

MDAC is interested in hearing from any State contemplating legal capacity law reform. We would also be interested in hearing from NGO representatives who would like to find out more about legal capacity.

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**The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities.**

**MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research.**

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**Legal  
Capacity  
Law Reform**

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## Legal Capacity Law Reform

Restricting someone's legal capacity means removing rights which other people take for granted. Making a decision about whom you live with. Making a decision about how to spend your money. Making a decision about your medical treatment. Being denied the right to vote. Being denied the right to marry and found a family.

In many States around the world, people with intellectual disabilities and people with psycho-social disabilities are denied full legal capacity and placed under the guardianship of a substituted decision-maker. The UN Convention on the Rights of Persons with Disabilities (CRPD) calls for a different approach. Article 12 obliges States Parties to 'recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life'. States must not remove legal capacity, but instead must 'provide access by persons with disabilities to the support they may require in exercising their legal capacity'.

## Implementing Article 12

States are obliged to transform from a system of substituted decision-making to one in which supported decision-making is the default model, but the policy steps needed frequently lack clarity and are closely dependent on local contexts. There is a dearth of information about what these steps could be, and the challenges which other countries are facing.

For example, during a session on legal capacity in June 2009, several members of the European Union's 'Disability High Level Group' showed an interest in receiving further information on the right to legal capacity. In the 2nd Conference of States Parties to the CRPD in September 2009 several State delegates wanted more information on legal capacity law reform. And the focus of the first day of general discussion hosted by the CRPD treaty body in October 2009 focused on legal capacity, demonstrating the importance which the global disability rights community places on implementing Article 12.

The need for information as well as the complexities of the issues all call for further research, dialogue and information-sharing on legal capacity generally and law reform specifically. MDAC's work on legal capacity is a response to

this need. It aims to contribute to the flow of information about how States can transform their laws and policies to bring them in line with CRPD obligations.

## MDAC advances legal capacity law reform by:

- carrying out research on the old framework of guardianship and the new paradigm of supported decision-making;
- pursuing strategic litigation to create progressive jurisprudence;
- advocating at domestic levels for law and system reform;
- and building the capacity of NGOs to intervene in such law reform.

MDAC is currently engaged in legal capacity law research in Kenya. Within Europe, it is carrying out legal capacity work in Bulgaria, the Czech Republic, Hungary, Latvia, Russia and Slovakia.

## Through its legal capacity work MDAC aims to

- ensure that people who have been denied legal capacity have access to justice;
- increase the availability and accessibility of materials on legal capacity law reform initiatives within the Council of Europe region, as well as promising practice in legal capacity law from around the world;
- provide capacity-building assistance to NGOs in those States where there is a strong engagement with legal capacity law reform; and
- offer technical assistance to States willing to engage in legal capacity law reform.

We should remember that there is a great difference between taking away the right to take decisions about one's life and to provide 'access to support'. The first views people with disabilities as objects of treatment, charity and fear. The second places the person with disabilities at the centre of decision-making and views them as subjects entitled to the full range of human rights.

Thomas Hammarberg, Council of Europe  
Commissioner for Human Rights,  
2009