General Comment Number 1 made by the United Nations Committee for the Rights of Persons with Disabilities.

General Comment on the right of persons with disabilities to be equal before the law.

This document has been made by the Committee on the rights of People with Disabilities between 31 March and 11 April 2014.

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What is this document?

This document has been done by the Committee on the Rights of Persons with Disabilities.

This committee is a group of experts that analyzes and explains the Convention on the Rights of Persons with Disabilities and checks if the countries respect it.

This committee is part of the United Nations.

This document is called a General Comment.

A General Comment explains the conclusions of the Committee about the Convention.

The countries should pay attention to General Comments.
Introduction

Everyone is equal before the law.

Equality before the law is a human right.

This right is recognized by:

- The Universal Declaration of Human Rights
- The International Pact of Civil and Political Rights

The Convention on the Rights of People with Disabilities also explains and defends this right.

It is explained in Article 12.

Article 12 of the Convention explains:

- The right of being equal before the law is the same for everybody.
  People with disabilities also have it.
- In which situations this right is violated.
- The measures that countries have to take to guarantee this right to all people with disabilities.

To violate:

Violate a right means that the right and the laws defending it are not respected.
Equality before the law is a very important right because it serves to **exercise** other rights.

The Committee on the Rights of Persons with Disabilities has encouraged **forums** to talk about this right:

These forums included:

- Experts.
- States and countries.
- Organisations of persons with disabilities.
- Non-governmental organization (called NGOs).
- Monitoring bodies that make sure that the treaties are respected.
- Institutions that protect human rights in some countries.
- The United Nations.

This Committee appreciated what was said in the forums and understood that people with disabilities are discriminated and that they cannot exercise their right to equality before the law like everyone else.

They are the most discriminated group of people this law talks about. Of all people with disabilities, the most discriminated against are people with **cognitive disabilities**.

This discrimination means they do not have access to many basic rights. Such as the right to vote, the right to marry or the right to liberty.

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**Exercise:**
Exercise a right is to have access to it and to enjoy it

**Forums:**
Forums are meetings where people talk about a topic. They can be in a meeting room or on the internet.

**Cognitive disability:**
A cognitive disability can be an intellectual disability, a mental health problem or dementia.
Some actions that discriminate people with disabilities are:

- **Substitute decision-making systems**
- Laws that force persons with mental health problems to take treatment even if they don’t want that.

People should make their own decisions to be equal before the law.

Countries should stop using substitute decision-making systems and change all the laws that discriminate against people with disabilities.

They must change the substitute decision-making systems and support actions that allow people with disabilities to make decisions.

It is their obligation.

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**Substitute decision-making systems:**
It is when a judge decides that someone else can make decisions about you because he or she thinks that you cannot do it on your own.

In some countries, this is called full guardianship or partial guardianship, and the person who makes decisions is called your guardian.

Full guardianship is when your guardian can make all your decisions. Partial guardianship is when your guardian can take some of your decisions, not all of them.

For example, he or she can use your money but cannot vote for you. Because he or she thinks that you can make some decisions on your own, but not all of them.
Countries do not really understand what they need to do. So people must explain Article 12 of the Convention so countries can better respect it.

That is why the Committee has written the General Comment Nr. 1 in 2014. The General Comment Nr. 1 of 2014 is the document you are reading. It explains what countries need to do to make sure all people, with or without disabilities, are equal before the law.
2. Explanations of Article 12

Paragraph 1 of Article 12

People with disabilities have the right to legal personality.

To have legal capacity means that the law recognizes you as a person and you have rights and obligations.

The recognition of legal personality is previous to the recognition of legal capacity.

To have legal capacity means that you have rights and obligations before the law and that you are responsible for your actions.
Paragraph 2 of Article 12

Legal capacity and mental capacity are two different concepts.

Legal capacity means two things:

- That you have rights and obligations
- That you can exercise your rights and obligations yourself, even if you need help.

In certain countries, this is called the capacity to act.

It means that you can make decisions and that you are responsible for their consequences.

Legal capacity is necessary to participate in society.

Mental capacity is the ability to make decisions.

Mental capacity is a confusing concept.

Professionals and countries understand it differently.

It is not an objective or scientific concept.

People have different mental capacities.

There are people who need more help to make decisions than others.

Moreover, our mental capacity can change according to the things we care about.

All people have the right to have legal capacity, even if they have a different mental capacity.
Most countries mix up legal capacity and mental capacity as if they were the same thing.

When a person has difficulties to make a decision, his or her mental capacity is checked.

If the check says that his or her mental capacity is weak, the person is not allowed to make decisions about his or her life. This means that they have no capacity to act, which is part of legal capacity.

This approach is discrimination for two reasons:

- It is used for people with disabilities just because they have a disability.
- Deciding on who has mental capacity is subjective.

Therefore, countries should not use mental capacity to take legal capacity away from a person.

They should help people to use their legal capacity.
Paragraph 3 of Article 12

States are obliged to provide the support people with disabilities need to exercise their legal capacity.

This support should respect the rights and the preferences of the person.

This support can have many different forms.

People are different and need different types of support.

People with disabilities have the right to receive support to exercise their legal capacity, even in crisis situations.
They can reject this right if they want to.
A form of support can be:

- **A support person**
  A support person is someone you trust to help you decide

- **Peer support**
  It means provide assistance and help to people who are similar to you and live situations similar to yours.

- **Universal design and accessibility measures**
  We say that a space has a universal design when this space can be used by everyone
  Accessibility measures are helping people to use spaces
  For example, make easy-to-read information available in banks.

- **Communication methods different from standard methods.**
  For example, sign language or Braille.

- **Measures to plan ahead**
  It means having the opportunity to plan what you will do.
  Having the information you need and enough time to decide.
  Having the opportunity to plan ahead is a right.
Paragraph 4 of Article 12

States should provide support to allow people to exercise their rights and they should protect them from abuse.

The support should respect the rights and preferences of the person.

The protection measures have to guarantee the rights and preferences of the person.

States should protect people from undue influence.

Undue influence is when a person deceives, controls, frightens, assault or threat another person to get benefits from him or her.

Protective measures against undue influence must respect the right to make mistakes and take risks.

Sometimes, we are trying to figure out the preferences of a person but we do not get it.

When we do not know the preferences of a person, we do what we think is the best for the person but according to our own preferences and opinions. This is called acting for the greater good.

This must change. What we should do is think about what the person wants and act according to his or her preferences.
**Paragraph 5 of the Article 12**

States should guarantee the right of persons with disabilities to make economic decisions and to own property under the same conditions as everyone else.

To guarantee this right, States have to take:

- Legislative measures.  
  These are the laws.
- Administrative measures.  
  These are the norms of the community and society that are not laws.
- Legal measures.  
  These are the measure related to judges, lawyers and lawsuits.
3. The obligations of the States on Article 12

States have the obligation to protect and respect rights of people with disabilities since they **ratified** the Convention on the Rights of Persons with Disabilities. Including the right to legal capacity.

To protect this right, States should:

- Avoid measures that discriminate people with disabilities
- Eliminate laws on substitutive decision-making systems and make other laws that guarantee support to exercise the rights.
- Not let other people and entities prevent people with disabilities from exercising their rights.
- Give support to people with disabilities so they can exercise and enjoy their rights.
- Help people with disabilities to have more confidence and develop their skills.
  
  Thus, they will need less support and will know which support they need.

States have the obligation to do it immediately.

The lack of money and resource is not an excuse for not complying with their obligations.

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**Ratify**:
Ratify a convention, a statute or a rule means convert this convention, statute or rule into a law.
The support measures of the State must respect all the rights and not organize the lives of people with disabilities.

They should have the following characteristics:

- Be available to everyone. Also for people with high support needs.
- Can be used by everyone, even if the use of a different way of communication is necessary.
- The support cannot depend on the evaluation of mental capacity. The need for support should be evaluated in a way that does not discriminate against people with disabilities.
- Respect the preferences and desires of the person.
- Support persons must have a license or a legal document to prove that they are support persons.
- There should be a system letting people protest or reject support persons if they think they do not take into account the preferences of the person.
- Support must be free or cost very little so that people who have not a lot of money can also use them.
- The need of support to take decisions should not be a reason to deny a person access to other fundamental rights such as to vote or to marry.
- People should have the possibility to accept or reject support and also be able to choose which form of support they need.
- There must be measures to protect people, respect their preferences and desires.
4. Relation of Article 12 with other articles of the Convention

The right to legal capacity is necessary to exercise other rights.

In this section we are going to explain the articles of the Convention talking about rights that are related to legal capacity.
**Article 5: Equality and non-discrimination**

Article 5 of the Convention prohibits discrimination against people because they have a disability.

Discriminate is not letting a person exercise his or her rights because of a personal characteristic such as religion or gender.

That is why a disability is not a reason to deny legal capacity.

States can deny legal capacity to certain persons but the reasons have to be the same for everyone.

For example if you have been convicted of a crime and you are in prison.

People have the right to reasonable accommodation in exercising their legal capacity.

Reasonable accommodations are adjustments and changes in the community and in the spaces so that a person can use it in equal conditions.

For example, if you need more time during an exam because it takes you more time to write.

They are adjustments and changes that the person or entity has to do.

Take into account:

- The discrimination a person would feel if the adjustments and changes he or she need are not made.
- If the adjustments are very expensive and the person or entity in charge of it can afford it.
Reasonable accommodation and support are two different rights.

People with disabilities have the right to have both.

States are obliged to make the necessary reasonable adjustments to allow people with disabilities to exercise their legal capacity except when the adjustments are too difficult to do.

States are always obliged to provide support to people with disabilities in exercising their legal capacity.

Even if providing support is very difficult.
Article 6:

Women with disabilities

Women are equal to men before the law.

Everyone has the same right to legal capacity.

Women with disabilities also.

People with disabilities suffer from discrimination.

Women also suffer from discrimination.

Women with disabilities suffer from much discrimination.

So, defending the legal capacity of women with disabilities is very important.

Article 7: Boys and girls with disabilities

Boys and girls are growing and developing their skills.
It is necessary to respect and protect their development.

Everyone should take into account the preferences of children and take care of their development and their interests at the same time.

States should take into account the preferences of all children equally, children with disabilities and without disabilities.
Article 9: Accessibility

The right to legal capacity is necessary for people with disabilities to live independently and participate in society.

If you live independently, you have to take your decisions and represent yourself.

If someone else takes your decisions, you are not independent.

The barriers people with disabilities face when they want to participate in society limits them to exercise their right of legal capacity. Because it prevents them from exercising other rights and making their own decisions.

The barriers may be the lack of information that is easy to understand and the lack of possibilities to communicate.

States need to ensure the accessibility of information, community spaces and society so that there are no barriers that prevent people from exercising their rights.

States need to review their laws and measures to guarantee the right to legal capacity and accessibility.
**Article 13: Access to justice**

People with disabilities need legal capacity to enforce their rights and obligations in front of a judge or a tribunal just like anyone else.

States should guarantee the legal representation of persons with disabilities on an equal basis with others.

The allegations and statements of persons with disabilities are equal to the allegations and statements of others.

States need to train and sensitize police, judges and others involved in legal proceedings so that they give them the same value.

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**Legal representation:**

Legal proceedings require a person to represent you.

People more prepared to represent someone else are lawyers.

Legal proceedings are more difficult without a lawyer to help you.

**Legal proceedings:**

These are all the activities between the complaint and the trial.
Many times, people with disabilities cannot participate in court proceedings in many ways.

For example, they cannot **testify** or be members of the jury.

People with disabilities have the right to testify and to receive the necessary support to be a witness.

This support can take different forms, for example:

- The possibility to use different communications methods
- The possibility to testify by video
- Sign language interpreters
- Other forms of support.

**Testify:**
Testify means to be a witness.
When you are a witness, you tell what you saw or what you know about a crime in court.
Article 14 and 25: Freedom, security and consent

The right to legal capacity means to respect the right to freedom and the right to security of a person.

There are people with disabilities who are put in institutions without their consent because they have been denied legal capacity.

They are deprived of their liberty.

This is a common problem.

States must stop these practices and must create measures to examine the cases of persons who are in institutions.

The right to legal capacity means respecting the right to health.

The medical professionals have the obligation to ask for the free and informed consent of people with disabilities to give them their treatment.

The informed consent should be given by the person with disability and not by a guardian or another authorized person.

Medical professionals have to make sure that the persons have the information and support they need to take the decision on their own.
Article 15, 16 and 17: Respect of the personal integrity and protection against torture, violence, exploitation and abuse.

Forced medical treatment violates the following rights:

- To be equal before the law and have legal capacity
- Personal integrity
- Protection against torture
- Protection against violence, exploitation and abuse.

Forced medical treatments are very common worldwide for people with intellectual or cognitive disabilities. Especially mental health treatments.

People with disabilities have the right to decide about their health on an equal basis as other people.

States should respect this right and guarantee that it is respected.

They must make sure that people with disabilities have:

- Information that is accessible and easy to understand for all services and the alternatives that exist.
- Non-medical alternatives.
- Support to take decisions about medical treatments.
- States must also eliminate laws and regulations allowing forced medical treatment.

**Forced medical treatment:**

It is a treatment that the doctor forces you to take.

No matter if you want to take it or not.
Article 18: nationality

To have the right to legal capacity means to have a nationality.

To have a nationality you have to register your birth in a country.

People with disabilities have the right to have a nationality.

This means that they have the right to have a name and register their name and birth in the official records of their country.

A person without nationality loses his or her citizenship and loses access to other rights.

For example, access to health care and education.

States know about the existence of all their citizens when their birth and name are registered.

If you don’t register your birth and name, your country doesn’t know that you exist.

It happens more with children with disabilities than to children without disabilities.
Article 19:
Right to live independently and to be included in the community

People with disabilities should have opportunities to live independently in the community and to take decisions on an equal basis as other people.

Natural supports in the community are very important so that people with disabilities can take decisions for themselves.

States should understand and recognize the importance of natural supports. They should take into account natural supports when they give support to exercise legal capacity.

People with disabilities can choose where and with whom to live and should have legal capacity to do so.

People without legal capacity can be placed in an institution without their consent. This happens a lot to people with disabilities and it violates their right to live independently.

People with disabilities have the right to exercise their legal capacity and to have the support they need to do so, no matter whom they decide to live with.

Natural supports:
Natural support is the help that you find everyday in your environment. For example, the help you receive from your family or your friends.
Article 22: Privacy

When you don’t have legal capacity, another person can decide for you.

This person is called a guardian.

A guardian knows much private information about the person.

Therefore,
denyng the legal capacity to a person is violating their right to privacy.

States should guarantee the right to privacy
when a person receives support to exercise his or her right to legal capacity.
Article 29:

Political participation

To have the right to legal capacity means:

- To be allowed to vote for a political representative.
- To be allowed to be a political candidate in an election.
- To be allowed to be member of a jury in court.

States should guarantee that people with disabilities have the support they need to vote in secret.

States should guarantee the right of people with disabilities to be candidates in elections.

States should guarantee the right of people with disabilities to exercise functions in public offices.

Also, States must guarantee that they have the support and the reasonable adjustments they need.
5. How to apply Article 12 in the different States.

States should take the following measures:

- recognize people with disabilities as persons before the law
- recognize that they have the legal capacity in all areas of their lives, on an equal basis as other people.
- Eliminate the discriminatory regulations taking away their right to decide. Such as laws on the substitute decision-making systems.
- Create laws protecting the right to legal capacity, equal for everyone.
- Offer people with disabilities the support they need to exercise their legal capacity.
- Ensure that measures to protect people with disabilities guarantee their rights and their preferences.
- Consult and collaborate with people with disabilities and the organizations representing them to make and enforce laws and regulations.
  Also with children with disabilities.

This committee encourages countries to investigate and make rules that respect the right to legal capacity and to allocate money and resources to do so.

The committee encourages countries to avoid protective measures that violate the right to decide of people with disabilities.

So that people with disabilities have the right to decide and develop their personality and capabilities.