

Legal Capacity and Persons with Disabilities

As persons with disabilities become more visible in politics, economics and society in countries around the world, the question of “legal capacity” is increasingly becoming a priority for human rights groups.

Legal capacity particularly affects persons with disabilities, especially those with intellectual or psychosocial disabilities, and their ability to participate in society on an equal basis as others by exercising the same rights to which other citizens have access.

This factsheet provides an introduction to legal capacity and why it is so important for persons with disabilities.

What does “legal capacity” mean?

“Legal capacity” refers to a person’s legal authority or power.

A person who has legal capacity is able to decide when and how to exercise their rights and obligations. For example, they are able to sign a contract to buy property, get a license to marry, and register to vote.

A person who does not have legal capacity does not have the power to exercise their rights. They cannot sign a contract to buy or lease property, get licenses to drive or get married, or register to vote.

Why is legal capacity important for persons with disabilities?

Concerns about legal capacity most often affect persons with disabilities, especially those with intellectual or psychosocial disabilities. For example, persons with an intellectual or psychosocial disability are more likely to be “under guardianship.” That means they have a legal guardian, or a person who has legal power to care for them and their property. The level of authority that a guardian has depends on a court decision.

However, just because a person has a legal guardian, it should not mean that a person’s rights are taken away, such as their right to vote. If a



A young woman with an intellectual disability casts her ballot on Election Day in the Philippines

Source: International Foundation for Electoral Systems

Terms to Know:

An **intellectual disability** means a disability that limits a person’s ability to learn at an expected level and to function in daily life. Down syndrome or autism are both examples of an intellectual disability.

A **psychosocial disability** is a disability that affects thought, emotion, or behavior. This includes schizophrenia, bipolar disorder, and depression.

person's rights are taken away only because they have a legal guardian, or have a particular type of disability, then this becomes discrimination.

What laws are there to protect legal capacity for persons with disabilities?

The most important international law is the **United Nations Convention on the Rights of Persons with Disabilities** (CRPD). When it is ratified by a country, the Convention is legally binding – that is, a country has formally agreed to uphold all of the articles outlined in the Convention. Article 1 of the CRPD states that the Convention applies to everyone with a disability, including persons with physical, intellectual, psychosocial or sensory disabilities.

Article 12 of the CRPD states that persons with disabilities have the right to enjoy equality before the law, and that they have the same legal capacity as other people. This means that persons with disabilities should have the same access to their rights as other people, and the same ability to exercise their rights. This article means that courts, judges and government officials should not legally discriminate against a person with a disability only because of their disability or on the presence of a guardian.

When combined with other CRPD articles, such as **Article 29** (which protects the right to vote, run for office, and participate in politics for persons with disabilities), having legal capacity means that all persons with disabilities are able to exercise these rights as well. For example, a person under legal guardianship, but with legal capacity, will still be able to vote.

Legal Capacity and the Right to Vote

There are a small but growing number of countries around the world that now allow persons with intellectual or psychosocial disabilities, or those under guardianship, to keep their right to vote.

Since voting can be a powerful way to create change, it is important that everyone is legally able to vote. Countries that have no legal restrictions to voting include:

- Australia
- Austria
- Canada
- Costa Rica
- Croatia
- Czech Republic
- Finland
- Hungary
- Indonesia
- Ireland
- Italy
- Israel
- Japan
- Latvia
- Netherlands
- New Zealand
- Peru
- Philippines
- Rwanda
- Spain
- Sweden
- United Kingdom