

Protect Legal Capacity: Amend Section 4 of the Mental Health Act!

Disability rights activists and persons with psychosocial disabilities are calling for section 4 of the Mental Health Act 6 of 2019 to be amended.

Section 4 of the Mental Health Act removes the human **right to legal capacity** for persons with psychosocial disabilities. This is contrary to the Convention on the Rights of Persons with Disabilities (CRPD), the 2012 Persons with Disabilities Act and the Zambian Constitution.

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.

Who has legal capacity?



Legal capacity is a human right. **Everybody** has a right to enjoy legal capacity. The CRPD confirms that it is "a universal attribute inherent in all persons by virtue of their humanity."

What is the difference between legal & mental capacity?



Legal capacity is the formal right to make decisions and form relationships recognised by law. Everyone has a right to legal capacity.

Mental capacity is the understanding and reasoning abilities of a person. Mental capacity varies from person to person, depending on age, circumstances and societal expectations.

Do persons with disabilities have legal capacity?



Article 12 of the CRPD says that persons with disabilities (including persons with mental and psychosocial disabilities) have the human right to equal recognition before the law on an equal basis with others.

Some people may need **support** to make decisions and exercise their legal capacity. Under the CRPD, persons with disabilities have the right to access the support they may require.

Why is legal capacity important?



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 held accountable for your decisions.

Without legal capacity, your community does not recognise you as a person before the law. You can't open a bank account, rent a home, sign an employment contract, buy or sell property, consent to medical treatment, or make any legally binding decisions about what happens to your body.

Section 4 of the Mental Health Act inappropriately confuses mental capacity and legal capacity. It denies people the right to legal recognition on the basis of their mental abilities.

The Mental Health Users Network (MHUNZA) and Disability Rights Watch are calling for section 4 of the Mental Health Act to be urgently amended to protect the rights of persons with psychosocial disabilities.



MENTAL HEALTH USERS
NETWORK OF ZAMBIA

