**International Disability Alliance Written Submission to the Day of General Discussion of the Committee on the Rights of Persons with Disabilities**

The International Disability Alliance and its Forum on the Convention on the Rights of Persons with Disabilities propose actions to be taken by States Parties for the realization of the right to legal capacity in Article 12.

The International Disability Alliance is made up of international and regional organizations of persons with disabilities, and also includes other DPOs and NGOs in its CRPD Forum. IDA member organizations represent people with diverse disabilities who are affected by deprivation of legal capacity. The IDA CRPD Forum Legal Capacity Task Force/ Grupo de Trabajo sobre Capacidad Jurídica brings together organizations of people with disabilities and others working on implementation and monitoring of Article 12 and related issues, to share information and develop normative documents on these issues for adoption by IDA and its CRPD Forum.

**Actions for Realization of the Right to Legal Capacity in CRPD Article 12**

Article 12.1: Recognize persons with disabilities as persons before the law

1. Require registration of the birth of persons with disabilities equally with others.

2. Legally establish that all human beings are persons and have legal personality, without distinction based on disability.

Article 12.2: Recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life

1. Repeal laws providing for declarations of incapacity or interdiction and/or designating a guardian or representative to exercise legal capacity on another person's behalf.

2. Repeal mental health laws providing for involuntary treatment and involuntary confinement, and ensure that the practice of involuntary treatment and involuntary confinement is discontinued.

3. Repeal any other laws providing for the involuntary imposition of a substitute decision-maker or administrator, involuntary protective mechanisms or coercive treatments, on the basis of disability or the "best interests" of an adult person.

4. Eliminate the requirement of "competence" as an element of valid consent or other legal acts, and establish standards for consent and other legal acts, that do not depend on the absence of a disability.

5. Abolish a defense to criminal responsibility based on the existence of a psychosocial disability.

6. Enact disability-neutral laws, or apply such laws as may already exist, to protect all individuals equally against adverse consequences of decisions, in areas such as financial transactions (e.g. consumer protection). Disability-neutral laws should also be applied in relation to civil and criminal responsibility. Such disability-neutral standards should be designed in such a way as to be equally relevant to persons with disabilities as to others.

Article 12.3: Provide access to support that may be required by persons with disabilities in exercising their legal capacity

1. Consult widely with persons with disabilities who may wish to use support to exercise legal capacity, to determine what types of support are desired and how such support should be provided.[[1]](#footnote--1) Such consultation should include persons with disabilities who need support in order to participate.

2. Investigate existing models for support, including supportive approaches in mental health as a replacement for coercion. Support must be defined as helping the person to make his or her own decisions without attempting to influence the decision.

3. Develop a range of options for support to exercise legal capacity. Such options should include transactional support and accessible communication in banks, courts, doctors’ offices and other places where legal capacity is commonly exercised. Such options should also include ongoing support provided as a service by paid workers, and/or support relationships and networks that operate on a voluntary (non-paid) basis. If support is provided as a service, it should be funded without cost to persons with disabilities, since support to exercise legal capacity is necessary to the equal exercise of human rights, and should not be treated as a commodity.[[2]](#footnote-0)

4. Develop supportive approaches in mental health and other services for persons with disabilities, and ensure that service systems are build around support, while eliminating coercive measures such as restraint, seclusion, aversive behavior modification, and nonconsensual administration of psychoactive drugs, electroshock or psychosurgery.[[3]](#footnote-1)

5. Conduct awareness-raising campaigns, education and training, and promotional activities on the right to legal capacity of persons with disabilities and the use of support to exercise legal capacity, designed for persons with disabilities and their close associates, various service sectors, lawyers and judges, and the general public.[[4]](#footnote-2)

6. Conduct outreach to persons with disabilities who may wish to use support to exercise their legal capacity.

Paragraph 4: Safeguards to prevent abuse of support

1. Enact basic standards and obligations of supporters, in particular: to respect the rights, will and preferences of the person, to be free from conflict of interest and undue influence, and to provide support that meets the person's individual needs.

2. Create a mechanism for dispute resolution and complaints of abuse. Such mechanisms should be easily accessible by persons with disabilities, including through the use of procedural accommodations.[[5]](#footnote-3)

3. Develop appropriate measures for oversight of supporters' compliance with obligations in cases where a high degree of support is provided and persons with disabilities depend on supporters to access an ordinary dispute resolution or complaints mechanism. Periodic review in such cases should be considered.

4. Develop other types of safeguards as appropriate. Such measures may include:

- penalties for abuse or noncompliance with obligations, and

- opportunities for review of the adequacy of support at periodic intervals. This type of review is different from the oversight of supporters' compliance, but it can be combined when appropriate. In establishing safeguards, it is important to avoid bureaucracy and intrusion on the privacy of persons with disabilities.[[6]](#footnote-4)

5. Create easily accessible procedures by which support relationships can be formalized if so desired, such as registration of supporters and documentation of their involvement in legal acts or transactions. The options of informal support, and confidential support without notification to authorities, should also be maintained.

Paragraph 5: Ensure equal rights of persons with disabilities in respect of property and finances

1. Repeal any laws that allow any person to be deprived of an inheritance or other property, or of the right to manage his or her own finances, on the basis of disability.

2. Identify and eliminate any barriers to access to bank loans, mortgages, insurance and other forms of financial credit by persons with disabilities.

3. Ensure that persons with disabilities using financial institutions have the right to receive information and to communicate in the modes, means and formats of the person's choice,[[7]](#footnote-5) including the right to sign documents as she or he chooses.

Other articles that contain obligations relevant to legal capacity:

Article 4.1(i): Promote the training of personnel working with persons with disabilities in the rights recognized in the CRPD

1. Establish standards and programs to train professionals and staff working in health care, financial professions, law and the justice system, law enforcement and other areas relevant to the exercise of legal capacity, in the use of accessible communication so as to facilitate informed choice and expression of the person's will and preferences in such matters.

2. Train mental health professionals and workers in respecting the choices and integrity of persons with psychosocial disabilities, and in supportive rather than coercive ways of relating to persons experiencing altered states of consciousness or intense emotion.

Article 8: Adopt awareness-raising measures throughout society and combat stereotypes

1. Promote awareness of the capabilities of all persons with disabilities to make decisions by exercising their own will and communicating in diverse ways, the right of persons with disabilities to take risks, and the need for persons with disabilities to take charge of their own destinies and development, with support if needed or without support if the person so chooses.

2. Promote the creation of support relationships and networks to function according to the principles of the CRPD.

Article 13: Ensure effective access to justice for persons with disabilities

1. Repeal any laws and discontinue any practices by which persons with disabilities are excluded from participating directly or indirectly, including as parties or witnesses, in legal proceedings.

2. Develop standards for procedural accommodations and accessible communication in legal proceedings, and promote appropriate training in this regard for personnel working in the legal system, law enforcement and prisons.

Article 23.1(a), 2 and 4: Ensure the right to marriage and to found a family

1. Repeal any laws that disqualify a person from marriage on the basis of disability.

2. Repeal any laws that disqualify a person, based on disability, from exercising rights and responsibilities as a parent, including the guardianship, wardship, trusteeship or adoption of children or similar institutions, where these exist in national legislation. Ensure that standards for custody and visitation of children do not discriminate based on disability.

Article 25(d): Require health professionals to provide care on the basis of free and informed consent

1. Repeal any laws that allow health care, including mental health care, to be administered without the free and informed consent of the person concerned, based on an alleged mental illness or other disability.

2. Repeal any laws and discontinue any practices by which "competence" is required as an element of valid consent to health care or refusal of such care.

3. Develop guidelines on what is meant by "free and informed consent," in line with the CRPD obligations and principles, and other relevant standards (omitting those that discriminate based on disability[[8]](#footnote-6)). Such guidelines should emphasize:

- with regard to "free" consent, the absence of coercion or intimidation of any kind, including economic incentives and disincentives; and

- with regard to "informed" consent: presentation of information in such a way that the person can appreciate the nature of the treatment or procedure, the goals of the treatment or procedure, the likelihood of meeting those goals, adverse effects reported, the likelihood of those adverse effects, and other options including non-medical supports and not undergoing the treatment or procedure.

4. Develop and promote standards for accessible information and communication in relation to health care.

Article 27.1, chapeau and (f): Safeguard and promote the right to work, and promote opportunities for self-employment and entrepreneurship

1. Repeal any laws and discontinue any practices by which a person can be denied the right to contract for employment, or to make contracts in relation to a business operation, on the basis that she or he lacks "competence" to contract.

Article 29(a): Ensure that persons with disabilities have the right and opportunity to vote and be elected, and to perform public functions and hold office

1. Repeal any laws that disqualify a person, on the basis of disability, from voting, standing for election, or effectively holding public office or performing any public function.

**Annex to International Disability Alliance (CRPD Forum) Written Submission**

Recommendations for the Committee on the Rights of Persons with Disabilities

1. The Committee on the Rights of Persons with Disabilities should recognize that implementing the right to legal capacity will take more time than is usually considered appropriate for civil and political rights. Implementation will depend on generating political will to make significant changes to long-held assumptions reflected in legal doctrines, raising awareness among persons with disabilities and the general public, and developing both appropriate legal forms to reflect the new paradigm and ways of delivering support to those who may need and desire to use it. This does not imply that legal capacity is anything other than a civil right, but calls attention to the need for new ways of dealing with implementation of rights that require significant changes to existing practice as well as those that are dependent on resources. Standards should be set for the requirements for full compliance, while acknowledging steps toward compliance and encouraging full compliance within a defined time frame.
2. The Committee on the Rights of Persons with Disabilities should address situations where people with disabilities are deprived of their legal capacity or autonomy, as violations of their human rights. A minimum content of the right to legal capacity, similar to the “core minimum content” applicable in the context of progressive realization, is the right to make one’s own decisions. If a person with a disability is placed under guardianship against his or her will, confined in an institution, forced to undergo psychiatric interventions with mind-altering drugs or electroshock, or forced to undergo other medical procedures such as abortion or sterilization, the Committee should consider such practices a violation of Article 12, as well as of any other relevant provisions of the CRPD.
3. The Committee on the Rights of Persons with Disabilities should continue its work to develop standards and guidelines for the implementation of Article 12, taking full advantage of the expertise developed by all organizations of persons with disabilities whose membership are affected by deprivation of legal capacity. The Committee should also use its prerogative under Article 38 to invite such organizations to contribute their expert advice in relation to both the development of appropriate legal norms, and the development of good practices in support, including alternatives to mental health coercion that reflect a wide range of perspectives on experiences of madness or mental health problems.

1. This action can also be referenced to the obligation to consult persons with disabilities through their representative organizations, in Article 4.3. [↑](#footnote-ref--1)
2. This action can also be referenced to the obligation of reasonable accommodation in Article 5, and its definition in Article 2; the obligations related to accessibility in Article 9; the obligations related to the right to seek and receive information and express opinions in Article 21; and the obligations in Article 28 on provision of services needed in relation to a disability. [↑](#footnote-ref-0)
3. The elimination of coercive measures can be referenced in part to the report of the Special Rapporteur on Torture of July 2008, U.N. Doc. A/63/175, paragraphs 40, 44, 55-56 and 61-65. [↑](#footnote-ref-1)
4. This action can also be referenced to awareness-raising obligations in Article 8 and the obligation in Article 4.1(i) to promote training of personnel working with persons with disabilities. [↑](#footnote-ref-2)
5. Ensuring accessibility and procedural accommodations in a complaint and dispute resolution mechanism can be referenced to Article 13 on access to justice. [↑](#footnote-ref-3)
6. Obligations related to privacy can be referenced to Article 22. [↑](#footnote-ref-4)
7. This action can also be referenced to Article 21. [↑](#footnote-ref-5)
8. Earlier standards that discriminate based on disability include the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, and those parts of CESCR General Comment No. 14 that accept the legitimacy of compulsory mental health treatment. [↑](#footnote-ref-6)