

## **UNEDITED VERSION**

### COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

Second session

19 -23 October 2009

## **OUTLINE**

### **Day of General Discussion**

**on “Article 12 of the CRPD – The right to equal recognition before the law”**

**21 October 2009**

The Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006 and entered into force on 3 May 2008. It counts now with more than 50 states parties.

The Committee on the Rights of Persons with Disabilities, the body of independent experts responsible for reviewing progress made by states parties in implementing the Convention on the Rights of Persons with Disabilities decided, during its first session, to devote its forthcoming annual day of general discussion (DGD) on the 21 October 2009 to the subject of “article 12 of the CRPD - the right to equal recognition before the law”.

The purpose of the day of general discussion is to foster a deeper understanding of the contents and implications of the Convention as they relate to specific articles or topics. Representatives of Governments, other United Nations human rights mechanisms, United Nations bodies and specialized agencies, non-governmental organizations, national human rights institutions as well as private individuals and experts are welcome.

The Committee has identified the right to equal recognition before the law under article 12 as one of the cardinal rights and principles of the Convention. This means that the implementation of article 12 is part of the implementation of the other articles of the Convention, and at the same time a free standing right of persons with disabilities.

The purpose of the day of general discussion, therefore, is to:

- explore the meaning of article 12; its linkage to the other articles (in particular articles 5, 9, 13, 14, 18, 19,21 to 33); and the implications of the article for participation and inclusion of persons with disabilities in all aspects of society;
- focus on identifying the gaps, certain good practices, and priority issues that need to be addressed in order to further the enjoyment of the right to equal recognition before the law;
- promote the full participation and inclusion of persons with disabilities at all levels, at home, community and the wider society.

As the theme of its 2009 day of general discussion has a wide scope, the Committee proposes to hold the discussions in two groups, each of them focusing on one of the topics below:

### **Working group I**

#### **Topic: The legal contents of the right to equal recognition before the law**

The working group I will focus on the contents of the right to equal recognition before the law, in particular (but not exclusively) on the following issues:

##### *1. Construction of legal capacity*

###### Suggested issues for review:

What does "legal capacity" mean in international and domestic law? In what ways might the construction of legal capacity discriminate against persons with disabilities, and how must this discrimination be remedied? ;

##### *2. Identity and Agency*

###### Suggested issues for review:

Legal personality, capacity for rights and capacity to act;

##### *3. Universal legal capacity*

###### Suggested issues for review:

Is legal capacity (including capacity to act), a universal right? What are the implications of this, and of its recognition on an equal basis to persons with disabilities? What are the implications of the obligation to provide access to support needed to exercise legal capacity? Is substituted decision-making still permitted? ;

##### *4. Reservations to article 12*

###### Suggested issues for review:

Are reservations and declarations to article 12 compatible with the object and purpose of the Convention? ;

##### *5. Scope of the right to equal recognition before the law and its linkage with other rights*

###### Suggested issues for review

What are the implications of recognizing legal capacity on an equal basis in all aspects of life? How are legal doctrines governing "contractual" capacity, capacity to exercise free and informed consent in health care, etc., affected by article 12? Does article 12 imply equal responsibilities as well as equal rights? In what ways is the right to recognition before the law mutually reinforcing with other articles of the Convention, including those that recognize individual autonomy in specific areas of life, those that require provision of support, and those aimed at promoting opportunities for individual development?.

## **Working group II**

### **Topic: Practical measures necessary to implement the obligation to promote the right to equal recognition before the law**

The working group II will focus on measures that states need to undertake in order to fulfill their obligations under article 12 in particular (but not exclusively) on the following issues:

#### *1. The challenges of the normative incorporation of the right to equal recognition before the law*

##### Suggested issues for review:

Identifying technical problems that have to be solved within the normative framework identified in session 1, and sketching possible solutions. What is the role of disability-neutral laws and reasonable accommodation as an alternative to disability-specific exemptions from responsibility, e.g. in relation to criminal responsibility and financial transactions?;

#### *2. The challenges of the effective implementation of the obligations arising under article 12;*

#### *3. Implementation of the state obligation to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”*

##### Suggested issues for review:

Part 1: defining good practices in supported decision-making (How can we define and identify good practices in supported decision-making? What is the scope of "support to exercise to exercise legal capacity? How does it relate to accessible information and communication? How can "support to exercise legal capacity" serve as an alternative to both guardianship and coercive practices in mental health and other services?)

Part 2: defining the role of the state (What is the role of the state in providing access to support in exercising legal capacity? Can support be understood as a service provided or funded by the state? Is the state's role to promote the development of supported decision-making networks? How can a state develop a multifaceted program to provide access to different types and models of support meeting diverse needs?);

#### *4. Practical measures to implement state obligation to ensure disabled people right to “own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit”; as well as access to justice and exercise of free and informed consent in health care;*

#### *5. The role of the independent and impartial review authority under article 12(4) and other possible safeguards*

Suggested issues for review:

What is the role of the independent review authority and under what circumstances can it be invoked? What kinds of other safeguards are useful in relation to different types of support? How can states best address the risk of abuse in the context of providing support to exercise legal capacity? How do we ensure that safeguards, including the independent review authority, do not result in driving persons with disabilities away from using support that they are entitled to?

**Participation and facilitators**

Participants will be free to join and present reports for both sessions. The sessions will be conducted by a facilitator indicated in due course by the Committee.

The day of general discussion is a public meeting that the CRPD intends to hold on a yearly basis during its fall session. For more information, please kindly contact the CRPD Secretariat at: [crpd@ohchr.org](mailto:crpd@ohchr.org) or write to UNOG-OHCHR, CH-1211 Genève 10, Switzerland.