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## Legal Capacity: Position Paper

The Draft Convention on the Rights of Persons with Disabilities promotes:

- ❑ That persons with disabilities have the right to recognition everywhere as persons before the law;
- ❑ That persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
- ❑ That States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Inclusion international demands the right of every person with an intellectual disability to have their right to make decisions recognized and to receive the support they require in making those decisions. People should never be asked to give up their legal capacity in order to qualify to receive supports and services.

### BACKGROUND:

For people with intellectual disabilities self-determination and full citizenship are fundamental principles that underlie the potential enjoyment of human rights. It is the presumption of legal capacity that makes it possible to exercise self-determination and full-citizenship.

**Guardianship** laws assume that some people do not have the capacity to make legally binding decisions and put in place substitute decision making provisions.

**Supported Decision-Making** means a person may accept help in making decisions without relinquishing the right to make decisions. Supported Decision-Making helps a person to understand information and make decisions based on his or her own preferences. A person with a learning disability might need help with reading, or may need support in focusing attention to make a decision. A person who has no verbal communication might have a trusted family member who interprets their non-verbal communications, such as positive or negative physical reactions, or uses Alternative and Augmentative Communication.

### STRATEGIES:

Inclusion international promotes the exercise of legal capacity by advocating:

- ❑ Development of models of supported decision making; and
- ❑ Development of safeguards that ensure that the persons with a disability are protected. These safeguards should be consistent with Article 6 of the Montréal Declaration, October 2004 developed by the pan-American Health Organization and the World Health Organization.