

**Summary of General comment No. 1 (2014) Article 12: Equal recognition before the law**

**Introduction**

The General Comment No. 1 (2014) on Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) provides guidance for States to implement the right to equal recognition before the law for persons with disabilities. It clarifies that this right is fundamental for the exercise of other human rights and is universally applicable.

The CRPD Committee underscores the need paradigm shift from substitute decision-making to supported decision-making, highlighting that all persons with disabilities must have their legal capacity recognized and respected on an equal basis with others. It outlines specific obligations for states to ensure this recognition through legal, administrative, and policy measures, including the abolition of discriminatory practices and frameworks that undermine the legal capacity of persons with disabilities.

**Key points**

* The inherent dignity and autonomy of persons with disabilities, emphasizing the need for their full and effective participation and inclusion in society (para 1-4).
* The universality of legal capacity as a right that must not be denied or limited, reinforced by international human rights law (para 5-6).
* The obligation of states to ensure the legal capacity of persons with disabilities is respected across all areas of life, and discriminatory practices like guardianship and forced treatment are abolished (para 7-10).
* Clarification that legal capacity involves both the capacity to hold rights and act under the law, distinct from mental capacity, and cannot be denied based on disability or perceived decision-making skills (para 11-14).
* States must provide access to support for persons with disabilities to exercise their legal capacity, ensuring such support respects their rights, will, and preferences (para 16-19).
* The requirement for appropriate and effective safeguards in support systems to prevent abuse and respect the autonomy and preferences of persons with disabilities (para 20-22).
* Coverage of financial and economic rights, stating that disability cannot be a basis for denying access to finance and property (para 23).
* States are urged to review and reform laws and policies to abolish substitute decision-making regimes and implement supported decision-making frameworks that respect the autonomy, will, and preferences of persons with disabilities. This includes ensuring access to various forms of support, establishing safeguards against abuse, and involving persons with disabilities in the development and implementation of laws and policies affecting their rights (para 24-52).

**Relationship with other provisions of the Convention**

* The General Comment underscores that legal capacity is critical for accessing justice, liberty, freedom of expression, the right to live independently, and participate in community life, among others (para 31, 44-45). The General Comment also emphasizes the importance of respecting the legal capacity of women with disabilities, given their exposure to multiple forms of discrimination (Article 6) and the need for their equal rights to be upheld in civil matters (para 35).
* Furthermore, it outlines the obligation of states to respect the rights of persons with disabilities to liberty and security, including the prohibition of forced treatment and detention without consent. It asserts that health care must be based on free and informed consent, stressing the need to abolish forced treatment practices that violate the right to personal integrity and freedom from torture and abuse (para 40-42).
* The Committee calls for support mechanisms that enable persons with disabilities to live independently and be included in the community (Article 19), highlighting the necessity of a community-based approach to support in exercising legal capacity (para 44-45). To implement these principles nationally, States should recognize the legal capacity of persons with disabilities in all aspects of life, provide access to a range of support options respecting individuals’ rights, will, and preferences, and involve persons with disabilities in policy and decision-making processes (para 50).

**Elements of supported decision making regimes:**

The CRPD Committee has listed key elements of a supported decision-making regime, which is aimed at providing “support options which give primacy to a person’s will and preferences and respect human rights norms”:

“29. … While supported decision-making regimes can take many forms, they should all incorporate certain key provisions to ensure compliance with article 12 of the Convention, including the following:

(a) Supported decision-making must be available to all. A person’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 in the exercise of legal capacity, including more intensive forms of support, must be based on the will and preference of the person, not on what is perceived as being in his or her objective best interests;

(c) A person’s mode of communication must not be a barrier to obtaining support in decision-making, even where this communication is non-conventional, or understood by very few people;

(d) Legal recognition of the support person(s) formally chosen by a person must be available and accessible, and States have an obligation to facilitate the creation of support, particularly for people who are isolated and may not have access to naturally occurring support 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 the action of a support person if they believe that the support person is not acting in accordance with the will and preferences of the person concerned;

(e) In order to comply with the requirement, set out in article 12, paragraph 3, of the Convention, for States parties to take measures to “provide access” to the support required, States parties must ensure that support is available at nominal or no cost to persons with disabilities and that lack of financial resources is not a barrier to accessing support in the exercise of legal capacity;

(f) Support in decision-making must not be used as justification for limiting other fundamental rights of persons with disabilities, especially the right to vote, the 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 terminate or change the support relationship at any time;

(h) Safeguards must be set up for all processes relating to legal capacity and support in exercising legal capacity. The goal of safeguards is to ensure that the person’s will and preferences are respected.

(i) The provision of support to exercise legal capacity should not hinge on mental capacity assessments; new, non-discriminatory indicators of support needs are required in the provision of support to exercise legal capacity.