiciary and other decision-makers.

There are notable exceptions to our assessment about the inaccessibility of Article 12 to broader audiences:

* Inclusion International’s recent global report, “Independent but Not Alone–A Global Report on the Right to Decide,” is the product of a thus-far rarely-applied methodology to communicating Article 12. Each of the report’s chapters shines a light on an aspect of Article 12, going back and forth between principle, policy, and narrative. The examples are tangible and the widespread use of first-person is empowering.
* Our technical assistance partner from Israel has begun an EU-funded pilot on supported decision-making. The group shared with us their plan to incorporate from the outset a digital campaign of short clips featuring individuals under guardianship and those whose legal capacity has been restored. Animation will be used to bring to life legal research demonstrating the tools to support decision-making in financial matters without resorting to guardianship. An effort will be made to maintain a balance between providing information and creating an emotional connection to the issue. Different clips would target different audiences, whether individuals with disabilities themselves, families, or policy-makers.

We now recognize the need to apply rigor and strategy to communicating about Article 12. This entails a commitment to avoiding legalistic shorthand and principled arguments that do not acknowledge real challenges and unanswered questions, legitimately worrying stakeholders such as the medical profession, judges, and financial institutions.

* **Preparedness for pushback** – Another important challenge we now recognize in supporting Article 12 work is that changes underway as a result of our partners’ legal capacity reform projects have triggered pushback from parties with a stake in the current paradigm. In Bulgaria, parallel to generating impressive links with the judiciary, our partners’ growing impact has led a cohort of law professors and legal clinical students to issue a negative legal opinion about the feasibility of the endeavor. Undoubtedly, this kind of pushback was not factored into our partner’s strategies; and in our review of proposals, not anticipating the kind of opposition reform efforts could face, we did not require potential grantees to include activities that would counter this opposition convincingly.
* **Ensuring learning and materials within reach** – Finally, we have not managed to make the learning and experience gained through the projects we support available and accessible to all but a narrow segment of activists. Those whom the message reaches happen to be in touch directly with us or in close contact with our partners. There is no repository of the latest developments from around the world. There is still no place where a budding activist, currently disconnected from the small communities of practice, could turn to access accumulated guidance on developing pilots or driving legislative reform.

**Adjustments to the portfolio**

An obvious adjustment is a **much stronger emphasis in each of our projects on the messaging of Article 12,** and requesting that our grantees devote a part of their projects to creating an accessible and compelling iteration of what legal capacity is that can be used with various audiences. Internally, we are delighted by a growing collaboration with our Communications team to showcase the exciting developments on global disability rights and the work carried out by our grantees. Their ideas, input, and expertise will be invaluable to us in developing our thinking about Article 12 communication. They have already expressed enthusiastic support for the idea of working together to elevate our work on this issue.

With the aim of instigating additional broad reform processes, **we are converging toward clustered funding for national-level reform** where capacity and opportunity exist. This entails identifying where law and policy advocacy calls for the addition of pilot-building, or where a research component would greatly enhance the potential to scale up a model, or even just linking between actors in the same country to consolidate their separate work into an aligned process. Indeed, we are already soliciting or approving grants that will yield broader reform processes in Zambia, Kenya, Latvia, Colombia, Peru, and Argentina. In communicating over renewals of support for existing reform processes, we will ask our partners to elucidate their strategy for the small-scale pilots involving 20, 30, or 100 individuals, and what it means to scale them up.

Within these processes, we must **take a closer look at methodology to support individuals with psychosocial disabilities** and use successful examples from projects we support to inform others. Absent sufficient capacity of the World Network of Users and Survivors of Psychiatry, we should increase the involvement of experts and organizations affiliated with the World Network.

Looking forward, we will **prioritize searching for an appropriate partner to work on the intersection of legal capacity and older persons**. Pursuant to the lessons we have learned about the importance of developing practice, an initial step may be supporting a pilot of supported decision-making involving older persons.

**Key questions**

1. **Adequate representation of constituencies and perspectives** – Have we invested adequately and sufficiently to help make the international constituency of persons with psychosocial disabilities a partner to Article 12 work? Given the gaps in leadership, was it right to move to a more country-level approach? More broadly, how can we help build up the platform and practice around supporting persons with psychosocial disabilities in decision-making?
2. **Robust and reachable communities of practice** – How real are our communities of practice? What else should we change in our strategy, including how we invest in the regional networks, to ensure that experience is collected and disseminated in a way that would enable someone who is not directly linked with the projects we support to know about this work and find material and support?
3. **Scaling up** – How do we support partners to build up existing efforts to transition from pilot-mode to systems-level change, and to anticipate and prepare for strong resistance? Do we have everything in place, in terms of how we support Article 12 work, to shepherd this process? Have we considered the range of partners to be brought in and relationships to be developed in order to systemize support for legal capacity (e.g., banking institutions, medical associations, bar associations)?