INTRODUCTION
Article 12 of the UN Convention on the Rights of Persons with Disabilities provides that States Parties shall recognize the full and equal legal capacity of persons with discrimination on the basis of disability. It also provides that States parties shall recognize the right to support in exercising legal capacity.

Recognizing the right to support may require putting into place new laws, policies, programs and administrative systems that make supported decision making available to people with intellectual and other disabilities. There are examples of some elements of a supported decision making system now in place in a few jurisdictions, and much that can be built upon.

Designing more comprehensive systems that fully implement supported decision making raises a number of practical design questions. Inclusion International wants to encourage public dialogue about how to design these systems and encourages experimentation and demonstration. We believe that culturally appropriate and context specific designs are necessary to respond to the unique legal traditions in different countries, and a range of civil society and governmental contexts.

To help foster public dialogue about the development of supported decision making systems, Inclusion International adopted a framework of principles and directions for development of supported decision making at its General Assembly in November 2008 (see… at www…) The following document is intended as a complementary ‘Guide for Dialogue’ in designing supported decision making systems. The purpose is to assist our member organizations, allied disability organizations, other civil society and professional groups, and governments to engage in public dialogue about how to design a supported decision making system. We believe that open dialogue is needed to ensure that such systems promote and respect the full and equal legal capacity of people with intellectual and other disabilities.

This Guide provides a set of questions that can be used to structure policy dialogue, analysis, research and design of effective and accountable systems for supported decision making.
1. **What are the criteria in law and public policy for ensuring recognition of legal capacity and the right to support in personal decision making?**

   Article 12 requires States Parties to put into place measures that recognize full legal capacity without discrimination on the basis of disability. It also requires measures that recognize the right to support in making personal decisions? How is this recognition institutionalized in law and public policy? Is it through legislated statements of principle and recognition of these rights, revised criteria of legal capacity, and/or specific policy statements?

2. **How does support to exercise legal capacity, including the support provided through a personal supported decision-making network, get recognized?**

   Support should be provided appropriate to the support a particular individual requires to exercise their legal capacity. Appropriate supports can take many forms – like an interpreter, a communications device, information in plain language, or a trusted individual or network of individuals who assist a person in making decisions about personal care, health care, finances and property. Such individuals or networks can help to represent a person in making agreements with others to give effect to these decisions (like a rental agreement to give effect to a decision to live in a certain place).

   Because entering agreements with others is an exercise of legal capacity that brings rights and obligations to all parties involved, it is important to ensure that the particular individuals designated to assist a person in exercising legal capacity can themselves be officially and legitimately recognized. Other parties to the agreements need to know that it is a particular individual or network that is designated – to avoid any conflicts over who is authorized to assist and/or represent a person with a disability in making a legal agreement with others.

   In designing a supported decision making system, therefore, it is important to ask how a supporting individual or network will be recognized. Is the recognition made informally, through an agreement between an individual and his/her network? Or is a more formal approach used – i.e. going to a lawyer or the court to have the supporting individual/network officially recognized.

3. **Where does a person, or their supporters, go to get assistance in developing a supported decision making network?**
People with disabilities who may require assistance in decision making are often isolated in their communities, or are living in institutional settings with little contact with others. Many live with aging parents or family members who are concerned about the future of their family member with a disability, after they are no longer able to provide any assistance at all. Developing a network of trusted people to provide decision making assistance and representation in a way that supports and maintains a person’s legal capacity usually takes intentional effort.

Having people who are ‘trusted’ by a person with a disability is essential to good representation and supported decision making. For people who have been isolated much of their lives, the first step may be to develop trusting relationships with others. Some kind of facilitation of such relationships is needed, and this takes time and resources to make happen. Once these relationships are in place, people will also need information and back-up about how to put supported decision making in place, how to mediate conflicts that might arise in a supported decision making network, and how best to represent a person and assist them in making decisions, without becoming a substitute decision maker.

What are the options for providing this kind of facilitation and assistance in developing and maintaining trusting personal relationships and supported decision making networks? Is an existing community resource available? How would this resource be funded and made widely available to meet States’ Parties obligations to ensure such supports are in place. Ideally, such a resource would be non-governmental and free from any conflict of interest in providing assistance.

4. **How is a support network monitored?**

Ideally, a supported decision making network is based on ongoing trusting, caring relationships of support and assistance. However, in designing a system it is important to acknowledge that such human relationships can break down. There is much evidence to suggest that people with disabilities are much more likely than most other groups to experience violence and abuse at the hands of others, and that this is most often by people who are close to them. It is important therefore to put in place a system of independent checks and balances, so that people with disabilities can be protected from support network members who would use their status in a recognized support network to abuse a person or take advantage of their property or financial resources.
How are support networks monitored? How are monitors appointed, and what is the range of their authority? What is the system of checks and balances?

5. **Where do people go when they have concerns that a person is being neglected or abused by a support network?**
   To what body does a monitor go, when they are concerned that a person may be at risk of abuse by one or more supported decision making network members? Beyond formally designated monitors, what options, and what responsibilities, do others have in reporting suspected abuse of a person by their network? Is reporting of suspected abuse mandatory, or voluntary? And what steps are taken, by what authorities, to respond to these reports?

6. **Where does a third party (like a physician, bank, etc.) go when they are concerned that they are not getting a valid consent through a supported decision making process?**
   Supported decision making enables full legal capacity. However, this way of making decisions may be new for physicians, housing authorities/landlords, lawyers, or financial or other professionals who are used to entering an agreement with or receiving consent from an individual who are seen to act by themselves. When a support network is involved, which may be required to represent a person, and interpret their unique form of communication, third parties in these decision making processes may legitimately wonder if the agreement they enter with a person, via the representation of a supported decision-making network, is indeed a valid one.

   Where do third parties go when they want validation that the representation by the supported decision making network of an individual’s wishes and intentions is an adequate basis for entering an agreement with the individual? Third parties have a legitimate interest and concern in doing so, in order to protect against any liabilities in entering an agreement that might later be declared null and void on the basis that the individual was misrepresented by their network. Individuals with disabilities also have an interest in making sure that the other party is fully confident in making an agreement with them.

7. **How are the liabilities of the support network members protected, for the advice they give to an individual, or the representations they make on behalf of an individual in entering an agreement with others?**
   Potential support network members may feel hesitant to become formally recognized as supported decision-making network members, if they feel that they may become personally liable for an agreement
entered on behalf of an individual. What are the ways in which support network members can protect against such liabilities?

8. **How does a person revoke a representation agreement with a support network, or a member of a support network (i.e. terminate the role of a supporter in representing an individual)?**

Relationships with support network members may change over time. Some members may pass on, or leave the network for personal reasons. An individual may wish to end the relationship with one or more of the network members, or an individual may develop new relationships with other people whom he/she may want to include on the network. Therefore, it may be necessary to change from time to time the individuals who are recognized members of the supported decision-making network. How does an individual revoke the designation of some or all network members and appoint new ones? What are the steps required?

9. **What is the way/the process by which someone that is under guardianship can shift to a supported decision making status?**

Supported decision making provides a person with a legal status (i.e. full legal capacity) that is distinct from substitute decision making. Therefore, it is important to ask in designing a system how people who are currently under the legal status of guardianship, can regain full legal capacity by having a supported decision making network in place. What are the steps? At what point does the transition from one legal status to the other take place, and how is it authorized?

10. **What happens if a person with a disability wants to be recognized as capable of exercising legal capacity without assistance or support of others?**

Some people with disabilities may feel they do not need others to assist them in making decisions, and do not want a formally recognized supported decision making network. It is essential to respect the right of individuals to exercise their legal capacity individually – that is, without the formally recognized assistance of others. A supported decision making network should not be forced on anyone. This would violate the basic principle of respect for autonomy that the right to legal capacity is based upon.

At the same time, the banker or physician with whom a person with a disability may want to enter an agreement or give legal consent to, may feel that the person cannot exercise their legal capacity without the support of others. They may be unwilling to enter an agreement with that person, or accept their consent for health care, unless others are also involved to support and represent the person in making that decision. It is important to recognize that no one can force another
party to enter an agreement with them, or force a physician to accept their consent for health care, if that party firmly believes the person requires decision making assistance to exercise their legal capacity.

What are the ways in which these differences can be resolved? Where does an individual go to seek recognition that they can exercise their legal capacity individually, if others refuse to enter agreements with them? What happens if the appointed authorities disagree that a person can exercise their legal capacity without support from others? Can arrangements be made so that a person can access support on a one-time basis, for a particular decision, in order to enter a specific agreement?

11. **What are the administrative systems for managing supported decision making at a state-level (registration of representation agreements, court proceedings, authorities, etc.)?** What authorities are responsible for design, implementation and management? Who is responsible for what costs?

Questions 1-10 above will be answered in different ways depending on the context. However, they do make clear that various systems will be required for designating, authorizing, monitoring, validating, and changing relationships and decision making processes associated with supported decision making. As these questions make clear, there will be many interacting elements in the design of a supported decision making system. Some broad administrative guidelines will be needed. As well, forms and systems for managing the various activities, documentation and authorizations associated with the system will be required.

What are the various administrative structures in place for the various steps and interactions associated with supported decision making? What is the budget required, and who is responsible for designing and implementing the needed systems?