



# From **discrimination** to **support**

The right of persons with disabilities to legal capacity and supported decision-making

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## Legal capacity

Most people take it for granted that they can **make decisions** and have them **respected by others**.

Legal capacity encompasses the ability **to hold** rights and duties, and **to exercise** those rights and duties.

## History

Historically many groups have been **deprived or restricted** on their legal capacity.

Persons with disabilities remain the group whose legal capacity is **most commonly denied worldwide**.

## Why is important?

Legal capacity is a necessary **precondition** for the exercise of all other human rights and freedoms.

It is instrumental in taking **control over one's life** and participating in society on equal basis with others.

## How is denied?

- Fully or partially: **guardianship**, curatorship, interdiction and other forms of substituted decision-making.
- Specific forms: **mental health legislation**.
- **De facto**.

All these forms of discrimination claim to protect the rights of persons with disabilities.

## A paradigm shift

From **objects to subjects**: persons with disabilities have **the same rights as everyone else**, including the right to legal capacity.

According to the CRPD, States have an obligation to ensure **all rights of all persons with disabilities**.

## What the CRPD says

States must guarantee:

- Universal legal capacity
- Prohibition of involuntary practices
- Supported decision-making
- Safeguards to respect will and preferences, and avoid abuses

## Support paradigm

Access to different forms of support to:

- Obtain and understand information,
- Evaluate alternatives and consequences,
- Express and communicate a decision,  
and/or
- Implement a decision.



## **How to ensure it**

Formal and informal measures:

- Advance directives (health or general)
- Support arrangements or agreements
- Peer support
- Independent advocates

## Difficult cases

When there is no possibility to know the will and preference of a person, when a person makes a 'unwise' decision, or during 'crisis' situations.

## How to deal with them?

The CRPD Committee recommends a **best interpretation** standard: what the person would want on the basis of the person's previously manifested preferences, values, attitudes, narratives and actions, including past verbal or non-verbal communication.

## What about crisis?

- Express will and preferences
- Advance directives
- Unconditional and intensive support

Structural aspects make impossible for persons with disabilities to access support during emergency situations (lack of alternatives, flexibility, resources, prejudices, duty of care, etc.).

## Is it possible?

- Costa Rica: no guardianship.
- Trieste: no seclusion nor restraints... and no psychiatric hospital.
- Germany: no involuntary medication (15 months).

CRPD standards are progressively being endorsed by other UN treaty bodies and agencies, including WHO (QualityRights).

## The way forward

- Embracing diversity: what's the role of mental health services?
- Moving towards a support paradigm
- Transformation of laws and policies
- Pilot initiatives
- Participation and collaboration
- Better allocation of resources



The **right to have a life** cannot be achieved without universal legal capacity and supported decision-making.

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**Embracing  
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