

Committee on the Rights of Persons with Disabilities

**Draft General comment on Article 12 of the Convention-
Equal Recognition before the Law***

* Adopted by the Committee at its tenth session (2 – 13 September 2013).

Justification of the General Comment

1. Equality before the law is a basic and general principle of human rights protection and is indispensable for the exercise of other human rights. The Universal Declaration of Human Rights (UDHR) and The International Covenant on Civil and Political Rights (ICCPR) specifically guarantee the right to equality before the law. Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) provides further description of the content of this civil right and focuses on the areas in which people with disabilities have traditionally been denied the right. It does not provide additional rights to people with disabilities; it simply describes the specific elements required to ensure the right to equality before the law for people with disabilities on an equal basis with others.

2. Given the importance of this Article, the Committee has provided interactive fora for discussions on legal capacity. Arising from these very useful deliberations on the provisions of Article 12 by experts, State Parties, disabled people's organizations (DPOs), non-governmental organisations (NGOs), treaty monitoring bodies, national human rights institutions and UN Agencies, the Committee found it imperative to give further guidance in a General Comment.

3. In the consideration of the initial reports of the different States Parties that have been reviewed so far, the Committee has observed that there is a general misunderstanding of the exact scope of the obligations of States Parties under Article 12. Until now there has been a general failure to understand that the human rights-based model of disability implies the shift from a substitute decision-making paradigm to one that is based in supported decision-making. The present general comment has the purpose of exploring the general obligations that are derived from the different components of Article 12.

4. This General Comment reflects an interpretation of Article 12 which is premised on the General Principles of the CRPD outlined in Article 3, including: respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

5. The UDHR, the ICCPR, and the CRPD each specify that the right to equal recognition before the law is operative 'everywhere'; in other words there are no circumstances permissible under international human rights law where a person may be deprived of the right to recognition as a person before the law, or in which this right may be limited. This is reinforced by the terms of Article 4(2) of the ICCPR, which provides that no derogation of this right is permissible even in circumstances of public emergency. Although an equivalent prohibition on derogation of the right is not included in the CRPD, the ICCPR parent article provides this protection by virtue of Article 4(4) of the CRPD, which provides that the provisions of the CRPD do not derogate from existing international law.

6. The right to equality before the law is also reflected in other core international and regional human rights treaties. Article 15 of the Convention on the Elimination of Discrimination against Women (CEDAW) also guarantees women equality before the law and requires the recognition of women's legal capacity on an equal basis with men, including the legal capacity to enter contracts, administer property and exercise their rights in the justice system. Article 3 of the African Charter of Human and Peoples Rights (ACHPR) enumerates the right to be equal before the law and enjoy equal protection of the law. Article 3 of the American Convention on Human Rights (ACHR) enshrines the right to

juridical personality and requires that everyone have a right to recognition as a person before the law.

7. States must holistically examine all areas of law to ensure that persons with disabilities are not having their right to legal capacity restricted on an unequal basis with others. Historically, persons with disabilities have been discriminatorily denied their right to legal capacity in many areas via substitute decision-making regimes such as guardianship, conservatorship, mental health laws that permit forced treatment, and others. These practices need to be abolished to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.

8. Article 12 affirms a permanent presumption that all persons with disabilities have full legal capacity. Legal capacity has been prejudicially denied to many groups throughout history, including women (particularly upon marriage), and ethnic minorities. However, persons with disabilities remain the group whose legal capacity is most commonly denied in our legal systems. The right to equal recognition before the law requires that legal capacity is a universal attribute, which inheres in all persons by virtue of their humanity, and applies to persons with disabilities on an equal basis with others. Legal capacity is indispensable for the exercise of economic, social and cultural rights. It acquires a special significance for the fundamental decisions persons with disabilities take in their lives in the areas of health, education and work. The denial of legal capacity to persons with disabilities has also in many cases led to the deprivation of many fundamental rights, including the following: the right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment and the right to liberty.

9. All persons with disabilities including those with physical, mental, intellectual or sensory impairments can be affected by denials of legal capacity and substitute decision-making. However, persons with cognitive or psycho-social disabilities were, and are, disproportionately affected by substituted decision-making regimes and denials of legal capacity. The Committee reaffirms that an individual's status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) can never be the basis for a denial of legal capacity or of any of the rights in Article 12. All practices that in purpose or effect violate Article 12 need to be abolished to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.

Normative Content of Article 12

Article 12 (1)

10. Article 12(1) reaffirms the right of individuals with disabilities to be persons before the law. This guarantees that every human being is respected as a person possessing legal personality, which is a prerequisite for the recognition of an individual's legal capacity.

Article 12 (2)

11. Article 12(2) recognises that persons with disabilities enjoy legal capacity on an equal basis with others in all areas of life. Legal capacity includes both the capacity to be a holder of rights and an actor under the law. Legal capacity to be a holder of rights entitles the individual to the full protection of her rights by the legal system. Legal capacity to act under the law recognizes the individual as an agent who can perform acts with legal effect. The right to recognition as a legal agent is also reflected in Article 12(5) CRPD, which outlines the duty of states to "take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial

credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

12. Legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise these rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to the decision-making skills of an individual, which naturally vary among individuals and may be different for a given individual depending on many factors, including environmental and social factors. Article 12 does not permit perceived or actual deficits in mental capacity to be used as justification for denying legal capacity.

13. In most of the state reports the Committee has examined so far, the concepts of mental and legal capacity have been conflated so that where an individual is thought to have impaired decision-making skills, often because of a cognitive or psychosocial disability, her legal capacity to make a particular decision is consequentially removed. This can be done simply based on the diagnosis of a disability (status approach), or where an individual makes a decision that is thought to have negative consequences (outcome approach), or where an individual’s decision-making skills are thought to be deficient (functional approach). In all these approaches, an individual’s disability and or decision-making skills are accepted as a legitimate basis for denying her legal capacity and lowering her status as a person before the law. Article 12 does not permit this discriminatory denial of legal capacity and instead requires that support be provided for the exercise of legal capacity.

Article 12 (3)

14. Article 12(3) recognizes the right of persons with disabilities to support for the exercise of legal capacity. States must refrain from denying legal capacity, and instead must provide access to the support that may be necessary to make decisions that have legal effect.

15. Support for the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making. Article 12(3) does not specify the form of assistance that must be provided. ‘Support’ is a broad term capable of encompassing both informal and formal support arrangements, and arrangements of varying type and intensity. For example, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for various types of decisions, or may use other forms of support, such as peer support, advocacy (including self advocacy support), or assistance in communication. Support for the legal capacity of persons with disabilities might include measures encompassing universal design and accessibility, for example, the burden of providing understandable information from private and public actors such as banks and financial institutions in order to enable persons with disabilities to perform the legal acts required to open a bank account, enter into contracts, or other social transactions. (Support can also constitute the development and recognition of diverse and unconventional methods of communication, especially for those who use non-verbal communication to express their will and preferences.)

16. The type and intensity of support desired will vary significantly between individuals due to the diversity of persons with disability. This is in accordance with Article 3(d) CRPD, which sets out ‘respect for difference and acceptance of persons with disabilities as part of human diversity and humanity’ as a general principle of the Convention. At all times including crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected.

17. Some persons with disabilities only seek the recognition of their right to legal capacity on an equal basis with others in Article 12(2), and may not wish to exercise their right to support enumerated in Article 12(3).

Article 12 (4)

18. Article 12(4) outlines the safeguards that must be present in a system of support for the exercise of legal capacity. Article 12(4) must be read holistically with the rest of Article 12 and the whole of the Convention. It requires States Parties to create appropriate and effective safeguards for the exercise of legal capacity. The primary purpose of these safeguards must be to ensure the respect of the individual's rights, will and preferences. In order to accomplish this, the safeguards must provide protection from abuse on an equal basis with others.

Article 12 (5)

19. Article 12(5) requires that States Parties take measures legislative and otherwise (administrative, judicial and other practical measures) to ensure the equal right of persons with disabilities with respect to financial and economic affairs. Access to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. This approach of denying legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with Article 12(3). Just as gender may not be used as basis for discrimination in this field, (Article 13(b) CEDAW) neither may disability.

Obligations of States Parties

20. State Parties have the obligation to respect, protect and fulfil the right to equal recognition before the law of persons with all disabilities. In this regard, the Committee recommends that States should refrain from any action that deprives persons with disabilities of the right to equal recognition before the law. They should take action to prevent non-state actors and private individuals from interfering with the ability of persons with disabilities to realise and enjoy their human rights, including the right to legal capacity. One aim of support to exercise legal capacity is to build the confidence and skills of individuals so that they can exercise their legal capacity with less assistance in the future if they wish. States Parties are obliged to provide training for those receiving support so that the individual can decide when to reduce support, or when they no longer require support for the exercise of legal capacity.

21. In order to recognise 'universal legal capacity,' whereby all individuals (regardless of disability or decision-making skills) inherently possess legal capacity, states must abolish denials of legal capacity that are discriminatory on the basis of disability in their purpose *or* effect (CRPD Article 2, in conjunction with Article 5). Status-based systems for the denial of legal capacity violate Article 12 because they are facially discriminatory, as they permit the imposition of a substituted decision-maker solely on the basis of the individual having a particular diagnosis. Similarly, functional tests of mental capacity, or outcome-based approaches that lead to denials of legal capacity violate Article 12 if they are either discriminatory or disproportionately affect the right of persons with disabilities to equality before the law.

22. This Committee has repeatedly stated in its Concluding Observations on Article 12 that States Parties must "review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences."

23. Regimes of substitute decision-making can take many different forms, including plenary guardianship, judicial interdiction, and partial guardianship. However, these regimes have some common characteristics. Substitute decision-making regimes can be defined as systems where 1) legal capacity is removed from the individual, even if this is just in respect of a single decision, 2) a substituted decision-maker can be appointed by someone other than the individual, and this can be done against the person's will, and 3) any decision made by a substitute decision-maker is bound by what is believed to be in the objective 'best interests' of the individual – as opposed to the individual's own will and preferences.

24. The obligation to replace regimes of substitute decision-making by supported decision-making requires both the abolishment of substitute decision-making regimes, and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the retention of substitute decision-making regimes is not sufficient to comply with Article 12.

25. A supported decision-making regime is a cluster of various support options which give primacy to a person's will and preferences and respect human rights norms. It should provide protection for all rights, including those related to autonomy (right to legal capacity, right to equal recognition before the law, right to choose where to live, etc.) and rights related to freedom from abuse and ill-treatment (right to life, right to bodily integrity, etc.). While supported decision-making regimes can take many forms, they should all incorporate some key provisions to ensure compliance with Article 12. These conditions include the following:

- (a) Supported decision-making must be available to all. An individual's level of support needs (especially where these are high), should not be a barrier to obtaining support in decision-making.
- (b) All forms of support to exercise legal capacity (including more intensive forms of support) must be based on the will and preference of the individual, not on the perceived/objective best interests of the person.
- (c) An individual's mode of communication must not be a barrier to obtaining support in decision-making, even where this communication is unconventional, or understood by very few people.
- (d) Legal recognition of the supporter(s) formally chosen by the individual must be available and accessible, and the State has an obligation to facilitate the creation of these supports, particularly for people who are isolated and may not have access to naturally-occurring supports in the community. This must include a mechanism for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge a decision of a supporter if s/he believes the supporter is not acting based on the will and preference of the individual.
- (e) In order to comply with the Article 12(3) requirement that States Parties take measures to 'provide access' to support, States Parties must ensure support measures are available at nominal or no cost to persons with disabilities and that a lack of financial resources is not a barrier to accessing support for the exercise of legal capacity.
- (f) The use of support in decision-making must not be used as a justification for limiting other fundamental rights of persons with disabilities. This is especially so for the right to vote, right to marry (or establish a civil partnership) and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment and the right to liberty.

(g) The person must have the right to refuse support and end or change the support relationship at any time they choose.

(h) There must be safeguards for all processes connected to legal capacity and supports to exercise legal capacity. The goal of these safeguards must be to ensure that the person's will and preferences are being respected.

26. The right to equality before the law has a long history of recognition as a civil and political right, with roots in the ICCPR. As such, rights within Article 12 attach at the moment of ratification. States Parties have an obligation to take steps to immediately realize the rights within Article 12, including the right to support for the exercise of legal capacity. The doctrine of progressive realization (Article 4(2)) does not apply to legal capacity.

Interrelationship of Article 12 with other Provisions of the Convention

27. Recognition of legal capacity is also inextricably linked to the enjoyment of many other human rights contained in the CRPD. These include, but are not limited to, the right to access justice (Article 13), to be free from involuntary detention in a mental health facility and forced mental health treatment (Article 14), respect for physical and mental integrity (Article 17), liberty of movement and nationality (Article 18), to choose where and with whom to live (Article 19 CRPD), freedom of expression (Article 21), to marry and found a family (Article 23 CRPD), to consent to medical treatment (Article 25 CRPD), and to vote and stand for election (Article 29 CRPD). Without the recognition of the individual as a person before the law, the ability to assert, exercise, and enforce these, and many other Convention rights, is significantly compromised.

Article 5 Equality and Non-discrimination

28. To achieve *equal* recognition before the law, legal capacity must not be denied discriminatorily. Article 5 CRPD guarantees that all people are equal under and before the law and have a right to equal protection of the laws. It also prohibits all discrimination on the basis of disability. Article 2 CRPD defines discrimination as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms.” Legal capacity denials that have the purpose or effect of interfering with the right of persons with disabilities to equal recognition before the law are a violation of CRPD Articles 5 and 12. The state might have the ability to restrict the legal capacity of individuals based on certain circumstances, e.g. bankruptcy or criminal conviction. The rights to equal recognition before the law and freedom from discrimination require that when the state is permitted to remove legal capacity it must be on the same basis for all individuals. Thus, it must not be based on a personal trait such as gender, race, or disability or have the purpose or effect of treating such persons differently.

29. Freedom from discrimination in the recognition of legal capacity restores autonomy and respects the human dignity of the person in accordance with the principles enshrined in Article 3 (a) CRPD. Freedom to make one's own choices most often requires legal capacity. Independence and autonomy include the power to have decisions legally respected. The need for support and reasonable accommodation in making decisions cannot be used to question legal capacity. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity (Article 3(d)) is incompatible with granting legal capacity on an assimilationist basis.

30. Non-discrimination includes the right to reasonable accommodation in the exercise of legal capacity (Article 5(3)). Article 2 defines reasonable accommodation as any

necessary and appropriate modification and adjustments which do not impose a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The right to reasonable accommodation in the exercise of legal capacity is separate from and complementary to the right to support for exercising legal capacity. States are required to make any modifications or adjustments to allow individuals with disabilities to exercise legal capacity, unless it is a disproportionate or undue burden. This may include, but is not limited to: access to essential buildings such as courts, banks, social benefit offices, voting venues, etc.; accessible information regarding decisions which have legal effect; and personal assistance. The right to support for the exercise of legal capacity is not limited by the claim of disproportionate or undue burden. The state has an absolute obligation to provide access to support for the exercise of legal capacity.

Article 6 Women with Disabilities

31. Article 15 CEDAW restored legal capacity to women on an equal basis with men, acknowledging that recognition of legal capacity is integral to equal recognition before the law. Paragraph 2 states that: “States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.” This applies to all women, including women with disabilities. The CRPD acknowledges in Article 6 that women with disabilities may be subject to multiple and intersectional forms of discrimination based on gender and disability. For example, women with disabilities experience high rates of forced sterilisation, and are often denied control of their reproductive health and decision-making, including being assumed not to be capable of consenting to sex. Certain jurisdictions also have higher rates of imposing substitute decision-makers on women than men. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognised on an equal basis with all others.

Article 7 Children with Disabilities

32. Article 12 protects equality before the law for all persons, regardless of age. The Convention also recognizes the developing capacities of children in Article 7(2&3) where it acknowledges that in ‘all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.’ To comply with Article 12, states must examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with children without disabilities.

Article 9 Accessibility

33. The rights in Article 12 are closely tied to the right to accessibility in Article 9 because the right to equal recognition before the law is necessary to enable persons with disabilities to live independently and participate fully in all aspects of life. The right to accessibility guarantees the identification and elimination of barriers to facilities or services open to or provided to the public. To the extent that these barriers include the recognition of legal capacity, the right to accessibility overlaps and is sometimes dependent upon the realization of the right to legal capacity. States must examine their laws and practices to ensure that both the rights to legal capacity and accessibility are being realized.

Article 13 Access to Justice

34. State parties must ensure that persons with disabilities have access to justice on an equal basis with others. The recognition of the right to legal capacity is essential for access

to justice in many respects. Persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals, in order to seek enforcement of their rights and obligations on an equal basis with others. States must also ensure that persons with disabilities have access to legal representation on an equal basis with others. This has been identified as a problem in many jurisdictions and must be remedied – including ensuring that individuals who experience interferences with their right to legal capacity have the opportunity to challenge these interferences (on their own behalf or with legal representation) and to defend their rights in court. (Persons with disabilities have often been excluded from key roles in the justice system, such as the ability to be a lawyer, judge, witness, or member of a jury.)

35. Police, social workers, and other first responders must be trained to recognize persons with disabilities as full persons before the law and to give the same weight to complaints and statements from persons with disabilities as they would give to non-disabled persons. This entails training and awareness raising in these important professions. Persons with disabilities must also be granted legal capacity to testify on an equal basis with others. Article 12 guarantees support for the exercise of legal capacity, including the capacity to testify in judicial, administrative and other adjudicative proceedings. This support could take various forms, including recognizing diverse communication methods, allowing video testimony in certain situations, procedural accommodations and other assistive methods. In addition, the judiciary must be trained and made aware of their obligation to respect the legal personhood of persons with disabilities, including legal agency and standing.

Articles 14 and 25 Liberty and Consent

36. Respecting the right to legal capacity on an equal basis includes respecting the right of persons with disabilities to liberty and security of the person. It is an on-going problem that people with disabilities are denied legal capacity and are detained in institutions against their will, either without regard to obtaining consent or on the consent of a substitute decision maker. This practice constitutes arbitrary deprivation of liberty and violates Articles 12 and 14 and States must refrain from such actions. It is recommended that States Parties provide a mechanism to review cases of persons with disabilities placed in any residential setting without specific consent from the individual.

37. The right to health in Article 25 includes the right to health care on the basis of free and informed consent. This obligates States Parties to require all health and medical professionals (including psychiatric professionals) to obtain free and informed consent from persons with disabilities. In conjunction with the right to legal capacity on an equal basis with others, this also obligates States to refrain from permitting substitute decision-makers to provide consent on behalf of persons with disabilities. All health and medical personnel should ensure the use of appropriate consultation skills that directly engage the person with disabilities and ensure, to the best of their abilities, that assistants or support persons do not substitute or have undue influence over the decisions of persons with disabilities.

Articles 15, 16, and 17 Respect for Personal Integrity and Freedom from Torture, Violence, Exploitation, and Abuse

38. As has been established in numerous concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement upon the rights to personal integrity (Article 17), freedom from torture (Article 15), and freedom from violence, exploitation and abuse (Article 16). This practice denies the right to legal capacity to choose medical treatment and is therefore a violation of Article 12. States Parties must, instead, provide access to support for decisions about psychiatric and other medical treatment. Forced treatment has been a

particular problem for persons with psycho-social, intellectual, and other cognitive disabilities. Policies and legislative provisions that allow or perpetrate forced treatment must be abolished. This is an on-going violation in mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness as well as views of people using mental health systems who have expressed deep pain and trauma as a result of forced treatment. The Committee recommends that State parties should ensure that decisions that involve a person's physical or mental integrity can only be taken with the free and informed consent of the person with disability concerned.

Article 18 Nationality

39. Persons with disabilities have the right to a name and registration of their birth as part of the right to recognition everywhere as a person before the law (Article 18(2)). States Parties must take the necessary measures to ensure that children with disabilities are registered at birth. This right is contained in the Convention on the Rights of the Child (CRC) (Article 7), but children with disabilities are disproportionately likely not to be registered. This denies them citizenship, often also denies them access to health care and education, and can even lead to their death with relative impunity, because there is no official record of their existence.

Article 19 Independent Living

40. To fully implement Article 12, it is imperative that persons with disabilities have opportunities to develop and express their will and preferences, in order to exercise their legal capacity in conditions equal to others. This means that persons with disabilities must have the opportunity to live independently in the community, and have choice and control over their everyday lives, on an equal basis with others, as enshrined in Article 19.

41. Interpreting Article 12(3) in light of the right to community living in Article 19 means that supports for the exercise of legal capacity should be provided using a community-based approach. Communities must be recognized by States as assets and partners in the learning process on the types of supports needed to exercise legal capacity, including raising awareness about different support options. States Parties must recognize persons with disabilities' own social networks and naturally-occurring community supports (including friends, family and schools, among others), as key to supported decision-making. This is consistent with the emphasis of the CRPD on full inclusion and participation in the community.

42. The segregation of persons with disabilities into institutions continues to be a pervasive and insidious problem in violation of a number of Convention rights. The problem is exacerbated by the widespread denial of legal capacity to persons with disabilities, which allows others to consent to their placement in institutional settings. The directors of institutions themselves are also commonly vested with the legal capacity of the individuals that reside there. This places all power and control over the individual in the hands of the institution. In order to comply with the CRPD and respect the human rights of persons with disabilities, deinstitutionalization must be achieved and legal capacity returned to the individuals who must be able to choose where and whom to live (CRPD Article 19). The individual's choice of where and with whom to live should not interfere with their right to access support for the exercise of legal capacity.

Article 22 Privacy

43. Substitute decision-making regimes, in addition to being incompatible with Article 12, also potentially violate the right to privacy of persons with disabilities, as substitute decision-makers gain access to a wide range of personal and health information regarding persons with disabilities. In establishing supported decision-making systems, States Parties

must ensure that those providing support for the exercise of legal capacity fully respect the right to privacy of persons with disabilities.

Article 29 Political Participation

44. Denial or restriction of legal capacity has been used to deny political participation, especially the right to vote, for certain persons with disabilities. In order to fully realise the equal recognition of legal capacity in all aspects of life, it is important to recognise the legal capacity of persons with disabilities in public and political life (Article 29). This means that the person's decision-making ability cannot be used to justify any exclusion of persons with disabilities from exercising their political rights, including the right to vote, to stand for election, and to serve as a member of a jury.

45. States parties should therefore protect and promote the right of persons with disabilities to access support of their choosing in voting by secret ballot, and to participate in all elections and referenda without discrimination of any kind. The Committee recommends further that the State parties should guarantee the right of persons with disabilities to stand for elections, to effectively hold office and to perform all public functions at all levels of government, with reasonable accommodation, and support, where desired, to exercise legal capacity.

Implementation at the national level and main implementation gaps

46. In view of the previously outlined normative content and obligations, States Parties should take the following steps to ensure the full implementation of Article 12.

1. Recognize individuals with disabilities as persons before the law, having legal personality and legal capacity in all aspects of life on an equal basis with others. This requires the abolition of substitute decision-making regimes, and any mechanisms for deprivation of legal capacity which discriminate in purpose or effect against persons with disabilities.

2. Establish, legally recognise, and provide access for persons with disabilities to a broad range of supports for the exercise of legal capacity. These supports must be safeguarded to ensure they are premised on respect for the rights, will and preferences of persons with disabilities. Such supports should meet the criteria set out above in the section on the obligations on States Parties to comply with Article 12(3).

3. In the development and implementation of legislation, policies and other decision-making processes to implement Article 12, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

47. The Committee encourages States Parties to undertake or to devote resources to the development of research on best practices respecting the right to equal recognition of legal capacity and support to exercise legal capacity.