

5 Why is protecting legal capacity important?

Legal capacity is fundamental to human dignity and the recognition of one's humanity.

- The denial of legal capacity means that your community does not recognise you as a person in law. This is dehumanising and the premise of the denial of other human rights.



- Enjoying the right to legal capacity, means you have a voice. You are able to make decisions that affect your life, to enter into legal relationships, and to be the bearer of legal rights and duties.



6 What must Zambia do to protect this right?

X The law should never disqualify someone from having rights (such as voting, marriage, owning property, or exercising informed consent to health care) on the basis of the person's mental capacity, or mental disability.

X Guardianship and substituted or proxy decision-making should be outlawed.

X Instead, the law should protect the right to legal capacity for all persons on an **equal basis** including persons with mental & psychosocial disabilities.

✓ The law should provide mechanisms for **supported decision-making and reasonable accommodations** to allow persons with disabilities to exercise their right to legal capacity.

✓ The law should establish **safeguards** against abuse and take measures to ensure the exercise of legal capacity respects the **rights, will and preferences** of the individual.

6

steps to understand

LEGAL CAPACITY



MENTAL HEALTH USERS
NETWORK OF ZAMBLIA

VALIDITY

SOUTHERN AFRICA
LITIGATION CENTRE

1 What is legal capacity?

Legal capacity is the right to make decisions and form legal relationships.

It makes a person recognised in law and the holder of rights and duties.

2 Who has it?

Legal capacity is a universal human right.

EVERYBODY has the right to enjoy their legal capacity by virtue of their humanity, including persons with disabilities.



3 How is it exercised?

To “enjoy” legal capacity means more than simply to be recognised as a person before the law. It also includes the right to **do** things: To make choices that are respected by law; to be an actor under the law.



4 What is the difference between mental capacity & legal capacity?

Legal capacity

Legal capacity is the formal right to hold and to exercise rights and duties.

Everyone has a right to legal capacity



Mental capacity

Mental capacity is the decision-making skills & competencies of a person.

Mental capacity varies from person to person.

