



Danske Handicaporganisationer

Til  
Folketingets By- og Boligudvalg,  
Retsudvalg samt  
Sundheds- og Forebyggelsesudvalg

Blekinge Boulevard 2  
2630 Taastrup, Danmark  
Tlf.: +45 3675 1777  
Fax: +45 3675 1403  
dh@handicap.dk  
www.handicap.dk

Taastrup, den 19. december 2013  
Sag 14-2013-00884– Dok. 143849 SHH/kft

## Invitation til temamøde den 17. januar 2014 om FN's Handicapkomité's arbejde med tilgængelighed og lighed for loven

---

**Danske Handicaporganisationer (DH) inviterer til temamøde den 17. januar 2014, kl. 12.30-15.00, i Handicaporganisationernes Hus, Blekinge Boulevard 2, 2630 Taastrup.** Der er mulighed for at købe frokost i kantinen inden mødet.

Emnerne for temamødet omhandler FN's Handicapkomité's tilgang til tilgængelighed – Handicapkonventionens Artikel 9 – samt om Handicapkomitéens tilgang til lighed for loven – Handicapkonventionens Artikel 12. Læs mere om programmet nedenfor.

Mødet er planlagt, så man kan vælge at deltage om den ene artikel eller om begge.

DH har inden 31. januar mulighed for at give input om de to General Comments. General Comments er udlægninger eller forklaringer på, hvordan en bestemt problemstilling står i forhold til en konvention. For os er det ganske væsentligt, at materialer fra Komitéen kan anvendes i praksis, og sammen med jer står vi med en enestående mulighed for at bidrage til den højeste grad af operationalitet.

Tilmelding til mødet skal ske til Karin Friis Trebbien ([kft@handicap.dk](mailto:kft@handicap.dk)) **senest fredag den 10. januar 2014. Husk at oplyse, om du deltager i hele mødet eller kun i en af artiklerne. Husk endvidere at oplyse om særlige behov.**

Vi ser frem til at høre jeres synspunkter og diskutere med jer.

Med venlig hilsen

*Signe Højsteen, chefkonsulent*

## Program

---

### ***Program for emnet om Handicapkomitéens tilgang til tilgængelighed – Handicapkonventionens Artikel 9:***

- Kl. 12.30-12.45: Velkomst og oplæg om Komitéens arbejde vedr. Handicapkonventionens Artikel 9 om tilgængelighed v. DH's formand Stig Langvad. Hvordan kan netop Artikel 9 anvendes, og hvilke overvejelser og særlige fokuspunkter har Komitéen haft under arbejdet med en General Comment om den artikel.
- Kl. 12.45-13.00: Seniorrådgiver Søren Ginnerup fra Statens Byggeforskningsinstitut vurderer og kommenterer Komitéens udkast til General Comment om Artikel 9.
- Kl. 13.00-13.40: Deltagernes synspunkter, refleksioner, overvejelser og idéer til, hvad en General Comment om Artikel 9 skal indeholde for at være udtømmende og reelt brugbar i hverdagen.
- Kl. 13.40-13.50 Pause.

### ***Program for emnet om Handicapkomitéens tilgang til lighed for loven – Handicapkonventionens Artikel 12:***

- Kl.13.50-14.05: Velkomst og oplæg om Komitéens arbejde vedr. Artikel 12 om lighed for loven v. DH's formand Stig Langvad. Hvordan kan netop Artikel 12 anvendes, og hvilke overvejelser og særlige fokuspunkter har Komitéen haft under arbejdet med en General Comment om den artikel.
- Kl.14.05-14.20: Leder af handicapteamet Maria Ventegodt Liisberg fra Institut for Menneskerettigheder vurderer og kommenterer Komitéens udkast til General Comment om Artikel 12.
- Kl.14.20-15.00: Deltagernes synspunkter, refleksioner, overvejelser og idéer til, hvad en General Comment om Artikel 12 skal indeholde for at være udtømmende og reelt brugbar i hverdagen.

### ***Om General Comments***

Forskellige menneskerettighedskomitéer udgiver såkaldte General Comments. Det er udlægninger eller forklaringer på, hvordan en bestemt problemstilling står i forhold til en konvention. Det vil ofte være anvendelsen af en bestemt artikel i en konvention, eller en problemstilling, som Komitéen ofte støder på. F.eks, når Komitéen arbejder med landerapporterne. En General Comment er et redskab både for stater og civilsamfundsorganisationer. De kan bruges til at vurdere, om konventionen opfyldes, og hvilke skridt, der skal tages, for at komme tættere på opfyldelse.

Som den nyeste komité er Handicapkomitéen netop kommet med de to første udkast til General Comments under Handicapkonventionen. Handicapkomitéen har identificeret Artikel 9 om tilgængelighed og Artikel 12 om lighed for loven, som nogle af Konventionens vanskeligere artikler, og ser her behov for uddybning.

Inden 31. januar 2014 har vi fra DH mulighed for at give input om de to General Comments. For os er det ganske væsentligt, at materialer fra Komitéen kan anvendes i praksis, og sammen med jer står vi med en enestående mulighed for at bidrage til den højeste grad af operationalitet.

Committee on the Rights of Persons with Disabilities

**Draft General Comment on Article 9 of the Convention-  
Accessibility**

## I. Introduction

1. Accessibility is pre-condition for independent life and full and equal participation of persons with disabilities in society. Without the access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have the equal opportunities for participation in their respective societies. It is not surprising that CRPD establishes accessibility as 1 of the principles on which this instrument of international law is based (Article 3, section (f)). Historically, the movement of persons with disabilities argued that access to the physical environment and public transport is a pre-condition for freedom of movement for persons with disabilities, guaranteed in Article 13 of Universal Declaration of Human Rights and Article 12 of the ICCPR. Similarly, access to information and communication was seen as pre-condition for freedom of opinion and expression, guaranteed in Article 19 of Universal Declaration of Human Rights and Article 19 (2) of the ICCPR.
2. International Covenant on Civil and Political Rights prescribes in article 25 lit. c the right of every citizen to have access, on general terms of equality, to public service in his/her country. Provisions of this article could serve as basis to incorporate the right of access in the core human rights treaties.
3. International Convention on Elimination of All Forms of Racial Discrimination guarantees everyone the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks (ICERD, Article 5, paragraph (f)). In this way a precedent for viewing the right to access as a right *per se* has been established in the international human rights legal framework. Admittedly, the barriers to free access of members of different racial, ethnic minority groups to places and services open to the public stemmed from prejudicial attitudes accompanied by the will to use the force in preventing access to spaces that were physically accessible. On the other hand, persons with disabilities faced the technical barriers such as staircases at the entrance of buildings and absence of lifts in multi- floor buildings, or lack of information in accessible formats. Such barriers often stemmed from lack of information and technical know- how, rather than from explicit will to exclude persons with disabilities from accessing places or services intended for use by the general public.
4. ICCPR and ICERD clearly establish the right to access as part of international human rights law. One should view accessibility as a disability/specific reaffirmation of the right to access CRPD further elaborate accessibility as one of its key underlined principles, vital pre-condition for effective and equal enjoyment of different civil, political, economic, social and cultural rights by persons with disabilities. Accessibility should be viewed in the context of equality and non-discrimination.
5. The Committee on Economic, Social and Cultural Rights in its General Comment Number 5 evoked the duty of the State parties to implement the United Nations' Standard Rules for Equalization of Opportunities. The Standard Rules also stress the significance of accessibility of physical environment, transport and information and communication for equalization of opportunities for persons with disabilities. The concept is elaborated in Rule No. 5, where accessibility to physical environment, and information and communication are targeted as areas for priority actions for states. The Committee on the Rights of the Child adopted a General Comment on No. 9 (2006) on the rights of children with disabilities, stressing that physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. The importance of

the accessibility was reiterated by the Committee on the Rights of the Child throughout is General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31).

6. World Disability Report (2011) of World Health Organization and the World Bank stresses that built environment, transport and information and communication are often inaccessible to persons with disabilities (World Disability Report, Summary, p. 10). Persons with disabilities are prevented from enjoying some of their basic rights, like the right to seek employment or the right to health care, due to lack of accessible transport. Levels of implementation of accessibility laws in many countries remains low and persons with disabilities are often denied their freedom of expression due to inaccessible information and communication. Even in countries where sign language interpretation services for deaf persons exist, the number of qualified interpreters is usually too low to meet the needs for interpretation as demands exceed the supply of services.

7. The Committee on the Rights of Persons with Disabilities considered the issue of accessibility as one of the key issues in each of the ten dialogues held so far with State parties in examination of their initial reports before the Committee. In each of the Concluding Observations points have been made pertaining to the accessibility. One of the common challenges was lack of adequate monitoring mechanism to ensure the implementation of the accessibility standards and relevant legislation in practice. In some of the State parties, the monitoring was in the competence of local authorities that lacked the technical knowledge, human and material resources for effective implementation. Lack of training to the relevant stakeholders and insufficient involvement of persons with disabilities and their representative organizations in the process of ensuring access to physical environment, transport, information and communication, services offered to the public was a common challenge.

8. The Committee on the Rights of Persons with Disabilities also dealt with the issue of accessibility in its jurisprudence. In the case of Szilvia Nyusti, Péter Takács and Tamás Fazekas v. Hungary, the Committee decided that all services open to the public have to be accessible in accordance with the provisions of article 9 of the CRPD. The State party was called upon to ensure access to ATM for blind persons. The Committee *inter alia* made the recommendations to the State party to establish “minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments” (paragraph 10.2 ( a ) ) and “to create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones. The State party should also ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities” (paragraph 10.2 ( a ) ).

[CRPD Committee expert proposed the deletion of paragraph 8 of Draft general comment on article 9 of CRPD, since the Committee “does not have an established practice in terms of the CRPD jurisprudence to cite or refer to only very few cases (actually, one) the Committee has dealt so far”. Committee could refer to specific cases in more details only once it has already covered most aspects of accessibility-related services and products and not only one by one case in a certain and specific service in a given State Party]

9. Bearing in mind all the above mention activities pertaining to the issue of accessibility and the fact that accessibility indeed is a vital pre-condition for full and equal participation of persons with disabilities in the society, and the effective enjoyment of all their human rights and fundamental freedoms, the Committee finds it necessary to adopt a general comment on article 9 of CRPD on accessibility, in accordance with its Rules of Procedure and the established practice of human rights treaty bodies.

## II. Normative content

10. Article 9 of CRPD prescribes that in order to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. It is important that accessibility is approached in all its' complexity, encompassing the physical environment, transportation, information and communication, and services. The focus is no longer on legal personality and public/ private nature of those who own buildings, transport infrastructure and vehicles, information and communication services. As long as goods, products, services are open or provided to the public, they must be accessible to all, regardless whether they are owned and/ or provided by a public authority or by a private enterprise. Persons with disabilities should be able to access equally all goods, products and services that are open to the public in a manner that ensures effective and equal access, in a way that respects the dignity of persons with disabilities. Such an approach stems from the concept of prohibition of discrimination, and denial of access should be considered as a discriminatory act regardless of the perpetrator- whether a public or a private entity. The accessibility should be provided to all persons with disabilities, regardless of the type of their impairment, legal status, social condition, gender, and age. Accessibility should take into account the gender and the age perspective for persons with disabilities.

11. Article 9 of CRPD clearly envisages accessibility as the pre- condition for independent living, full and equal participation of persons with disabilities in the society and unrestricted enjoyment of all their human rights and fundamental freedoms on basis of equality with the others. CRPD does not create any new rights, and indeed accessibility should not be viewed as a new right. Some of the core human rights instruments and human rights treaties recognize the right to access: ICCPR article 25 ( c ) and ICERD article 5 (f). Therefore one should consider accessibility in the context of the right to access, seen from the specific disability perspective. This is an approach widely accepted in the comparative law and applied in different national laws on equalisation of opportunities, and prevention of disability- based discrimination.

(Alternative text: 11. Although during the negotiations of the treaty it was said that the intention was not to create new rights, if we read the text of article 9 in accordance with the general guidelines for the interpretation of treaties set forth in article 31 of the Vienna Convention on the Law of Treaties, we can arrive to the conclusion that we are fact in the presence of a new right. If we read the text plainly, in conformity with the ordinary use of language, we can see that it establishes binding obligations for states and consequently rights for persons with disabilities that are not yet included in the other core human rights treaties, although there are important precedents to this effect in ICCPR article 25 ( c ) and ICERD article 5 (f). )

12. Strict application of the universal design to all new goods, products, facilities, technologies, services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a manner that fully takes into account the inherent dignity and diversity of the above- mentioned persons. It should contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including the movement inside particular objects, without any barriers in-between. Persons with disabilities, and other users, move in barrier- free streets, enter accessible low floor vehicles, can access information and communication, enter into and move inside universally designed buildings, using technical aids and live assistance, when that is necessary for an individual. The application of the universal design does not automatically exclude the necessity for the use of technical aids. One should bear in mind that application

of the universal design to a building from the initial stage of design contributes to making construction much less costly: Making a building accessible *ab initio* may increase the total cost of construction for up to 0, 5 percent maximum (or not at all, in many cases), while the cost of subsequent adaptations in order to make a building accessible in some cases may rise up to 1/3 of the total cost of the construction. Accessibility of information and communication, including ICT, should also be achieved *ab initio* because subsequent adaptations of Internet and ICT may increase costs, so it is more economic to incorporate mandatory accessibility features of ICT from the earliest stages of designing and construction.

13. It is also significant that Article 9 explicitly imposes the duty to ensure accessibility both in urban and in rural areas. The practice shows situation with accessibility is usual better in bigger cities than in remote rural areas, though extensive urbanisation can sometimes also create barriers that prevent access for persons with disabilities, in particular to the built environment, transport and services in the heavily populated, bustling urban areas.

14. Paragraph 1 of Article 9 prescribes for the State Parties identify and eliminate obstacles and barriers to accessibility. The above- mentioned measures shall apply, *inter alia*, to:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services.

15. Paragraph 2 of article 9 furthermore prescribes the measures which State Parties have to take in order to develop, promulgate and monitor the minimum national standards of accessibility of facilities and services open or provided to the public. State Parties also have to take measures ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities (Art. 9, paragraph 2 (b)).

16. As lack of awareness and technical know- how is 1 of the key sources for lack of accessibility, Article 9 prescribes that State Parties should provide training to all stakeholders on accessibility for persons with disabilities (paragraph 2 (c)). In order to avoid the trap of exhaustive listing, Article 9 does not attempt to offer any list of relevant stakeholders, but one should include authorities that issue building permits, broadcasting boards, chambers of engineers, designers, architects, urban planners, transport authorities, service providers, members of academic community, and persons with disabilities as some of those stakeholders. Training should be provided not just to those designing goods, services, products, but also to those who actually produce them. Eventually, it is the builders on the construction site who make a building accessible or not. It is important to put in place training and monitoring systems for all these groups that will ensure application of accessibility standards in practice.

17. Movement and orientation in the buildings and places opened to the public can be a challenge for some persons with disabilities if there are no adequate signage, accessible information and communication, and support services. Paragraph 2 of Article 9, sections (d) and (e), therefore prescribe for signage in Braille and in easy to read and understand forms in buildings and spaces open to the public, as well as for the provision of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public. Without such signage, accessible information and communication, and support services, orientation and movement inside and through buildings may become impossible for many persons with disabilities, especially those who are facing cognitive fatigue.



18. Without the access to information and communication persons with disabilities cannot enjoy freedom of thought and expression, and many other basic rights and freedoms. Thus Paragraph 2 of Article 9 of CRPD prescribes that State Parties should promote live assistance and intermediaries, including guides, readers and professional sign language interpreters (section (e)), the other appropriate forms of assistance and support to persons with disabilities to ensure their access to information (section (f)), and access for persons with disabilities to new information and communications technologies and systems, including the Internet (section (g)) through application of mandatory accessibility standards

19. New technologies can be used for promotion of full and equal participation of persons with disabilities in the society, but only if they are designed and produced in a way that would ensure their accessibility. New investments, new research and production should contribute to elimination of inequality, and shouldn't contribute to the creation of the new barriers. Therefore section (h) of Paragraph 2 of Article 9 calls upon State parties to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

20. Since accessibility is pre-condition for independent life as prescribed for in article 19 of the Convention, and full and equal participation of persons with disabilities in society, denial of access to the physical environment, transportation, information and communication, and services opened to the general public should be viewed in the context of discrimination. Taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities" (Article 4, Paragraph 1 (b) of CRPD) constitutes of the main general obligations of all State Parties. States Parties shall "prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds" (Article 5, Paragraph 2 of CRPD). In order to promote equality and eliminate discrimination, States Parties shall "take all appropriate steps to ensure that reasonable accommodation is provided" (Article 5, Paragraph 3 of CRPD). "Reasonable accommodation" means "necessary and appropriate modification and adjustments not imposing 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" (Article 2 of CRPD).

21. One should make clear distinction between the obligation to ensure the access to all newly designed, built, produced objects, infrastructure, goods, products, services and the obligation to remove the barriers and ensure access to already existing physical environment, transportation, information and communication, services opened to the general public on the other hand. It is one of State Party's general obligations to "undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines" (Article 4, Paragraph 4 (f) of CRPD). All new objects, infrastructure, facilities, goods, products, services have to be designed in a way that makes them fully accessible for persons with disabilities, in accordance with the principles of the universal design. State Parties are under obligation to ensure the access to already existing physical environment, transportation, information and communication, services opened to the general public, but as this obligation is to be implemented gradually, state parties should set definite, fixed time frames, and allocate adequate resources for the removal of the existing barriers.

22. Accessibility is group related, whereas reasonable accommodation is individual related. This means that the duty to provide accessibility is an *ex ante* duty. That means the State party has the duty to provide accessibility before individual request to enter or use a place or service. State parties need to set accessibility standards which have to be negotiated with organizations of persons with disabilities, and these standards need to be prescribed to service providers, builders, and other relevant stakeholders. Accessibility standards need to be broad and standardized. In addition, in particular cases, when a person with disability has a rare impairment that was not included in the elaboration of the accessibility standards or simply do not use some of modes, methods or means offered to achieve the accessibility (for example, they don't read Braille print), even the application of disability standards may not be sufficient to ensure access for that particular persons with disability. In such cases, reasonable accommodation may apply.

23. In contrast, the duty to provide reasonable accommodation is an *ex nunc* duty, which means from the moment an individual with an impairment needs it in a given situation (work place, school, etc.) in order to enjoy her or his rights on basis of equality in a particular context. Here accessibility standards can be a help or even an indicator but may not be taken as prescriptive. Reasonable accommodation can be used as a mean to ensure accessibility for an individual with disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is provided taking the dignity, autonomy and choices of the person into account. Thus, a person with disability, who has a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard. If it has to be provided depends on if it is reasonable and not imposing a disproportionate or undue burden.

24. Inherent dignity of persons with disabilities is a crucial element to be considered, including in the context of reasonable accommodation, In adapting the existing buildings one must balance the reasonableness of costs with the respect for the inherent dignity of persons with disabilities. For example, a private entrepreneur owning a restaurant located in an old building should make effort to make its' main entrance accessible for customers with disability, even if more costly and technically challenging, instead of adapting the back door entrance to the restaurant.

### **III. State party obligations**

25. Even though ensuring access to physical environment, transportation, information and communication, and services open to the public is often pre-condition for the effective enjoyment of different civil and political rights by persons with disabilities, State Parties can ensure that access is achieved through gradual implementation when necessary as well as through the use of international cooperation. An analysis of the situation, and identification of obstacles and barriers that should be removed, can be carried out in an efficient manner and within short to mid- term framework. The removal of barriers should be carried in a continuous and systematic way, with a gradual yet steady realization.

26. State Parties are obliged to adopt, promulgate and monitor the national accessibility standards. Adoption of adequate legal framework, if such legislation is lacking, is the first step. State parties should undertake a comprehensive review of the laws on accessibility to identify, monitor and address gaps in legislation and its' implementation. It is important that the review and the adoption of the above- mentioned laws and regulations is carried out in the process of consultation with persons with disabilities and their representative organizations (Article 4, Paragraph 3 of CRPD), as well as with all other relevant stakeholders, such as academic community, expert associations of architects, urban planners, engineers, designers and others. Legislation should incorporate and be based on the principles of the Universal design, as prescribed for by the CRPD (Article 4, paragraph

4 (f)), and prescribe for mandatory application of accessibility standards, as well as for sanctions, including fines, for those who fail to apply them. One should also strive to achieve interoperability of goods and services, especially in the field of transport, information and communication, including the Internet and other ICT through promotion of internationally recognized accessibility standards.

27. On one hand, it is good to mainstream accessibility standards that prescribe for various areas that have to be accessible- physical environment in laws on construction and planning, transportation in laws on public aerial, railway, road, water transport, information and communication, services open to the public. On the other hand, accessibility should be encompassed in the general and specific laws prescribing for equal opportunities, equality and participation in the context of prohibition of disability- based discrimination. Denial of access should be clearly defined as a prohibited act of discrimination, and persons with disabilities whose access to physical environment, transportation, information and communication, and services open to the public had been denied should have efficient legal remedies at their disposal. When defining accessibility standards, the State Parties have to take into account the diversity of persons with disabilities and ensure that accessibility is provided to all persons of both genders and all ages and types of disability. Part of encompassing the diversity of persons with disability in the provision of accessibility is recognition that some persons with disability need human or animal assistance to enjoy full accessibility (such as personal assistance, sign language interpretation, tactile sign language interpretation, guide dogs etc.). It is necessary to prescribe that for example a ban on entry of guide dogs in a particular building or open space would constitute a prohibited act of disability- based discrimination.

28. It is necessary to establish the minimum standards for the accessibility of different services provided by public and private entities for persons with different types of impairments. The State Parties should create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private entities of previously inaccessible services provided by them into accessible ones. The State party should also ensure that all newly procured goods and other services are fully accessible for persons with disabilities. The above-mentioned minimum standards must be developed in collaboration with persons with disabilities and their representative organisations in accordance with article 4 (3) of CRPD. Such standards can also be developed in collaboration with other states parties and international organizations and agencies, through international cooperation in accordance with article 32. The above mentioned cooperation can be used for development and promotion of international standards that would contribute to interoperability of goods and services. In the field of communication- related services, State Parties must ensure at least minimum quality of services, especially for the relatively new types of services such as personal assistance and sign language interpretation, aiming at their standardization.

29. Public procurement procedures should be used in a way to encourage the removal of the existing barriers and to prevent the creation of the new barriers. It is unacceptable to use public funds to perpetuate new inequalities. All new objects, infrastructure, facilities, goods, products, services have to be fully accessible for all persons with disabilities. Public procurements should be used for carrying out of the affirmative actions in line with the provisions of article 5 (4) of CRPD, in order to ensure accessibility and *de facto* equality for persons with disabilities.

30. State Parties should adopt action plans and strategies for the identification of the existing barriers to access, set time- frames with concrete deadlines and provide for both human and material resources for the removal of the barriers. Once adopted, such strategies and action plans should be strictly implemented. State Parties should strengthen the monitoring mechanisms additionally in order to ensure accessibility and to continue

providing sufficient funds for the removal of accessibility barriers and the continued training of relevant monitoring staff. As accessibility standards are often implemented locally, continuous capacity- building of the local authorities competent for the monitoring of implementation of the standards is of paramount significance. State parties are under obligation to develop effective monitoring framework and set up efficient monitoring bodies with adequate capacities and appropriate mandates to make sure that plans, strategies and standardisation are implemented and enforced.

#### IV. Inter-sectional issues

31. As already elaborated, one should view State Party's duty of ensuring access to the physical environment, transportation, information and communication, and services open to the public for the persons with disabilities in the context of equality and non-discrimination. Denial of access to physical environment, transportation, information and communication, and services open to the public constitutes an act of disability- based discrimination that is prohibited by article 5 of CRPD. Ensuring the accessibility *pro futuro* should be viewed in the context of implementation of the general obligation of development of universally designed goods, services, equipment and facilities (Article 4, Paragraph 1 (f) of CRPD).

32. Awareness-raising is one of the pre- conditions for effective implementation of CRPD. Since accessibility has often viewed in a narrow way, as accessibility of the built environment (which is significant, but only one aspect of access for persons with disabilities), State Parties should put effort into systematic and continuous awareness-raising on accessibility for all relevant stakeholders. One should cover all- encompassing nature of accessibility, providing for access to physical environment, transportation, information and communication, and services. Awareness-raising should also stress that duty to observe accessibility standards applies equally to the public and the private sector. It should promote the application of universal design and the idea that designing and building in an accessible way from the earliest stages is cost- effective and economical too. Awareness-raising should be carried out in cooperation with persons with disabilities, their representative organizations and technical experts. Special attention should be paid to capacity- building for application and monitoring of implementation of the accessibility standards. Media should not only take into account accessibility of their own programmes and services for persons with disabilities but should also take an active role in promotion of accessibility and contribute to the awareness raising.

33. Ensuring full access to physical environment, transportation, information and communication, services opened to the public is indeed vital pre-condition for effective enjoyment of many rights covered by CRPD. Emergency services in situations of risk, natural disasters and armed conflict must be accessible to persons with disabilities, or their lives cannot be saved and well- being protected (Article 11). There can be no effective access to justice if buildings of law- enforcement organs and judiciary aren't physically accessible, if the services they provide, information and communication aren't accessible (Article 13). One has to have accessible safe houses, accessible support services and procedures if one wants to provide effective and meaningful protection from violence, abuse and exploitation to persons with disabilities, especially women, girls and boys with disabilities (Article 16). Accessible environment, transportation, information and communication, and services are a pre-condition for inclusion of persons with disabilities in their respective local communities and independent life (Article 19).

34. Articles 9 and 21 cross over in the field of information and communication. Article 21 prescribes that States Parties shall "take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the

freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice". In fact, Article 21 elaborates in more detail how the accessibility of information and communication can be ensured in practice. *Inter alia*, the State Parties shall provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities. Article 21 furthermore prescribes for facilitation of the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions (section (b)). Private entities providing services to the general public, including through the Internet, are urged to provide information and services in accessible and usable formats for persons with disabilities (section (c )), and mass media, including providers of information through the Internet, are encouraged to make their services accessible to persons with disabilities (section (d)). Indeed, Article 21 elaborates the issue of accessibility of information and communication further in more detail. It also provides for promotion and recognition of the sign languages, in accordance with articles 24, 27, 29 and 30 of the CRPD.

35. Without accessible transport to the schools, without accessible school buildings, accessible information and communication, persons with disabilities would have no chance to realize their right to education (article 24 of CRPD). Thus schools have to be accessible, as it is explicitly prescribed for in Section (a) of Paragraph 1 of Article 9 of CRPD. But the entire process of inclusive education must be accessible, not just buildings but also all information and communication, support services and reasonable accommodations in school. In order to foster accessibility, education should promote and be carried out in sign language, the Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation (Paragraph 3 of Article 24 of CRPD). Modes and means of teaching should be accessible and carried out in accessible environments. The complete environment of students with disabilities has to be designed in a way that fosters inclusion and guarantees equality of students with disabilities in the entire process of their education. One should consider the full implementation of article 24 of CRPD in connection to other core human rights instruments, as well as the provisions on UNESCO Convention against Discrimination in Education, *inter alia*.

36. Health care and social protection would remain unattainable for persons with disabilities without accessible premises where above- mentioned services are being provided. Even if the buildings where the health care and social protection services are provided are accessible themselves, without accessible transportation persons with disabilities won't be able to arrive to the places where the above- mentioned services are being provided. It is specially significant to take into account the gender dimension of accessibility when ensuring health care, specially reproductive health care for women and girls with disabilities.

37. Persons with disabilities cannot effectively realize their right to work and related rights, prescribed for in Article 27 of CRPD, if the work place itself is not accessible. Thus the work places have to be accessible, as it is explicitly prescribed for in Section (a) of Paragraph 1 of Article 9 of CRPD. Denial of the work place adaptation constitutes a prohibited act of disability- based discrimination. Besides the physical accessibility of the work place, a person with disability would need accessible transportation and support services to get to his/ her work place. All information pertaining to work, advertisements of job offers, process of selection for the work place and communication at the work place, during the process of work has to be accessible through the use of sign language, Braille print, accessible electronic formats, alternative script, augmentative and alternative modes, means and formats of communication. Training and qualification for a job have to be accessible as well, just like the realization of all trade unions and related labour rights. For

example, foreign language or computer courses for employees and trainees have to be conducted in an accessible environment in accessible forms, modes, means and formats.

38. Article 29 of CRPD guarantees the persons with disabilities the right to participate in political and public life, to take part in running of public affairs. Persons with disabilities wouldn't be able to exercise the above- mentioned rights equally and effectively if the State Parties fail to ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use. It is also important that political meetings and materials used by and produced by political parties or individual candidates participating in the public elections are accessible. Without that, the persons with disabilities are deprived of their right to participate in the political process in an equal manner. The persons with disabilities who get elected to a public office must have equal opportunities to carry that office out in a fully accessible environment. 38. Everyone has the right to enjoy arts. Everybody has the right to take part in sports. Everyone has the right to go to hotels, restaurants, bars. But wheelchair user cannot go to a concert if there are only stairs in the concert hall. A blind person cannot enjoy a painting if there is no description of it he can hear in the gallery. A deaf person cannot enjoy a movie if there are no subtitles. A person with intellectual disability cannot enjoy a book if there is no easy- to- read version of it. Article 30 of the CRPD prescribes that States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) Enjoy access to cultural materials in accessible formats;
- (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

Provision of access to cultural and historical monuments considered patrimonial may indeed be a challenge in some circumstances; however State Parties are indeed under obligation to strive to provide access to those sites as far as possible. Many monuments and sites of national cultural importance have been made accessible in a way that preserved their cultural and historical identity and uniqueness.

39. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential“(Article 30, Paragraph 2). States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials“(Article 30, Paragraph 3). The international WIPO Copyright Treaty to facilitate access to publish works that was adopted in June 2013 should ensure the access to cultural material without unreasonable or discriminatory barriers for persons with disabilities, especially those facing challenges accessing classical print materials. CRPD provides for recognition and support of their specific cultural and linguistic identity of persons with disabilities on an equal basis with others. Paragraph 4 of Article 30 specially stresses the recognition of and support for sign languages and deaf culture.

40. Paragraph 5 of Article 30 of CRPD prescribes that, in order to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

- (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

41. The international cooperation, as envisaged in Article 32 of CRPD should become a significant tool in promotion of accessibility and the universal design. All new investments carried out in the framework of international cooperation should be used in a way to encourage the removal of the existing barriers and to prevent the creation of the new barriers. It is unacceptable to use public funds to perpetuate new inequalities. All new objects, infrastructure, facilities, goods, products, services have to be fully accessible for all persons with disabilities. International cooperation should be used not merely for investments into accessible goods, products, services but it also should foster the exchange of know-how, information on examples of good practice of achieving accessibility in ways that will make concrete changes for better in the lives of millions of persons with disabilities world-wide. It is important that the international cooperation in relation to standardisation is also mentioned in the context article 32. And in relation to this issue, it is important to highlight the fact that organisations of persons with disabilities must be supported so that they can participate in the process of national and international developing, implementing, and monitoring of accessibility standards.

42. Monitoring of accessibility is a crucial aspect of the national and international monitoring of the Convention. The processes of national and international monitoring of the implementation of the Convention should also be performed in an accessible manner that would promote and ensure participation of persons with disabilities and their representative organizations in the above-mentioned process in an effective way. Article 49 of CRPD prescribes that the text of the present Convention shall be made available in accessible formats. This is a novel solution in an international human rights treaty and CRPD should be seen as setting a precedent in that respect for the future treaties.

**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.