



Policy Paper

From Guardianship to Empowerment: Legal Capacity for Persons with Intellectual and Psychosocial Disabilities in Palestine

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Executive Summary

This paper, the first of its kind, addresses the issue of **legal capacity of persons with intellectual and psychosocial disabilities** as a **critical test** for the respect of human dignity and the rule of law, rather than a technical or procedural matter subject to discretion or postponement. The paper is grounded in the central premise that the existing exclusion does not stem from the lack of commitment or legal provisions, but rather from a **profound structural gap** between binding international standards and national practice in legislation, the judiciary, and public administration.

Despite the State of Palestine's accession to the Convention on the Rights of Persons with Disabilities (CRPD) and its publication in the Official Gazette, which gives **it binding normative authority and requires its immediate application** across ordinary legislation and all public authorities and sectors, legislative frameworks and judicial, administrative, and financial practices continue to reproduce **a logic of guardianship and substituted decision-making**, particularly with regard to persons with intellectual or psychosocial disabilities. This logic is grounded in **unscientific assumptions** that conflate disability with the denial of legal capacity and treat **supported decision-making** as a legal risk that should be avoided, rather than as **a legally required mechanism of empowerment**. In practice, this results in the consequent **deprivation of legal capacity** across a spectrum of areas, including civil and financial transactions, personal status matters, litigation procedures, and access to justice, extending even to criminal proceedings when the person concerned is a victim.

This paper demonstrates that the core of the problem does not lie in the theoretical recognition of legal capacity, but rather in **the absence of a clear operational model** that enables persons with **disabilities to exercise their full legal capacity with the necessary support**, without exclusion or discrimination, in accordance with the State of Palestine's obligations under the CRPD and the provisions of the Basic Law. Disability of all types, including intellectual or psychosocial, does not negate or restrict legal capacity; the type of disability is used for description and classification purposes only and produces no legal effect on capacity. Furthermore, support is understood as the availability of **procedural and reasonable accommodation, appropriate communication means, or specialists' support** to ensure the exercise of will, rather than its substitution.

The paper further emphasizes, that **functional assessment approach** is the correct legal standard, which focuses on the **individual's ability to understand, communicate, and make decisions within a specific context**, rather than on their medical diagnosis or type of disability (physical, intellectual, psychosocial, or

sensory). This assessment, whether described as mild, moderate, or severe, **is not used to deprive or restrict legal capacity**. Rather, it serves **to determine the appropriate level and form of support** and the safeguards required, enabling persons with disabilities to exercise their own will and preferences, rather than substituting them with decisions made by others..

Accordingly, the paper affirms **the central equation of the CRPD as clear and indivisible: full legal capacity is an inherent and established right of all persons with disabilities, including persons with intellectual or psychosocial disabilities, and supported decision-making is the legal mechanism through which it is realized, not a substitute for it and never a replacement for the individual's will.**

In this context, the paper emphasizes the importance of a **scientific approach** to dismantling the **"conceptual gap" associated with full legal capacity in cases of intellectual or psychosocial disabilities**, where **a mistaken assumption** linking medical diagnosis to the deprivation of legal capacity persists.

Contemporary scientific evidence demonstrates that decision-making capacity is not a **binary state (capable/incapable)**, but rather a variable functional spectrum influenced by context, the nature of the decision, and available support tools. Neuropsychological and behavioral science literature confirms that persons with intellectual or psychosocial disabilities **possess actual capacities for understanding, choosing, and expressing preferences** when necessary and appropriate support (**linguistic, visual, temporal, or human**) is provided. In this framework, the paper points to comparative experiences in several countries where transition from guardianship systems to supported decision-making models occurred, practically proving that full legal capacity is **actionable** without compromising legal security or increasing risks; rather, it improves the quality of decisions and reduces disputes.

The paper draws on **in-depth legal and normative analysis** in this field, as well as on **in-depth interviews and evidence-based analysis** conducted by QADER's monitoring and documentation field team with judges, lawyers, representatives of financial and administrative institutions, activists, and women with disabilities. These interviews revealed a recurring pattern of **institutional hesitation and fear of assuming responsibility**, as well as one practical question that repeatedly emerges across sectors: **how can legal capacity be operationalized without risk?**

This paper demonstrates that this question itself reflects a misunderstanding of the nature of risk. **Exclusion does not mitigate risk but rather exacerbates it**, while documented holistic support constitutes the most effective tool for regulating procedures and safeguarding all parties involved.

The paper highlights that disability is a **cross-sectoral issue**, yet this nature does not justify the dilution of responsibility or the suspension of implementation. Legal responsibility **rests with the State as a single entity**, with a **clear distribution of roles** between the legislature, the judiciary, the administration, and financial organizations, within a unified framework that guarantees legal capacity and activates support as a **direct legal obligation** rather than an administrative option.

The paper proposes a **phased policy roadmap** that is not based on an isolated legislative leap, nor on suspended implementation awaiting for future alignment . Instead, it calls for **the immediate activation of the existing framework** through a binding interpretation consistent with the Convention, **in parallel** with a path of legislative and non-legislative alignment as a **binding international obligation** that does not contradict implementation. It calls for building a **national model for supported decision-making** and transforming it from individual discretion into a well-defined institutional practice, fortified by safeguards and subject to accountability.

The paper highlights the **criminal justice sphere as a critical site for assessing legal capacity**, where procedural violence intensifies and patterns of disability-based discrimination expand when a victim with a disability is excluded from meaningful participation in the proceedings under the pretext of protection. This is clearly reflected in the Palestinian Criminal Procedure Law No. (3) of 2001, which **deprives a person with an intellectual or mental disability, as a victim, of their inherent right to file a complaint regarding the assault perpetrated against them** and substitutes their will with that of a legal guardian. The law even employs discriminatory and degrading terminology in its text, such as the phrase (afflicted with a mental defect), reflecting an exclusionary approach that strips the person of their legal before considering their individual circumstances. The provision also entirely ignores the possibility of **providing the necessary support to exercise legal capacity**, including reasonable accommodation and the obligation to involve a communication expert, relying instead solely on substituted decision-making arrangements.

The paper emphasizes that this approach does not represent a secondary procedural matter; rather, it touches **the very essence of criminal justice**, as it excludes the victim from the core of protection and accountability, undermines the right to access to justice, and practically contributes to **perpetuating impunity** instead of preventing it.

In this context, the normative supremacy of international treaties over ordinary legislation is **binding and must be applied**, thereby settling the issue in terms of its **legal force**. It is therefore not a matter for judicial interpretation, administrative discretion, or institutional hesitation. Following the publication of the CRPD in

the Official Gazette through Decree-Law No. (36) of 2023, its provisions became **immediately applicable** and prevail over ordinary legislation, including **the Criminal Procedure Law and other laws**. This position has been affirmed by the decisions of the Supreme Constitutional Court No. (4) and No. (5) of 2017, which confirmed that international human rights treaties, once officially published, constitute a binding normative reference that prevails over ordinary laws while remaining below the Constitution in the legal hierarchy. This approach is further reinforced by the ruling of the High Court of Justice No. (56/2005), which **established a fundamental interpretive principle** that legislation related to the rights of persons with disabilities **was not enacted for legal formality or symbolic purposes**, but to address an existing social reality. Accordingly, any refusal to apply such legislation, or any attempt to render it devoid of practical effect, constitutes a violation of the principle of legality and a misuse of authority.

This judicial obligation cannot be separated from the provisions of the Palestinian Basic Law as the highest constitutional framework, particularly Article (106), which explicitly affirms that judicial rulings must be **implemented** and that any refusal or obstruction of their implementation **constitutes a criminal offence punishable by imprisonment and dismissal from public office** if the responsible party is a public official or a person entrusted with a public service, in addition to full compensation. Accordingly, disregarding the established constitutional and administrative jurisprudence regarding full legal capacity and supported decision-making does not constitute a legitimate interpretive disagreement. Rather, it places the refusal of authority under **direct constitutional responsibility**. This underscores the importance of immediate implementation, **the significant role of the judiciary in leading this transformation**, and the urgent need for **a clear operational model** that enables practical implementation without waiting for comprehensive legislative harmonization. Legal and policy harmonization should proceed **in parallel**, not at the expense of existing rights, and in partnership with relevant institutions to promote awareness, coherence, and sustainability.

The paper concludes **that the transition from guardianship to empowerment is neither a human rights slogan nor a legal adventure**; rather, it is a policy choice that can be **immediately implemented** within the existing legal framework, provided there is will, a defined pathway, and integrated roles between the legislature, the judiciary, the administration, and financial organizations. In this context, legal capacity for persons with disabilities **is not a privilege to be granted, nor a risk to be managed through exclusion**; it is an inherent and unwavering right whose exercise must be activated through supported decision-making, including the necessary reasonable accommodations, communication tools, and appropriate procedural models. In this sense, this paper does not present a theoretical call, but **a practical roadmap** that bridges the

gap between text and impact, reinstates the person " at the center of decision-making, **with full respect of their will and preference**", and places Palestine on a path of actual alignment with its constitutional and international obligations, without waiting for legislative amendments or the suspension of rights.

1. Introduction: Why this Paper?

Legal capacity is not measured by abstract legal provisions or formal procedures. Rather, it is determined by the extent to which the legal system recognizes the person's humanity and their right to act in their own life and **to determine their choices freely, independently, and with dignity**. In other words, the person is a holder of will, not an object of protection or control. In this sense, legal capacity is fundamentally a **test of dignity** rather than a technical matter, **and a defining line between empowerment and exclusion**, and between justice as a living practice and justice as a purely rhetorical discourse.

In the Palestinian context, this test is manifested particularly in the field of **legal capacity** for persons with intellectual or psychosocial disabilities; not due to the absence of a legal framework, but because the system continues to approach this issue with **an inherited guardianship** mindset that reproduces the substitution of will under the guises of "**protection**" and "**risk management**," despite the existence of a clear international and constitutional framework that prohibits discrimination and requires the recognition and exercise of legal capacity on an equal basis. The crisis therefore, is not one of "text" but of "gap": **a conceptual gap** that conflates support with substitution, and **an operational gap** that leaves organizations facing a practical vacuum, fueling hesitation and fear of responsibility.

This is what renders legal capacity, in practice, a recognized yet unfulfilled right. It is recognized in law but constrained in practice. **The problem does not lie in the absence of the rule itself, but in the dysfunction of the mechanisms required to activate it.** This dysfunction transforms the right from a binding guarantee into a declaration devoid of practical effect.

This reality in the State of Palestine is sustained by an implicit assumption that intellectual or mental disability necessarily means the absence of decision-making capacity, and that the "**safer**" course for institutions is to act on behalf of the person rather than to enable them. In practice, the result is **an automatic deprivation of legal capacity across multiple spheres**: in civil and financial transactions, in administrative procedures and public services, in litigation, and, most critically, in the criminal justice sphere in instances where the person with intellectual disability is a victim. In this context, measures presented as "**protection**" become **a form of silent**

procedural violence that excludes the person's voice in the name of protection and overrides their will in the name of the so-called best interests.

This paper proceeds from **a firm conviction** that the solution does not lie in linguistic reforms or individual interpretations, but in **dismantling the system of deprivation of legal capacity** affecting persons with disabilities, particularly those with intellectual or mental disabilities, which continues to be reproduced in practice across multiple sectors. It also requires **dismantling the conceptual gap** and **building a nationally applicable support model** that resolves the recurring question across institutions: **"How can legal capacity be activated without risk?"** **The equation presented by the CRPD is not a slogan. It is an operational rule: legal capacity is an established right that cannot be diminished, and support is a legal obligation required to enable its exercise, not a substitute for it and never a replacement for the individual's will.**

This paper does not seek to reproduce a theoretical debate on legal capacity, nor to revisit well-known legal provisions. Rather, it aims to bridge the gap between legal texts and practice **by analyzing the concepts that have generated confusion**, diagnosing the circles of exclusion within the judiciary, public administration, the financial sector, and the criminal justice sphere, and **proposing a practical policy pathway** that enables the Palestinian system to move **from guardianship to empowerment**. This transition does not deny risks nor evade them, but rejects managing them through exclusion, and restores the individual, with their full will, to the center of decision-making.

2. Methodology

This paper adopts **a policy analysis methodology** that establishes a systematic link between binding international legal standards, particularly the supremacy of treaties (the CRPD) over ordinary legislation, existing national laws, and actual institutional practice. This approach enables a structured transition from describing the problem, **to dismantling its structural foundations**, and ultimately to proposing **practical pathways** that can be implemented. The paper does not approach legal capacity as an abstract theoretical issue, but rather as an applied matter whose consequences are directly observable within the judiciary, public administration, financial transactions, and the criminal justice sphere, where the effects of either depriving individuals of legal capacity or enabling its exercise become concretely visible.

Within this framework, the paper draws on an in-depth legal and normative analysis covering the CRPD, particularly **the provisions of Article 12, General Comment No. 1 (2014) issued by the Committee on the**

Rights of Persons with Disabilities on Article 12 of the Convention concerning the equal recognition of persons with disabilities before the law, and the Committee’s concluding observations addressed to the State of Palestine in this area, as the cornerstone for affirming full legal capacity. This analysis is further grounded in **the provisions of the Palestinian Basic Law, judicial jurisprudence, and relevant national legislation** in the civil, criminal, and administrative spheres, with a particular focus **on the points of structural contradiction** between the binding international standard and actual national practice, whether those contradictions arise from existing legal texts or are produced through judicial interpretation or institutional custom.

In addition to the legal analysis, the paper relies centrally on **in-depth interviews** conducted by the field monitoring and documentation team at QADER with a diverse range of stakeholders, including judges, lawyers, representatives of financial institutions, public officials, human rights activists, and women with disabilities. These interviews were designed not to collect subjective opinions or personal viewpoints, but to diagnose patterns of decision-making, identify sources of institutional hesitation, examine the mechanisms through which legal capacity is denied in practice, and explore the recurring central question across sectors: how can legal capacity be activated without risk?

The interviews were analyzed using **an evidence-based qualitative analysis approach**, focusing on extracting recurring patterns, common gaps, and points of convergence and divergence across sectors, rather than merely presenting individual stances. The statements were treated as structural indicators of flaws within the legal and institutional system, rather than isolated opinions or circumstantial testimonies.

The paper also benefited from reviewing previous policy papers, studies, and human rights reports prepared by **QADER** as part of its leading role in producing specialized knowledge. It built upon and deepened this production, including research on financial inclusion, access to justice, gender-based violence, and the rights of women and girls with disabilities, to strengthen the analysis within a broader context and highlight the sectoral intersections that reproduce exclusion in various forms.

This methodology rests on a central analytical assumption that **the structural problem in addressing the legal capacity of persons with disabilities, particularly those with intellectual or mental disabilities, does not arise from ambiguity in the international standard or from a lack of obligations. Rather, it stems from a conceptual and operational misunderstanding of the relationship between legal capacity and supported decision-making.** Accordingly, establishing a clear conceptual framework constitutes an

essential foundational step before moving to legislative and practical analysis and proposing pathways for reform.

This methodology is presented in line with the nature of a policy paper in a foundational legal field, with the aim of maintaining a clear analytical focus on the analysis, findings, and proposed pathway. It is grounded in strict reliance on legal and field-based evidence as the basis for every conclusion and recommendation.

3. Objectives

This paper aims to advance **a practical policy shift in how the legal capacity of persons with intellectual or mental disabilities in Palestine is addressed by moving the discussion from the level of theoretical recognition and principled positions to the level of institutional implementation that can be practically applied.** It proceeds from the need to address the existing structural deficiencies within the legal and institutional system, rather than merely describing them, and to develop a pathway that enables decision-makers to operate within a clear, coherent, and reliable legal and normative framework.

First, the paper seeks to dismantle the conceptual confusion associated with types of disability, particularly the common conflation between intellectual disability and mental (psychosocial) disability, as well as between different degrees of disability. This confusion directly contributes to the misuse of the concept of legal capacity in both legislation and practice. Addressing this confusion constitutes a foundational step for any subsequent reform, as it places the discussion on a sound scientific and legal basis and prevents reliance on inaccurate assumptions or medical classifications that are improperly given legal effect.

Second, the paper aims to reframe the concept of **legal capacity** as an inherent right that cannot be removed, while clarifying the distinction between legal capacity to hold rights and legal capacity to exercise them. It emphasizes that disability, in all its forms, does not terminate or suspend legal capacity, but may require proportionate support to enable its exercise. In this context, the paper restores the central equation of the CRPD: legal capacity is constant, and supported decision-making is the legal mechanism for enabling its exercise, not a substitute for it and never a replacement for the individual's will.

Third, the paper seeks to dismantle the system through which persons with disabilities in the Palestinian context are deprived of their legal capacity by identifying its legal and institutional mechanisms across legislation, judicial and administrative practices, personal status matters, financial affairs, and the criminal sphere. It further examines how guardianship is reproduced in different forms, sometimes without an explicit

legal provision, and at other times under the justification of protection or risk management. This objective goes beyond documenting the deficiency itself; it seeks to uncover the internal logic through which it operates, the sources of its persistence, and its impact on fundamental rights.

Fourth, the paper aims to present a practical and safe model for supported decision-making as a legal and operational alternative to substituted decision-making arrangements based on guardianship. This includes clarifying its tools, limits, and safeguards, as well as how it can be nationally adapted in a manner consistent with the broader Palestinian context, without improvised replication of external experiences. This objective seeks to remove the ambiguity that fuels institutional hesitation, particularly within the judiciary and financial and administrative institutions, and to transform “support” from an ambiguous concept into a clear and operational tool that can be implemented in practice.

Fifth, the paper proposes a realistic and gradual policy pathway that enables the transition from a logic of guardianship to a logic of empowerment, without undermining legal stability or imposing burdens or obligations on persons with disabilities or public institutions that are not clearly framed within the law or supported by defined procedures and safeguards. This approach considers the Palestinian context and the relevant constitutional and international obligations. It includes defining clear roles for the legislature, the judiciary, and the administration, and developing practical implementation tools that are reinforced by safeguards and accountability mechanisms.

Through these objectives, the paper presents itself not merely as a rights-based position or a legal critique, but as a practical policy tool aimed at addressing the existing structural deficiency by bridging the gap between binding legal norms and their practical impact, and by transforming legal capacity from a theoretical recognition into an institutional practice that can be implemented. Within this framework, the paper seeks to restore the person with a disability to the center of decision-making as a holder of will and rights, while regulating support as a legal and procedural obligation. This approach strengthens the legal system against procedural violence disguised as protection and restores the meaning of legal capacity as an expression of human dignity and the rule of law.

4. Conceptual Framework: Legal Capacity Between Disability, Will, and Support

The issue of legal capacity of persons with disabilities, particularly persons with intellectual or mental disabilities, cannot be addressed in isolation from **the fundamental conceptual flaw** that shapes the legal and institutional debate concerning legal capacity. This flaw does not arise from the absence of legal provisions or

a lack of international standards, but from a **structural conflation between concepts that differ in their nature and function**: disability as a diverse human condition, will as a personal expression of choice, and legal capacity as an inherent legal status that is neither acquired nor granted.

In practice, this conflation has produced an impermissible assumption that is **scientifically, legally, and from a human rights** perspective unacceptable. It assumes that certain disabilities, particularly intellectual or mental disabilities, automatically lead to the absence of will and therefore justify the removal or restriction of legal capacity. This assumption is grounded neither in science nor in international law, but rather in a traditional **guardianship-based legacy** that continues to operate under the banners of protection or risk management.

4.1 Types of Disability Under the CRPD: Meaning, Not Terminology

Article 1 of the CRPD reflects a fundamental shift in the understanding of disability. It does not define disability as an individual medical defect, but rather as the result of the interaction between the person and environmental, institutional, and communication barriers. From this rights-based perspective, disability encompasses multiple forms that differ in their nature and effects, none of which affect the presumption of legal capacity.

Physical disability pertains to physical or motor limitations that may affect physical performance or mobility, but it does not infringe upon the capacity for understanding or decision-making. **Sensory disability**, whether visual or hearing-related, affects the channels of communication with the outside world, not the essence of will or perception. Its impact is addressed through well-known and established reasonable accommodations as set forth in the CRPD.

Sensory disabilities also include, in addition to visual and hearing disabilities, speech and communication disabilities, which affect the means of expression rather than the substance of will or cognition. Their impact is addressed through appropriate facilitative and communication accommodations, without any effect on legal capacity.

Intellectual disability is associated with core cognitive capacities, as in certain developmental disabilities or genetic conditions such as Down syndrome. It may affect, to varying degrees, comprehension, information processing, or the speed of understanding, but **it does not necessarily imply the absence of awareness or the inability to express will or make choices**. In the Palestinian context, the term “**mental disability**” is often used as a synonym for **intellectual disability** despite the scientific distinction between the two. This

contributes to reinforcing a **conceptual confusion** that directly affects legislation as well as judicial and administrative practice.

Psychosocial disability, which corresponds to what is often referred to as **mental disability**, relates to psychological conditions that may be stable or fluctuating, such as disorders associated with prolonged trauma. These conditions may affect behavior or social interaction at certain times, **without in themselves eliminating the capacity to understand meaning, form a will, or express it**. Nevertheless, in practice this type of disability is often treated as an automatic presumption of the absence of legal capacity.

It should be noted that the distinction between **Intellectual Disability** and **Mental Disability** in the Arabic text of the Convention reflects a normative intent. The former is linked to cognitive and developmental abilities, while the latter refers to psychosocial disabilities, as established in the human rights interpretation of the CRPD, particularly in the application of Article 12 regarding legal capacity.

In this context, the CRPD clearly and unequivocally affirms in **Article 12** that diversity in forms of disability, whether physical, intellectual, mental (psychosocial), or sensory, **does not in itself produce any legal effect on full legal capacity**. Rather, it requires the adaptation of the legal and institutional environment, the provision of **supported decision-making**, and the enabling of the person to exercise their rights fully on an equal basis with others.

The Committee on the Rights of Persons with Disabilities, in its **General Comment No. 1 (2014)**, specifically in paragraph (8), affirms that Article 12 of the Convention recognizes that persons with disabilities enjoy full legal capacity, explaining that the right to recognition on an equal basis before the law means that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be guaranteed to persons with disabilities on an equal basis with others, as it is an indispensable pillar for the exercise of all civil, political, economic, social, and cultural rights; consequently, any deprivation or diminution of this capacity is not merely an administrative procedure, but a flagrant violation of the essence of the Convention and the right to legal personality.

The conceptual flaw does not stop at the confusion between types of disability. It extends to a more serious conflation that equates “**mental capacity**” in a particular situation with **legal capacity itself**. Mental capacity refers to the level of understanding, appreciation, or processing in a specific context and at a particular moment in time. By its nature, it is variable and graduated, and it is influenced by the environment, the availability of support, and surrounding circumstances. Legal capacity, by contrast, is an inherent and constant legal status

that accompanies the person by virtue of their humanity, and it cannot be suspended, divided, or removed based on a situational functional assessment. Even where genuine difficulties in understanding or decision-making exist, the legitimate legal response is not the removal of legal capacity or the substitution of will, but the provision of **appropriate and proportionate support** that enables the person to express their will and exercise their rights on an equal basis with others. The problem, therefore, does not lie in the existence of difficulty itself, but in transforming difficulty into a justification for exclusion.

Consequently, refining the conceptual framework cannot be complete without re-examining the internal legal structure of the concept of **legal capacity** itself within national jurisprudence, particularly the distinction between capacity to hold rights and capacity to exercise rights, as this distinction has been one of the key concepts that has been misapplied in the context of disability.

4.2 Legal Capacity: The Distinction between Legal Capacity to Hold Rights and Capacity to Exercise Them

Legal thought distinguishes between two levels of legal capacity that must not be conflated: capacity **to hold rights and capacity to exercise rights**. Capacity to hold rights refers to a person's eligibility to acquire rights and assume obligations. It is an inherent attribute of every human being from the moment of birth and does not admit limitation, gradation, or deprivation. Under this understanding, every human being is a rights-holder whose entitlement to rights is full and inalienable.

By contrast, **capacity to exercise rights** refers to a person's ability to practice legal rights and act upon them in practical life. This ability may vary from one individual to another, and from one context to another, depending on the nature of the right being exercised and the surrounding circumstances. The flaw in traditional guardianship-based approaches lies in transforming this practical variability into a **predetermined legal judgment**. As a result, difficulties associated with exercising certain rights have been treated as evidence of a complete inability to exercise rights altogether.

Instead of exploring ways **to facilitate the exercise of capacity to exercise rights through appropriate support mechanisms**, legislation and practice have tended **to exclude (deprive) the individual from the position of legal agency** by assigning the exercise of their rights to another person who makes decisions on their behalf. With this shift, the issue is no longer about enabling the person to exercise their rights, but about **managing the rights for them**.

This trajectory has led to **a fundamental conflation of three distinct issues**: difficulty in exercising rights, need for support, and substitution of will. **Difficulties** that were meant to be addressed through empowerment tools have instead been treated as justification for exclusion, while **support**, which is supposed to facilitate the exercise of will, has in practice become a means to bypass it. In this way, legal capacity has not been theoretically abolished, but it has been **practically emptied of its substance** through **substitute arrangements** that reproduce **the logic of guardianship** under regulatory or protective labels.

Conversely, **Article 12** of the CRPD affirms that difficulty in exercising a right does not imply the absence of legal capacity. Rather, it indicates the need for **support arrangements** that enable the person to exercise their rights in a manner that respects their will and preferences.

The Committee on the Rights of Persons with Disabilities clarifies in **General Comment No. 1 (2014)**, paragraph (13), that **“legal capacity and mental capacity are distinct concepts**. Legal capacity refers to the ability of a person to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency), and it is the key to meaningful participation in society. Mental capacity, by contrast, refers to decision-making skills, which vary from person to person and may also vary for the same person due to many factors, including environmental and social conditions.” The Committee further explains that Article 12 of the Convention on the Rights of Persons with Disabilities clearly establishes that discriminatory labels such as “mental deficiency” and similar terms **do not constitute legitimate grounds for denying legal capacity**, whether in terms of legal standing or legal agency. Accordingly, under Article 12 of the Convention, perceived or actual deficits in mental capacity must never be used as a justification for depriving a person of their legal capacity.

Accordingly, **the proper framework for addressing the exercise of legal capacity does not lie in searching for grounds of exclusion, but in designing mechanisms of empowerment**. Differences in a person’s ability to carry out certain acts do not automatically produce legal consequences; rather, they impose a positive obligation on the state and its institutions to provide appropriate, suitable, and safe support so that the person’s will remains **the decisive reference** and the individual remains at the center of the legal act. **The question, therefore, is not whether the person is able to act, but what must be provided to enable them to do so**. For example, if a person with an intellectual disability has trouble understanding a complex financial contract, the issue should not be addressed by depriving them of the right to sign or by assigning the decision to a guardian acting on their behalf. Instead, it should be addressed by providing a simplified explanation, an accessible format, or a trusted support person who can assist them in understanding the matter and making the

decision themselves. In this sense, the right is not exercised on behalf of the person but by the person through their own will and with appropriate support. Legal capacity itself is therefore not what is being tested; rather, the true test lies with the state and its institutions.

4.3 The CRPD Equation: Disability + Support = Full Legal Capacity

Article 12 of the CRPD constitutes the cornerstone for redefining legal capacity. It does not present an idealistic or abstract vision but rather **establishes a clear and practical legal equation**: disability, regardless of its type or degree, does not cancel or diminish the legal capacity of persons with disabilities. Instead, it requires the provision of the support necessary to enable its exercise.

Under this equation, legal capacity moves from being understood as an assumed and absolute ability to being recognized as **an inherent right** that can be exercised in different ways depending on the person's needs and the context of the decision. **Support does not create or grant legal capacity; rather, it removes the barriers that prevent its exercise.** The Convention also affirms that the purpose of support is not to correct or replace the person's will, but to enable the individual to express it and understand its consequences, even in situations where their choices do not align with the views of a guardian, trustee, curator, or public authority.

The Committee on the Rights of Persons with Disabilities notes in General Comment No. 1 (2014), specifically in paragraph (16), that "Article 12(3) recognizes the obligation of States Parties to ensure that persons with disabilities have access **to the support they may require in exercising their legal capacity**. States Parties must refrain from denying persons with disabilities their legal capacity and must instead provide them with access to **the support necessary** to enable them to make decisions that have legal effect."

The Committee further states in paragraph (17) of the same General Comment that "when providing support to persons with disabilities in the exercise of their legal capacity, their rights, will and preferences must be respected, and **such support must never amount to substitute decision-making**. Article 12(3) does not prescribe the specific form that support should take. **'Support' is a broad concept that encompasses both formal and informal arrangements of different types and degrees.** For example, persons with disabilities may choose one or more trusted individuals to assist them in exercising their legal capacity in certain types of decisions, or they may seek other forms of support such as peer support or assistance from supporters, including support in self-advocacy or assistance with communication. Support for the exercise of legal capacity may also include measures related to universal design and accessibility, including requirements for private and public entities such as banks and financial institutions to provide information in formats that persons with

disabilities can understand, or to provide sign language interpreters, enabling persons with disabilities to carry out the legal procedures required to open a bank account, enter into contracts, or engage in other social transactions. Support may also involve the recognition and use of a variety of non-conventional methods of communication, particularly for persons who use non-verbal forms of communication to express their will and preferences, and the ability to engage in advance planning constitutes an important form of support.”

This reading demonstrates that, within the logic of the Convention on the Rights of Persons with Disabilities, support is neither an exceptional measure nor a privilege granted when needed. **Rather, it constitutes a complete alternative legal framework to traditional guardianship systems that are incompatible with the Convention.** The equation established by Article 12 does not allow for reconciliation between support and substitution; rather, it places them in direct opposition. Accordingly, any legal system that retains substitute decision-making arrangements under any designation effectively empties this equation of its substance and reproduces guardianship in a new form.

4.4 Supported Decision-Making: Enabling the Will, not Replacing It

In this context, support should not be understood as a softened form of guardianship, nor as a transitional system leading to the removal or restriction of legal capacity. Rather, it constitutes a legal empowerment mechanism. Support may take multiple forms, whether personal, familial, professional, or technological, and it may evolve over time. Yet it remains grounded in one fundamental principle: **the will belongs to the person, and support exists to enable it, not to replace it.**

The Committee on the Rights of Persons with Disabilities also noted in General Comment No. 1 (2014), under the section on “Obligations of States Parties,” that it has repeatedly emphasized in its concluding observations on reports submitted by States Parties that they must review laws that allow guardianship and tutorship. States are required to take the necessary measures to adopt laws and policies that replace substitute decision-making regimes with systems of supported decision-making that respect the person’s autonomy, will, and preferences.

The Committee further stated in its General Comment under the same heading that access to supported decision-making must be available to all. **Safeguards must be established** for all processes related to legal capacity and the provision of support in exercising it. The purpose of these safeguards is to ensure respect for the person’s will and preferences. The provision of support to persons with disabilities in exercising their legal capacity should not be based on assessments of mental capacity, and **new non-discriminatory indicators must be developed to determine the support required when providing such support.** The Committee also

emphasized that States Parties must ensure that support is available to persons with disabilities **either free of charge or at minimal cost**, and that the lack of financial resources must not constitute a barrier to accessing the support required. The Committee further stressed that the “progressive realization” of economic, social and cultural rights does not apply to legal capacity, and that States must immediately begin taking steps to implement the rights set out in Article 12 of the Convention concerning the full legal

The Irish experience is considered one of the advanced legislative models in this field. Ireland adopted **the Assisted Decision-Making (Capacity) Act 2015**, which entered full institutional operation with the establishment of **the Decision Support Service** on 26 April 2023. The Irish law did not merely reorganize guardianship regimes but established a multi-layered framework for supported decision-making. This framework includes decision-making assistance arrangements, co-decision-making mechanisms, and limited-scope representation arrangements, with agreements formally registered and subject to clear regulatory oversight. This model demonstrates that support is not merely a general ethical idea, but a structured legal framework that defines the scope of assistance, preserves the individual’s will, and at the same time provides safeguards for institutions and those interacting with the system.

In Latin America, Colombian Law No. 1996 of 2019 (Ley 1996 de 2019) marked a fundamental transformation in the reconstruction of the legal capacity framework. The law abolished traditional interdiction regimes and reaffirmed the full legal capacity of persons with disabilities, while introducing regulated support arrangements designed according to the individual’s needs and the context of the decision. The law also established safeguards related to the registration of support arrangements, judicial review, and the prevention of conflicts of interest. This demonstrates clearly that transitioning to a supported decision-making model does not create instability in legal transactions; rather, it strengthens transparency and reduces the arbitrariness that traditional guardianship systems had long produced.

In the Anglo-Saxon legal context, the experience of **the Canadian province** of British Columbia represents an **early operational model** through the Representation Agreement Act, 1996, which allows individuals to enter into support agreements that define the nature and scope of assistance without transferring the person’s legal status to another individual. These agreements are based on a clear specification of powers and may be limited to specific areas such as health care, financial transactions, or personal decisions, while requiring respect for the person’s will and preferences and allowing the agreement to be amended or terminated. The system also includes safeguards related to the documentation of agreements and the accountability of the representative in cases of misuse or exceeding the granted authority. This mechanism demonstrates that the

regulation of support can be both practical and straightforward, and that recognizing the person's will does not undermine legal certainty; rather, it strengthens it through clarity of roles and defined responsibilities.

Taken together, these models confirm that the transition from “**substituting the will**” to “**enabling the will**” is not merely a theoretical pathway, but a legislative and institutional option that **can be implemented at the national level** when its mechanisms are carefully designed, supported by clear safeguards, and subject to balanced judicial oversight. These experiences have been cited in the literature of the Committee on the Rights of Persons with Disabilities as practical examples demonstrating the feasibility of transitioning from traditional guardianship regimes to structured supported decision-making arrangements.

This means that the challenge in many legal systems does not lie in the absence of an alternative model, but rather in the continued insistence on interpreting legal capacity as a mental ability to be measured and assessed, rather than as an inherent right that must be recognized, exercised, and supported on a basis of full equality.

4.5 Conceptual Confusion as a Pathway to the Denial of Legal Capacity

Ignoring this conceptual framework, or reducing it to general slogans, does not only lead to a misunderstanding of Article 12 of the Convention; it also results in the practical reproduction of the denial of legal capacity under labels that appear protective on the surface, such as protection, best interests, or risk management. In such situations, the denial of legal capacity is not openly declared, but is exercised gradually and in a concealed manner, through replacing the person's will with the judgment of others, linking legal capacity to assessments of mental capacity, or conditioning the exercise of rights on notions of “maturity.”

Thus, in practice, disability is transformed from a condition that calls for support into a presumption of exclusion. The law shifts from being a tool of empowerment to a mechanism of control, and from a framework that guarantees equality to a means of reproducing dependency. This becomes particularly evident in civil procedures related to financial transactions, in judicial proceedings, and in contexts of criminal responsibility, where the person may be excluded from meaningful participation in decision-making even when they are themselves the victim, under the pretext of protection or safeguarding their best interests.

The problem here is not merely procedural but fundamentally conceptual. It is rooted in a traditional understanding of legal capacity as a mental ability that is measured and classified, rather than as a legal right that must be recognized, exercised, and supported on a basis of full equality and without discrimination. When

a legal system is built upon such an understanding, support becomes the exception, while guardianship in its various forms becomes the unspoken norm.

Accordingly, any serious approach to the issue of legal capacity of persons with disabilities, particularly those with intellectual or psychosocial disabilities, must begin with this clear and explicit conceptual foundation: **disability does not negate legal capacity, and support is not a substitute for it but a condition for its effective exercise.** Without this conceptual shift, no legislative reform, judicial interpretation, or public policy can produce a genuine or sustainable transformation, because the flaw will remain embedded in the underlying mindset through which legal provisions are interpreted and applied.

From this point, the discussion moves from the level of concept to the level of binding legal obligation. The recognition of the legal capacity of persons with disabilities is therefore no longer a matter of interpretative discretion or administrative judgment, but a direct legal duty and an international obligation under the Convention that is immediately applicable and does not admit justification or delay. Any failure to comply with this obligation entails clear and established legal responsibility.

5. Legal and Normative Framework: Legal Capacity as a Legal Obligation, Not an Interpretative Option

The issue of legal capacity of persons with intellectual or psychosocial disabilities in Palestine does not suffer from the absence of a legal reference framework, as previously outlined in this paper, but rather from a **structural disconnection** between the binding normative standard and its practical application. The international and constitutional framework is in place, formally recognized, and legally binding. However, legislative and institutional practice remains constrained by traditional assumptions that reproduce guardianship and substitute decision-making arrangements, treating disability as a justification for denying legal capacity rather than as a legal trigger for the provision of support.

In this sense, the issue "**does not lie in what the law says**", but in **how it is activated in practice**, who holds the tools of its implementation, and how institutional risk is managed at the expense of individual will and autonomy.

5.1 The International Framework: Legal Capacity as an Inherent Right and Support as a Legal Obligation

The Convention on the Rights of Persons with Disabilities, **particularly Article 12, established a fundamental shift in the understanding of legal capacity** by affirming that persons with disabilities enjoy legal capacity on an equal basis with others **in all aspects of life**. This recognition was not framed as a

declaratory or aspirational statement, but **as an explicit legal obligation** requiring States Parties to take the necessary measures to enable persons with disabilities to exercise this capacity, including through the provision of **appropriate support in decision-making**.

The Committee on the Rights of Persons with Disabilities emphasized in **General Comment No. 1 (2014)**, under the heading **“Implementation at the national level,”** that States are required to review existing legislation, abolish guardianship regimes and replace them with structured systems of support, develop effective safeguards, train judges and professionals, and establish oversight mechanisms to prevent the misuse of support. This means that the obligation does not stop at theoretical recognition but extends to the restructuring of the legislative and institutional framework, including the review of judicial procedures, the development of support mechanisms, the establishment of safeguards to prevent conflicts of interest, and the creation of effective monitoring systems.

The Convention breaks with the traditional model based on the denial of legal capacity or the substitution of a person’s will and instead establishes the principle that legal capacity is not a fixed normative ability but an **inherent right** whose effects may be exercised through diverse means. Differences in ways of understanding or expressing oneself do not justify the removal of this right; rather, they require the adaptation of the legal and procedural environment in a manner that respects the individual’s will. Accordingly, any legal system that results in the denial of legal capacity or the imposition of guardianship on the basis of disability constitutes, as affirmed by Article 12 of the Convention on the Rights of Persons with Disabilities, the recommendations of the Committee on the Rights of Persons with Disabilities, and the Palestinian Basic Law (Article 9 on equality and non-discrimination), **a direct violation of an inherent right**.

5.2 The Legal Status of the Convention within the Palestinian Legal System

The Convention on the Rights of Persons with Disabilities (CRPD) acquired binding force within the Palestinian legal system following its publication in the Official Gazette pursuant to **Decree-Law No. (36) of 2023**, published in the Official Gazette, Issue No. (210), on 28 January 2024. It has thereby become an integral part of the national legal framework. In accordance with established constitutional principles, and as affirmed by the jurisprudence of the Palestinian Constitutional Court, published international human rights treaties **prevail over ordinary legislation** and are binding on all authorities, legislative, executive, and judicial.

Ordinary legislation or administrative interpretation cannot be invoked to restrict legal capacity or to undermine its effect in contravention of the Convention on the Rights of Persons with Disabilities, the

Committee's General Comments and recommendations, the Palestinian Basic Law, and Decree-Law No. (36) of 2023.

Accordingly, any provision or procedural practice within Palestinian law that deprives persons with disabilities of their legal capacity, restricts it, or presumes its absence based on diagnosis or health condition does not constitute a matter of interpretation or administrative discretion. Rather, it represents **a direct legal and constitutional violation of an inherent right that is immediately applicable and enforceable** and therefore requires review and correction rather than justification or delay.

5.3 The Constitutional Framework: Equality and Non-Discrimination

The Palestinian Basic Law (the constitutional framework) reinforces this obligation by enshrining the principle of equality before the law and prohibiting discrimination on any ground, including disability. This is explicitly affirmed in **Article 9** of the Basic Law, which states: "Palestinians are equal before the law and the judiciary, without discrimination based on race, sex, color, religion, political opinion, or disability." Furthermore, **Article 32** of the Basic Law affirms that any violation of the rights and freedoms guaranteed by the Basic Law, including those protected under Article 9, constitutes a defined constitutional offense that entails accountability as well as fair compensation for the person harmed.

In this context, the denial or restriction of legal capacity on the basis of disability constitutes not only a breach of international obligations under the Convention on the Rights of Persons with Disabilities (CRPD), but also a **direct constitutional violation**, particularly when it is applied automatically or generally, without individualized assessment and without providing supportive alternatives that enable the person to exercise their rights effectively and independently.

5.4 National Legislation: Explicit Conflict with the International Standard

Despite this binding framework, the publication of the Convention on the Rights of Persons with Disabilities, and the requirement that it prevail over ordinary legislation, certain Palestinian laws continue to rely on traditional assumptions that reproduce the denial of legal capacity or the substitution of the person's will, not as an exception but as a legislative approach. This conflict is evident both at the level of the broader rights framework and in the legislative language used in statutory drafting, which still employs **degrading terms that contravene the Convention**, such as "mental defect," "insane," "imbecile," and "prodigal." Such terminology

effectively turns medical diagnosis into a **legal presumption of incapacity** while disregarding individualized functional assessment.

This conflict is also evident in the presumption that a person is unable to exercise their rights merely because of the existence of a disability, particularly intellectual or psychosocial disability, without any serious consideration of the possibility of providing the **required support** and without requiring the exhaustion of empowerment measures before resorting to substitute arrangements. Under this logic, difficulty in exercising a right is transformed from a situation that necessitates facilitation and support into a legal justification for exclusion.

This conflict reaches its peak when the exercise of rights or decision-making authority is assigned to a guardian, trustee, or official authority without regard to the person's will or preferences, and without clear safeguards preventing guardianship from becoming a permanent system. This deficiency is not limited to civil, commercial, banking, or personal status laws, but extends to both **procedural and substantive criminal legislation**, where a victim with an intellectual or psychosocial disability may be excluded from the center of the legal process in the name of protection. In such cases, their voice is replaced through representation or substituted decision-making, effectively silencing them and depriving them of their right to file a complaint and to participate in the proceedings.

This approach reaches its **symbolic and legal peak**, among other examples, in Article 467(3) of the applicable Penal Code No. 16 of 1960, which imposes a fine on “**any person who releases a dangerous animal or allows a ‘mad person’ under their custody to escape.**” This legislative equivalence between a “**dangerous animal**” and a “**person classified as insane and under custody**” reflects not merely outdated language but reveals a deeply rooted, degrading legal culture that undermines legal personhood and legitimizes the denial of legal capacity as a supposedly preventive measure.

The problem is not limited to the language used in legal provisions but extends to the legal effects produced by such formulations. These expressions reinforce within judicial and administrative practice a preconceived assumption of incapacity that precedes individualized assessment, effectively transforming protection into automatic guardianship.

5.5 Normative Outcomes: Legal Conclusions not Open to Interpretation

A comprehensive reading of the international, constitutional, and national frameworks leads to decisive normative conclusions that do not allow dilution or circumvention:

- **Full legal capacity is an inherent right inseparable from the human person and cannot be diminished based on disability.**
- **Guardianship and substitute decision-making arrangements do not constitute legitimate legal options under the application of the CRPD.**
- **Supported decision-making is a binding legal obligation for all authorities, not a discretionary measure or an administrative exception.**
- **Any practice that excludes a person with a disability from the center of decision-making constitutes a violation of the binding standard and cannot be justified.**
- **Existing legislation must be reviewed, and any provision inconsistent with Article 12 of the CRPD must be repealed or amended through a clear timeline and a defined institutional mechanism ensuring the transition from guardianship regimes to systems of support.**

Accordingly, the problem no longer lies in the ambiguity of legal texts or in the absence of binding international, constitutional, or judicial frameworks, but in the continued suspension of legal capacity despite the clarity of the binding normative legal framework. This situation necessitates moving beyond merely describing the structural problem toward dismantling the mechanisms through which it is produced in practice, as a necessary step toward establishing a clear and defined path for reform.

6. Circles of Denial of Legal Capacity: How is Exclusion Reproduced in Practice?

The denial of legal capacity of persons with disabilities, particularly persons with intellectual or psychosocial disabilities, does not occur because of an isolated legal provision or a single judicial decision. Rather, it emerges through **a system of interconnected circles operating cumulatively**, where each circle reinforces and justifies the others under the banners of protection, risk management, or similar rationales, while simultaneously shifting responsibility among institutions. In this sense, the denial of legal capacity is not an incidental legal flaw but a **comprehensive institutional structure** that produces exclusion as a **“normalized”** practice that does not even require an explicit decision.

Within this interwoven structure, the decision cannot be attributed to a single authority. Instead, it is distributed across successive procedural layers: a judge acting cautiously to avoid potential appeals, an employee adhering

to internal instructions, a bank invoking compliance policy, and an administrative body referring to outdated legal provisions that have never been reviewed.

Thus, the denial of legal capacity of persons with disabilities, particularly persons with intellectual and psychosocial disabilities, is reproduced as a “technical” outcome of administrative or judicial processes rather than recognized as a normative choice that contradicts clear legal obligations. In the absence of a conceptual reassessment that resets the point of departure, exclusion continues and its circles expand, not because it is legitimate, but because it is inherited and continually reproduced through institutional routine.

6.1 The Judiciary: Fear of Legal Liability Instead of Protecting the Will

In-depth interviews conducted by QADER’s field monitoring and documentation team with Palestinian judges and lawyers indicate that the problem does not lie in a principled rejection of the concept of legal capacity. Rather, it stems from a “**conceptual gap**” regarding the legal capacity of persons with disabilities, together with the absence of codified procedural tools that regulate support mechanisms within the courtroom and clarify the limits of judicial responsibility when support arrangements are adopted instead of guardianship. This concern has been reinforced by **the lack of a clear and reliable procedural model** that would allow a judge to respect the will of a person with a disability without exposing themselves to subsequent appeals, legal scrutiny, or accusations of misjudgment.

In this context, guardianship or substitute decision-making for persons with disabilities, particularly those with intellectual or psychosocial disabilities, comes to function as a form of “**precautionary solution,**” not because it aligns with the CRPD or the applicable international standard, but because **it carries the lowest institutional cost for the judge**. Here the structural flaw becomes clear: the protection of the judge’s procedural position is prioritized over the protection of the right itself, and individual will is sacrificed in the name of judicial stability, resulting in a quiet reversal of the judiciary’s role as a guardian of rights rather than a manager of institutional risk.

6.2 Banks and Financial Transactions: Risk Management as Disguised Guardianship

In the financial sector, the circle of denial of legal capacity takes on a more severe form. Financial institutions often do not proceed from the principle that legal capacity can be exercised with appropriate support; instead, they operate on a prior assumption that a person with a disability constitutes **a potential legal risk** that must be neutralized.

Accordingly, legal capacity is reduced to a purely compliance-based equation, where incapacity is presumed in advance and guardianship, representation, or substitute signatures are imposed as conditions for accessing the financial system, even in the absence of any individualized assessment or serious consideration of reasonable and legally available support mechanisms. In this sense, compliance and risk-management policies become a **systematic mechanism of exclusion** that fundamentally contradicts the concept of financial inclusion, which is premised on independence and support rather than preventive exclusion, and is inconsistent with the Palestinian Basic Law, the Convention on the Rights of Persons with Disabilities (CRPD), as well as the General Comments and recommendations issued by the Committee on the Rights of Persons with Disabilities. Guardianship is thus reformulated in contemporary technical language that performs the same function: excluding the person from the center of decision-making. This illustrates that procedural modernization does not necessarily represent a normative shift; rather, it may reproduce exclusion through more organized and less visible mechanisms.

Reference may also be made to **Instruction No. (8) of 2017 issued by the Palestine Monetary Authority** concerning the accessibility of bank buildings and banking services for persons with disabilities. Article (2), relating to the objective, states that these instructions aim to affirm the right of persons with disabilities to live with dignity and to access banking services, on an equal basis with other citizens, with ease and privacy, while granting them priority in receiving banking services and protecting their rights as consumers of financial services. Article (3) provides that these instructions apply to all banks, while Article (4) requires the adaptation of bank buildings and facilities in every branch to meet the needs and requirements of persons with disabilities.

Article (6) requires the adaptation of banks' automated teller machines (ATMs), while Article (7), concerning general provisions, requires the review and development of operational procedures to incorporate the needs and requirements of persons with disabilities, the preparation of guidance manuals, the training of employees in the use of sign language, and the printing of promotional and informational materials about available services in Braille.

Article (7) also imposes **a financial penalty** ranging from no less than USD 5,000 and no more than USD 15,000 on any party that violates these instructions concerning the accessibility of bank buildings and banking services for persons with disabilities.

In contrast, **Article (5)** of the same instructions, relating to **banking products and services**, provides that the signature of a blind client or a client with a hearing disability may be accepted without requiring the presence of witnesses, **provided that the client signs a one-time declaration documented in the presence of two**

witnesses who are not employees of the bank. Through this declaration, the client acknowledges full responsibility for conducting banking transactions without witnesses and releases the bank from any liability arising from such transactions. Paragraph (3) further stipulates that if the person with a disability (the client) modifies their signature, they **must sign a new declaration** in accordance with the requirements set out in paragraph (2). Paragraph (4) provides that bank accounts and all banking transactions for blind clients may be conducted through fingerprint verification in the presence of two witnesses, in cases where the blind client **has not signed the declaration** referred to in paragraph (2) of these instructions.

An analysis of these instructions issued by the Palestine Monetary Authority, when read considering the international standard and the normative supremacy of the Convention on the Rights of Persons with Disabilities (CRPD), reveals **a significant contradiction**. Although Instruction No. (8) of 2017 ostensibly aimed to enhance financial inclusion and adapt banking services for persons with disabilities, the practical application of some of its provisions, particularly Article (5), reproduces **the logic of guardianship** in a modern technical form. This approach **shifts the burden of risk from the institution to the individual**, rather than adapting procedures in a manner that protects the person's will. By contrast, international standards require precisely the opposite: institutional procedures must be adapted to mitigate risk without undermining the individual's will or transferring the burden of responsibility to the rights-holder.

More concerning still is that this approach has also been applied to persons with **visual and hearing disabilities**, despite **the absence of any legal basis in Palestinian law permitting the restriction of their legal capacity**. This development signals a risk of expanding the circle of exclusion, which would inevitably affect persons with intellectual or psychosocial disabilities even more severely. In the absence of any explicit reference to these groups in the relevant banking instructions, they are in practice treated according to the **guardianship-based logic** prevalent in ordinary legislation, namely **the automatic denial of legal capacity** under the pretext of protection or incapacity, in direct contradiction to the principle of normative supremacy.

In this sense, the banking deficiency does not represent an isolated procedural issue but rather **a revealing example** of how the circles of denial of legal capacity expand. Exclusion begins with groups whose legal capacity should not be restricted under the law and then **silently** extends to others, in disregard of the principle of the supremacy of international treaties and the governing rule that support is a legal obligation while **deprivation of legal capacity is prohibited, regardless of the type of disability**.

This banking model is not an isolated exception. Rather, it reveals a replicable mechanism that may appear in other sectors, where exclusion is reproduced through procedural requirements that outwardly claim to provide

protection while in reality result in the denial of legal capacity, in contradiction with the Convention on the Rights of Persons with Disabilities, the General Comments issued by its Committee and its concluding observations to States, as well as in violation of constitutional provisions and national judicial jurisprudence.

6.3 Public Administration: A Signature-Based Routine that Excludes the Will and Empties Legal Capacity of its Substance

Within public administration, the denial of legal capacity is rarely exercised through an explicit administrative decision or a formally declared legal provision issued by official authorities. Instead, it occurs **through silent everyday practices** carried out in the name of “necessity,” “procedural requirements,” or “administrative regulation.” It appears in various forms, such as requiring the signature of a guardian, referring an application to an unspecified authority, rejecting requests without written justification, or suspending procedures indefinitely under the pretext of “protection” or “lack of clarity.” **These mechanisms do not openly declare the denial of legal capacity, yet they produce its full practical effect.**

The danger of this pattern lies not only in its outcome but also in its form. Exclusion here does not take the shape of a decision that can be challenged or subjected to accountability; rather, **it is practiced as an ordinary administrative routine**, despite its clear violation of the Palestinian Basic Law (the Constitution) and international human rights treaties. There are no written decisions, no identifiable authority assuming responsibility, and no explicit legal justification that can be examined or contested. In this way, the denial of legal capacity shifts from an overt legal act into a **normalized institutional practice**, carried out quietly and reproduced without resistance.

In this way, legal capacity is emptied of its practical substance, even when it continues to exist theoretically in legal texts. A person with a disability may be “recognized” as legally capable on paper, yet **is effectively prevented from exercising their rights** because public administration acknowledges their will only through an intermediary or suspends procedures until another person intervenes. The issue therefore shifts from the existence of the right to **the ability to access it**, which is the core of legal capacity in its practical dimension. More critically, this administrative pattern **reproduces guardianship** without naming it. Instead of guardianship being imposed through a judicial decision subject to safeguards and consistent with the Constitution and international obligations under the CRPD, it is practiced as an implicit condition for accessing public services. In this way, public administration shifts from being a mechanism for facilitating rights to becoming a **silent gatekeeper of exclusion**, accumulating structural discrimination, normalizing it through

bureaucratic routine, and effectively neutralizing the international standard without openly declaring a departure from it.

This administrative pattern does not represent merely a problem of implementation; **it constitutes a practical denial of the provisions of Article 12 of the Convention on the Rights of Persons with Disabilities, which has been published in the Official Gazette** and therefore binds the State of Palestine. The Convention obliges the State not only to recognize legal capacity but also to ensure that persons with disabilities are able to exercise it in practice through appropriate and accessible support arrangements. When these arrangements are replaced by an implicit requirement of guardianship, public administration does more than violate procedural norms; it undermines the very substance of the right and reduces legal capacity from a binding legal obligation to a discretionary administrative privilege that can be withheld.

6.4 Legislation: From Derogatory Language to Substitution and the Legalization of Deprivation of Legal Capacity

National legislation constitutes the primary point of departure in the reproduction of deprivation of legal capacity, whether through the **terminology employed** or through the legislative logic itself. Terms such as “mental defect,” “insane,” or “imbecile” do not merely function as legal descriptions; they reinforce a derogatory perception that transforms diagnosis into a legal presumption of incapacity. In doing so, they disregard the obligation **to raise societal awareness** under Article 8 of the Convention on the Rights of Persons with Disabilities, whether at the legislative level through the removal of such language or at the level of practice.

This deficiency and the resulting violations are further aggravated by the absence of a functional approach to the legal capacity of persons with disabilities. Legislative provisions frequently move directly toward substitute decision-making arrangements without the mandatory prior consideration of the support mechanisms required under international law, as though guardianship were the rule and support an exceptional possibility. In this way, legislation ceases to function as a tool for regulating the exercise of rights and instead becomes **a structural foundation for exclusion**.

The problem does not end at the level of language or the substitutive structure of certain legal provisions; it also extends to the mechanisms through which legislation is reviewed and updated. Although the Council of Ministers established **a committee for harmonizing legislation with international conventions** in 2017 and amended its mandate in 2019, the absence of representation from organizations representing persons with disabilities within its membership, together with the lack of tangible impact on legislation relating to legal

capacity, reveals that the problem lies not in the absence of a formal mechanism but in its structure and working methodology. Harmonization, **pursuant to Article 4(3) of the Convention on the Rights of Persons with Disabilities**, is not a purely technical internal procedure; it is a binding participatory obligation that requires the effective and meaningful involvement of persons with disabilities and their representative organizations in all legislative and policy processes that affect them.

In addition, the weak institutionalization, governance, and effectiveness of the legislative harmonization committee established by the Council of Ministers, together with the fact that it is not treated as a mandatory channel for reviewing draft laws prior to their adoption, the selective referral of legislation to it, and the limited number of laws it has addressed over the years, have contributed to entrenching a structural gap between Palestine's international obligations and the operative legislative framework. The absence of a clear procedural requirement to refer all draft legislation relating to rights and freedoms to the committee, and the reduction of its role to a limited advisory function, strips the concept of "harmonization" of its preventive and transformative purpose and turns it into a post-legislative tool rather than a prior normative safeguard.

In this sense, the deficiency does not lie solely in the substance of certain legislative provisions but extends to the very structure through which they are produced. The contradiction with the Convention is thus reproduced even before an opportunity for correction arises, in the absence of a binding mechanism capable of operationalizing the supremacy of the international standard within the legislative process itself.

When the process of harmonization is conducted in isolation from this principle, **and in the absence of genuine partnership with organizations representing persons with disabilities (OPDs)**, it does not correct the structural deficiency but may instead reproduce it in a more institutionalized and organized manner. In such circumstances, the concept of "harmonization" shifts from an instrument for implementing the Convention into an administrative framework incapable of producing the conceptual transformation required by Article 12 and by General Comment No. 1 (2014) of the Committee on the Rights of Persons with Disabilities, as well as the Committee's recommendations to States, particularly with regard **to national implementation**. The Committee has emphasized that the abolition of guardianship and substitute decision-making regimes is not a gradual political option but a legal obligation requiring a comprehensive and time-bound legislative review based on a support-based model rather than substitution.

Accordingly, addressing the issue of legal capacity for persons with disabilities cannot be reduced to revising or partially amending specific provisions. Rather, it requires recalibrating the legislative and institutional structures that produce those provisions, ensuring that the support-based model of legal capacity is integrated

into the legislative process itself rather than addressed only after laws are enacted. Without transforming harmonization into a mandatory, participatory, and time-bound process, the contradiction with the Convention on the Rights of Persons with Disabilities will continue to recur, regardless of changes in wording or the introduction of purely formal amendments.

6.5 The Criminal Justice Sphere: Legal Capacity Between Procedural Protection and the Silencing of the Victim

In the criminal justice sphere, deprivation of legal capacity assumes **its most serious and sensitive form**, not through an explicit decision to withdraw a right, but through shifting the very center of the proceedings from the victim to another party in the name of “protection.” Under Article (6) of the Palestinian Criminal Procedure Law No. (3) of 2001, the right to file a complaint is transferred from the injured party (the victim) to the guardian, custodian, or trustee if the injured party is “affected by a mental defect,” while the Public Prosecution assumes this role where conflicts of interest arise or where a representative is absent.

In its current formulation, this provision does not distinguish between deprivation of legal capacity and the regulation of procedural representation. Instead, it treats intellectual or mental disability as a legal presumption of incapacity to initiate or express a complaint, rather than as a situation requiring the activation of support mechanisms.

The problem becomes most evident in crimes affecting bodily integrity and dignity, particularly sexual violence. **What if the victim in such a situation has been subjected to rape? And what if the guardian or custodian himself is the suspected perpetrator?**

In such circumstances, Article (6/2) of the Criminal Procedure Law provides that the Public Prosecution shall act in place of the victim. However, although this solution may initially appear to serve “protective” purposes, it raises **a fundamental question** regarding the position of the victim within the proceedings: does the crime, in procedural logic, become an offense against the Public Prosecution rather than against the living body of the victim? And can procedural substitution for the victim justify her complete exclusion from expression, testimony, confrontation, and participation—even through supported means?

It is precisely here that the structural deficiency becomes most apparent, when existing legal tools within the Palestinian Criminal Procedure Law No. (3) of 2001 itself are disregarded. **Articles (22) and (64)** explicitly allow **the engagement of experts** during both **the inquiry and investigation stages**, including obtaining

necessary clarifications and establishing the circumstances of the crime under the supervision of investigative authorities. **When interpreted considering the supremacy of the Convention on the Rights of Persons with Disabilities**, these provisions do not permit the exclusion of the victim. Rather, **they require the activation of reasonable accommodations and professional support arrangements—such as communication experts, psychological specialists, or alternative methods of expression**—enabling the victim to exercise her procedural rights as a complainant rather than being reduced to the object of silent protection.

The obligation in this context is not limited to Article (12) of the Convention on the Rights of Persons with Disabilities but also extends to **Article (13)**, which requires States Parties **to ensure effective access to justice for persons with disabilities on an equal basis with others**. This includes providing appropriate procedural accommodations enabling their effective participation at all stages of proceedings, including investigation and inquiry. Accordingly, any approach that excludes the victim from the center of the case without exhausting available support and accommodation mechanisms cannot be considered a legitimate procedural arrangement; it constitutes a direct violation of the right of access to justice as affirmed by the Convention.

Departing from this approach and resorting directly to substitute arrangements does not constitute protection or legitimate precaution. Rather, it produces **a form of procedural violence** in which will is confiscated in the name of order and voice is erased in the name of caution within a judicial system that should be founded on justice and the protection of rights—not on the preventive management of risk or the removal of the individual from the center of proceedings.

These overlapping spheres demonstrate that deprivation of legal capacity for persons with disabilities is not imposed through a single explicit decision. Rather, it is produced through **a silent convergence** between the judiciary, public administration, the financial sector, legislation, and criminal practice. Within each sphere, exclusion is presented as protection and the removal of will is justified in the name of precaution, until guardianship becomes the rule and support the exception.

Accordingly, the problem is no longer merely one of flawed legal provisions or individual misunderstanding. It is a fully developed institutional structure that reproduces exclusion within the very cycle of legal procedures, empties the legal capacity of persons with disabilities of its practical meaning, and normalizes procedural violence as an ordinary practice that escapes accountability. In this context, the transition to a support-based model is not an optional reform path or a limited improvement; it is a direct legal requirement imposed by the Convention on the Rights of Persons with Disabilities, by the law publishing the Convention, and by the

Palestinian Basic Law. It is also a moral imperative to restore the human being—**with their will, voice, and dignity**—to the center of the legal process. This requires a systematic and institutional shift from the logic of substitution to the logic of empowerment, as addressed in the following section.

7. Support as the Decisive Equation of Legal Capacity

The challenge does not lie in disability itself, but in **the absence of a support model capable of transforming potential ability into effective legal practice**. Intellectual or mental disability, regardless of its degree, does not by its nature produce legal incapacity; rather, it generates a need for support arrangements that vary in form and intensity depending on context and function. Here emerges the **clear equation** that resolves the theoretical debate and answers the practical question of “how?” often raised by a cautious judge or a risk-averse institution: **disability + appropriate support = operationalized legal capacity**.

7.1 The Scientific, Rights-Based, and Normative Foundations of the Support Model

The Convention on the Rights of Persons with Disabilities, particularly Article 12, established a decisive conceptual shift grounded in the recognition of persons with disabilities as persons before the law on an equal basis with others, and in the obligation of States to provide the support necessary for exercising their legal capacity. General Comment No. 1 (2014) further elaborated this shift, affirming that guardianship and substitute decision-making regimes are incompatible with the essence of the Convention and that the transition to a supported decision-making model is not a cosmetic reform but a direct legal obligation.

Support, in its essence, does not involve the removal, diminution, or transfer of a person’s will, nor does it substitute another’s will for that of the individual concerned or undermine their autonomy. Rather, it enables the person’s will to emerge and operate in practice. It constitutes a system of human, technical, psychological, and legal tools that assist the person in understanding, choosing, expressing preferences, and assuming the consequences of their decisions, while the decision itself remains attributable to the person alone and free from guardianship.

In this sense, **support differs fundamentally from guardianship**: guardianship excludes the individual in the name of protection, whereas support keeps the person at the center of decision-making while redistributing surrounding roles without affecting the attribution of the decision itself. Any approach that fails to distinguish between the two models inevitably reproduces exclusion, even if framed through modern tools or softened concepts. This leads to a governing principle that resolves the widespread confusion between disability and

lack of understanding: **legal capacity is not measured by medical diagnosis but by functional ability within a supported context.**

Diagnosis may indicate a need for support, but it does not in itself create or justify the removal of legal capacity. The shift from a medical logic to a rights-based functional approach dismantles the mistaken assumption often present in practice that protection requires substitution or guardianship. Instead, it offers a structured framework capable of regulation, training, and oversight—rather than the legal uncertainty sometimes feared.

This is not a rhetorical formulation, but **a scientific and rights-based conclusion** established by the Convention on the Rights of Persons with Disabilities, to which the State of Palestine has acceded, and protected under the Palestinian Basic Law as a binding legal obligation.

7.2 Comparative Experiences and the Institutional Transition from Guardianship to Support

The support model has not remained merely a rights-based theory or an abstract normative proposition. It has been translated into practice in several legal systems that have gradually transitioned—through carefully designed legislative and institutional reforms—from comprehensive guardianship regimes to supported decision-making arrangements.

In Canada, several provinces, including British Columbia, have adopted a system of “representation agreements,” which allows the appointment of decision-making supporters without removing legal capacity. In Ireland, the Assisted Decision-Making (Capacity) Act of 2015 introduced a multi-tiered framework linking the type of support provided to the individual’s functional needs rather than to a permanent classification of legal capacity. Similarly, Colombia enacted comprehensive legislative reform through Law No. 1996 of 2019, which abolished traditional interdiction regimes and replaced them with a legal framework for individualized, reviewable support arrangements.

These models did not abolish legal responsibility nor place the judiciary in a regulatory vacuum. Instead, they recalibrated responsibility in a manner that attributes actions to their rightful author, while documenting the support process as a procedural safeguard within the exercise of legal capacity rather than as a constraint on the individual’s will, which remains the essence of legal capacity. These experiences have demonstrated that concerns relating to the potential misuse of support or to procedural uncertainty can be addressed through precise regulation, periodic judicial review, and clear standards defining the scope, limits, and safeguards of support, without undermining the stability of transactions or legal certainty.

The importance of these experiences does not lie in importing a particular model, but in establishing a practical truth: **that transition is possible and that institutional transformation can be implemented gradually** and in a regulated manner without jeopardizing legal security or the stability of legal transactions.

In the criminal justice sphere in particular, this principle acquires its greatest ethical and legal weight. Support here is not a procedural luxury but **a fundamental condition for preventing secondary harm and the expansion of violence in the name of protection**. Enabling a victim with a disability to express themselves and respecting their autonomy and inherent dignity through specialized professional support, restores the essence of criminal justice as a personal form of justice that cannot be administered by proxy. Conversely, denying this pathway and continuing to rely on substitute arrangements constitutes a direct violation of the principle of respect for will and autonomy and empties constitutional and international obligations of their substance.

In summary, support serves as the bridge between the theoretical recognition of legal capacity for persons with disabilities, particularly persons with intellectual or mental disabilities, and its practical realization. Without it, legal capacity remains a legal principle without effect. With it, legal capacity becomes a practice that can be measured, regulated, and held accountable. In this sense, the support model is not merely an improvement but **a decisive equation** that moves institutional actors, foremost among them the judiciary, from a position of hesitation to one of certainty grounded in a binding international standard and demonstrated practical experience.

This leads directly to the next section of the paper, in which a comprehensive and phased institutional roadmap will be outlined to codify this transition and ensure its effective implementation at the national level with clarity, accountability, and legislative discipline.

8. Roadmap: From Recognition to Implementation

Legal capacity is not realized merely by declaring it in legal texts or invoking it within rights-based discourse. It becomes meaningful only when it operates within **everyday institutional practice**. The recognition established by the Convention on the Rights of Persons with Disabilities, particularly Article 12 and General Comment No. 1 (2014) issued by the Committee, remains incomplete in its effect unless translated into a practical pathway that reorganizes the relationship between individual will and institutions, between protection and empowerment, and between risk management and respect for human dignity.

In the Palestinian context, the difficulty does not lie in the absence of a binding standard. The international, constitutional, and judicial frameworks are clear and enforceable. Rather, the challenge lies in **the absence of an operational structure capable of translating this standard into stable institutional practice**. The legal system recognizes legal capacity at the level of the Convention on the Rights of Persons with Disabilities published in the Official Gazette pursuant to Decree-Law No. (36) of 2023, as well as in the Committee's General Comment on Article 12 concerning legal capacity and in its recommendations addressed to the State of Palestine. However, a systematic mechanism has not yet been established to operationalize this recognition within the judiciary, public administration, the financial sector, and the criminal justice sphere in a manner that removes institutional hesitation and alleviates fears of legal responsibility.

The proposed roadmap is built upon **four interconnected pillars** that progress from immediate operational activation toward the stable institutionalization of full legal capacity. Each stage addresses a specific dimension of the structural deficiencies identified in the preceding sections.

8.1 Immediate Activation Consistent with the CRPD

The first step in this pathway does not require waiting for amendments to the existing ordinary legislation governing the legal capacity of persons with disabilities, particularly those with intellectual or mental disabilities. Rather, it relies on the already binding force of the Convention on the Rights of Persons with Disabilities following **its publication in the Official Gazette (Palestinian Gazette) and its supremacy over ordinary legislation**. By virtue of this supremacy, the judiciary, the prosecution, public administration, and regulatory authorities are required to interpret existing legal provisions in a manner consistent with Article 12 and to refrain from any application that produces the automatic removal of legal capacity or the substitution of a person's will based on disability.

This interpretive shift does not mean the immediate repeal of existing provisions. Rather, it requires **neutralizing their exclusionary effects through a constitutional interpretation consistent with the international standard**. For example, when a court examines a case involving the conclusion of a contract by a person with an intellectual or mental disability, incapacity cannot be presumed solely on the basis of a prior medical diagnosis. Instead, the person must first be enabled to understand the nature of the obligation within a supported context, whether through simplified explanation, an accessible clarification session, or the involvement of a communication expert, before any substitute representation is considered. Similarly, in the criminal justice sphere, the right to file a complaint cannot automatically be transferred from the victim to a guardian without first exhausting available legal support mechanisms, particularly the use of expert assistance

and procedural accommodations that enable the victim to participate effectively in the proceedings. Failure to do so would constitute a clear violation of the principle of the supremacy of international conventions over domestic legislation and of constitutional guarantees.

In this sense, the role of the judiciary and public administration shifts from the literal application of statutory provisions to their implementation considering the supremacy of the Convention. The refusal to adopt such an interpretation would therefore constitute a breach of constitutional and international obligations rather than a mere interpretive choice. This phase sends a decisive institutional signal that **legal capacity is not contingent upon future legislative harmonization** but is an enforceable right that must be operationalized in the present. The Committee on the Rights of Persons with Disabilities confirmed this position in General Comment No. 1 (2014), emphasizing that “progressive realization” does not apply to legal capacity and that States are required to take immediate steps to implement this right.

8.2 Building a National Model for Supported Decision-Making

If the first phase neutralizes exclusion in the field of legal capacity for persons with disabilities, the second phase establishes the **structured alternative**. Abandoning guardianship as the default solution is insufficient unless it is replaced by a clear and regulated framework for supported decision-making that defines its forms, determines its limits, and reassures institutions that individual will is exercised within an organized and accountable process rather than an unregulated one.

The proposed **national support model** is based on a central principle: the assessment should not focus on the question “**Does the person possess legal capacity?**” but rather on “**What does this person need in order to exercise their legal capacity in this specific context?**” Support should therefore not be grounded in a general medical description but in a functional analysis linked to the nature of the decision presented to the person with a disability, its level of complexity, the available tools for understanding it, and the environment in which the decision is made. A person may require a simplified explanation in accessible language, additional time to understand the information, the presence of a trusted individual who can assist in asking questions and organizing thoughts, or the assistance of a communication expert who can help convey the person’s preferences, particularly in criminal proceedings. These tools do not transfer the decision to another person; they merely facilitate its expression.

For this model to be operational, it must include **clear regulatory elements**. These include specifying the type of support, its duration and scope, documenting the supported decision-making process within an official

record, and allowing periodic review of these support arrangements in line with evolving circumstances or changing needs. Documentation in this context is not a bureaucratic formality but a dual safeguard: it protects the person from the transformation of support into disguised guardianship, while also assuring institutions that the decision was taken within a structured professional framework.

This model **can be adapted across different sectors**. Within the judiciary, supplementary regulations or procedural guidelines consistent with the Convention on the Rights of Persons with Disabilities may be adopted to require courts to assess the need for reasonable accommodations before taking any procedural step. In the banking sector, a supported explanation session could precede any decision to refuse the opening of an account or the execution of a transaction, ensuring that the client understands the terms of the service within an accessible and comprehensible context. In public administration, the option to request support could be incorporated into official forms to ensure that the presence of a disability does not become an implicit reason for suspending a procedure or requiring a guardian's signature. In this way, support evolves from a conceptual idea into a measurable legal structure, and the alternative to guardianship becomes a practical framework rather than a theoretical slogan.

8.3 Institutionalizing Support and Building the Professional and Oversight Framework

No model can achieve stability if it remains dependent on individual discretion or personal initiatives. For this reason, the third phase of the proposed roadmap requires moving support from sporadic application to the level of stable institutional practice.

This process begins with integrating the concept of legal capacity for persons with disabilities, particularly those with intellectual or mental disabilities, and the model of supported decision-making into formal judicial education. The subject should no longer remain limited to occasional training sessions or awareness workshops but should become **a core component of the curricula used to prepare judges, prosecutors, and police officers**. Such integration requires systematic training that firmly establishes the distinction between mental capacity as a variable functional concept and legal capacity as an inherent right that cannot be removed, while clarifying the practical implications of this distinction for judicial decisions and for the conduct of investigative and hearing procedures.

It also requires the establishment of **clear accreditation pathways for communication experts and decision-making assistants**, including the development of professional standards governing their practice and accountability mechanisms in cases of misuse. Support, to serve as a genuine alternative to guardianship,

must be governed by safeguards that ensure respect for the person's will and preferences, rather than becoming a new channel for covert control.

In this context, general guidelines or codes of conduct are insufficient. Institutionalization requires the adoption **of a dedicated legal framework issued by the Council of Ministers establishing a regulatory structure for the profession of "communication and supported decision-making specialist,"** particularly in cases involving intellectual or mental disabilities. This framework should define the objectives of the profession as an instrument of empowerment rather than substitution, regulate the scope of its intervention, and identify the bodies responsible for oversight and supervision at both formal and informal levels. It should also ensure the meaningful participation of organizations of persons with disabilities in functions and responsibilities and in oversight and periodic evaluation mechanisms in accordance with the Convention on the Rights of Persons with Disabilities, particularly Article 4(3), which requires the involvement of such organizations.

This framework should include clear provisions regarding **the conditions for practicing the profession** and registration in a national registry of communication experts, requiring specialized academic qualifications, accredited training based on the support model under the Convention on the Rights of Persons with Disabilities, and successful completion of professional certification programs. It should also define the rights and duties of the specialist, including the obligation of neutrality, confidentiality of information, explicit adherence to the person's expressed preferences rather than presumed best interests, and the prohibition of any direct or indirect conflict of interest.

To ensure that this important role does not deviate from its intended purpose, the framework must establish **effective oversight mechanisms.** These should include procedures for receiving complaints, conducting investigations, imposing disciplinary sanctions when violations are confirmed, and publishing periodic performance reports indicating the number of cases, the nature of interventions, and the level of compliance with professional standards. Such measures enhance transparency and institutional trust. The framework should also require relevant authorities to assess national needs in this field and to adopt a phased plan to address **the severe shortage of specialists** through accredited university and professional training programs, while regularizing the status of current practitioners during a defined transitional period.

The framework should also include **mechanisms for periodic review of supported decision-making arrangements** to ensure that they remain instruments of empowerment rather than substitution. Such review should include the person's right to request modification or termination of support arrangements, as well as the authority of judicial bodies to intervene when indications of misuse or conflicts of interest arise. In this way,

support arrangements remain adaptable and subject to continuous and effective review in line with the evolving nature of functional ability and decision-making contexts.

Leaving this important and influential field unregulated despite the urgent need would reproduce the same risks that guardianship systems claim to avoid. By contrast, institutionalizing support within a clear legal framework transforms it from an individual initiative into a regulated professional practice and ensures that communication specialists remain facilitators of will rather than becoming new guardians in a different form.

In the legislative sphere, the harmonization of laws must become a **mandatory institutional process rather than a subsequent advisory function**. The review of any draft law affecting legal capacity should occur considering the international standard and with the meaningful participation of organizations representing persons with disabilities so that contradictions with the Convention are not reproduced within the legislative process itself. Through such institutionalization, judges and public officials are no longer left confronting a “legal uncertainty,” but instead operate within a clear professional framework with defined responsibilities and mechanisms of accountability.

8.4. Managing Risk Through Structured Empowerment Rather Than Exclusion

Fear of risk remains one of the primary motivations behind resorting to guardianship. However, risk management does not require eliminating a person’s will but rather organizing it within a clear framework. Every legal action involves the possibility of error or difficulty, whether undertaken by a person with a disability or by anyone else. The fundamental difference between the guardianship model and the support model lies in how this possibility is addressed.

Rather than neutralizing the person in advance under the pretext of protection, the support model relies on transparency in the decision-making process, documentation of the accommodations and support arrangements provided, and periodic review to ensure that these arrangements effectively enable the person’s will, which is the core of legal capacity. It also provides accessible grievance mechanisms when a person believes that support has shifted into disguised guardianship. This approach requires clear distinctions between the roles and responsibilities of those providing support and those making the decision, ensuring that assistance does not become direction and that caution does not turn into de facto guardianship. In this way, institutions move from a logic of “**reducing responsibility through prohibition**” to one of “**sharing responsibility through structured regulation**”, where accountability becomes distributed, clear, traceable, and subject to review rather than avoided through exclusion.

Documenting the supported decision-making process enables judicial and administrative bodies to review the integrity of procedures when necessary and to verify that a decision was made within a legitimate support framework that respects the person's will and preferences. Such documentation is **particularly important in fields** that require a high degree of legal certainty, including banking and financial transactions, civil contracts, and public administrative procedures. A clear record describing the nature of the support provided, the entity that delivered it, and the methods and accommodations used to enable the person to understand and express their will allows banks, financial institutions, and government bodies to rely on the decision as one issued through an activated will rather than through substitute representation. In this way, a balance is achieved between respecting individual autonomy and preserving the stability of transactions and institutional trust, as the supported decision-making pathway can be traced and verified without undermining the attribution of the decision to its author.

Legal stability is not achieved by **freezing the will that constitutes the essence of legal capacity** for persons with disabilities, but by integrating that will within a clear framework governed by objective standards, transparent procedural safeguards, and effective partnership between public authorities and organizations representing persons with disabilities. When risk is managed through structured empowerment, the system becomes more transparent and less arbitrary, and dignity becomes part of the legal equation rather than a burden upon it. In such a framework, respect for individual will is no longer perceived as a risk but as a necessary condition for sustainable justice that balances protection and freedom without sacrificing one in the name of the other.

8.5 Integrating the Four Pillars and Reconstructing the Institutional Standard

Through these four pillars, which form the foundation of the proposed roadmap, the result is not a set of scattered recommendations but a coherent and integrated normative structure that redefines the relationship between the Palestinian legal system and the concept of legal capacity itself. **The first pillar** neutralizes exclusionary application through binding interpretation consistent with the Convention. **The second** establishes a national model of support as an operational tool adaptable across sectors. **The third** creates the professional and oversight framework necessary to safeguard the model from deviation. **The fourth** reclaims risk management within a regulatory rather than guardianship-based logic. When these elements operate together, support ceases to be merely a reform idea and becomes an institutional standard through which authority and responsibility are redistributed within the legal system.

At this stage, the legal capacity of persons with disabilities, particularly those with intellectual or mental disabilities, moves from a theoretical status cited in legal texts to an effective practice manifested in courtrooms, administrative offices, banking institutions, and investigative proceedings. The question then is no longer whether legal capacity should be activated, but **how the quality of support can be improved**. This shift in the nature of the question itself signals the maturity of the legal system, as it indicates that recognition is no longer contested and that the debate has moved from the question of existence to the question of implementation.

Closing the gap between recognition and practice cannot be achieved through political declarations, cosmetic amendments, or the mere publication of the Convention without its implementation. It requires **the reconstruction of the governing standard** so that dignity and equality become the starting point of every procedure rather than considerations introduced only upon request. When this standard is rebuilt, the transition from guardianship to empowerment becomes a structured methodological shift rather than an uncertain experiment, and a stable legal pathway rather than a temporary adjustment. In this way, the Palestinian legal system is recalibrated around a clear principle: legal capacity is not a conditional privilege dependent on ability, but an inherent right whose exercise is organized through support, whose will is protected through safeguards, and whose dignity is preserved through institutionalization. Under such a framework, empowerment becomes not a burden on legal stability but a condition for it.

9. Decisive Conclusions

This paper confirms, based on the conceptual and normative framework, applied analysis, and in-depth interviews, that the central challenge regarding the legal capacity of persons with disabilities, particularly persons with intellectual or mental disabilities, does not lie in the absence of legal recognition. Rather, it lies in **a conceptual and operational gap** between binding international and constitutional standards and prevailing institutional practice. Accordingly, the required transformation is not cosmetic or technical but structural, affecting the very nature of the relationship between the State and the person with a disability.

The following conclusions therefore constitute **governing normative foundations** that cannot be bypassed or diluted in any legislative, judicial, or administrative process. They do not represent policy options or reform proposals open to negotiation, but binding requirements grounded in the Convention on the Rights of Persons with Disabilities (CRPD), the provisions of the Palestinian Basic Law, and the principle of the supremacy of international treaties. As such, they establish the minimum standards from which any regulation, interpretation, or practice related to legal capacity must proceed, ensuring that the same structural deficiencies are not reproduced under new labels or updated regulatory forms. Accordingly, what follows is not a

descriptive account but a set of governing principles defining what is permissible and what is prohibited in relation to legal capacity and support in decision-making.

9.1 Legal Capacity Is a Full and Indivisible Right

Legal capacity, under the Convention on the Rights of Persons with Disabilities, particularly Article 12, and under the provisions of the Palestinian Basic Law, is an inherent right enjoyed by all persons without exception. It may not be suspended, fragmented, or withdrawn based on the type of disability, its degree, or a medical diagnosis. Any practice that does so constitutes a direct violation of binding international and constitutional obligations.

9.2 Functional Variation in Disability Does Not Affect Legal Capacity

Differences in the degree of disability do not create variations in legal capacity but determine the level and form of support required. Using such variations to remove or restrict a person's will reflects a fundamental confusion between disability and the denial of legal capacity and lays the foundation for exclusionary policies that contradict the core human rights standard. Functional classification serves to organize support, not to undermine the fundamental right to full legal capacity.

9.3 Support Is a Legal Obligation Inherent in the Recognition of Legal Capacity

Recognition of legal capacity entails a positive obligation to provide the support necessary for its exercise. No restriction or intervention may be considered before appropriate and effective support mechanisms have been exhausted. Any departure from this sequence constitutes a breach of international and constitutional obligations. Support is therefore not an optional or secondary regulatory measure but a legal condition for the validity of any action or decision affecting the exercise of legal capacity.

9.4 Substitute Decision-Making Creates Incapacity Rather Than Resolving It

Substitute arrangements such as guardianship or replacing the persons will do not resolve difficulties but reproduce them in a permanent legal form. Depriving a person of decision-making weakens autonomy and excludes the individual from the center of legal action instead of empowering them.

9.5 The Risk of Formal Support and Disguised Guardianship

Support that fails to respect the genuine will of the person with a disability or that is not subject to documentation, review, and accountability becomes disguised guardianship. Any support model lacking institutional safeguards empties Article 12 of the Convention of its practical meaning.

9.6 The Criminal Justice Sphere as the Ultimate Test

The criminal justice field represents the most sensitive arena for testing commitment to the legal capacity of persons with disabilities, particularly those with intellectual or mental disabilities, where the tendency toward exclusion under the pretext of protection becomes most pronounced. Removing the victim from the center of proceedings without providing appropriate support constitutes a form of procedural violence and a direct violation of autonomy while undermining the guarantees of justice.

9.7 The Conceptual Gap as the Source of Persistent Deviation

The problem persists due to a conceptual confusion between mental capacity as a situational functional assessment and legal capacity as an inherent right. This confusion turns any difficulty in understanding or communication into a justification for transferring decision-making authority to others, thereby reproducing the logic of guardianship under the banner of protection. Addressing this conceptual gap is therefore not a theoretical matter but a necessary condition for redirecting legislation and institutional practice toward the support model as the only approach consistent with the human rights standard.

9.8 Institutionalizing Support Is a Structural Obligation, Not an Administrative Option

Establishing a clear professional structure for support, including the regulation of communication specialists and decision-making assistants, is not an optional improvement that may be postponed but an essential safeguard against the re-emergence of guardianship in new forms. Support that lacks accreditation standards, professional regulations, and oversight and accountability mechanisms remains dependent on individual discretion and vulnerable to misuse. In this sense, the absence of institutional regulation does not produce flexibility but rather reproduces disorder and ambiguity while undermining legal stability and trust in the system.

9.9 Operational Planning and Effective Participation as Binding Obligations

Any legislative alignment or institutional reform concerning legal capacity and support in decision-making, whether related to civil, criminal, financial, or procedural legislation, must be accompanied by a clear

implementation plan that includes defined timelines, measurable indicators, and mechanisms for monitoring and periodic evaluation. It must also ensure the early and meaningful participation of organizations representing persons with disabilities in accordance with Article 4(3) of the Convention on the Rights of Persons with Disabilities, not as a formal gesture but as genuine partners in policy design and implementation oversight. Reform undertaken without such participation loses its legitimacy and risks reproducing the very structural deficiencies it seeks to address.

10. Operational Recommendations

Building on the decisive conclusions outlined above, and with the aim of moving from the theoretical recognition of legal capacity to its effective implementation, the following recommendations are proposed as a structured operational pathway that considers the institutional realities of the Palestinian context without diluting the binding normative commitment. These recommendations ensure full alignment with the Convention on the Rights of Persons with Disabilities (CRPD), the provisions of the Palestinian Basic Law, and the principle of the supremacy of international treaties. The transformation required is therefore not merely a formal reformulation of legal texts, but a reorganization of institutional practice grounded in support and respect for individual will, preventing the re-emergence of guardianship in new or updated forms.

10.1 At the Legislative and Normative Level

Adopt a binding interpretation of legal provisions within existing Palestinian legislation to ensure their immediate and full alignment with Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), excluding any application or interpretation that results in the automatic removal of legal capacity or the substitution of a person's will based on disability. This includes neutralizing the exclusionary effects of existing provisions without waiting for comprehensive legislative reform, while establishing supported decision-making as the governing principle for any subsequent legal regulation.

At the same time, legal terminology of a degrading or purely medical nature should be reviewed and replaced with functional concepts consistent with the rights-based and developmental approach to disability under the CRPD. This shift would transform legal discourse from describing incapacity to regulating support and would prevent the incorporation of substitute decision-making arrangements in future legislation or regulatory frameworks.

10.2 At the Judicial Level

Individual functional assessment, which focuses on a person's ability to understand and make a specific decision within a particular context, together with determining the type of support required for the exercise of legal capacity rather than issuing a general judgment on capacity, constitutes a normative requirement for organizing support in decision-making. This assessment must be used solely to determine the nature of the support required in the context of the decision, not to determine legal capacity itself, as legal capacity is an inherent and non-negotiable right. The assessment therefore remains a procedural tool intended to facilitate the exercise of this right and to enable the person's will to be expressed within a supported context, and it must be documented within clear safeguards that protect the person's will rather than replace it.

This stage also requires integrating the concept of legal capacity and the support model into the programs of the Palestinian Judicial Institute responsible for developing judicial personnel, public prosecutors, and administrative staff in the justice sector, as well as into specialized training, coaching, and institutional accompaniment programs implemented by organizations specializing in disability and the production of specialized legal knowledge. Addressing the conceptual gap is essential for establishing a stable procedural framework that enables judges to avoid resorting to substitute arrangements out of caution or fear, and to reinforce a judicial culture based on enabling individual will rather than administering it by proxy.

10.3 At the Administrative and Financial Level

The transition toward the effective implementation of the legal capacity of persons with disabilities requires the issuance of binding regulatory instructions and frameworks for public institutions, oversight bodies, and the banking sector to develop internal procedures that activate legal capacity within a supported context in accordance with the Convention. This approach should replace risk management practices based on exclusion or requirements for substitute representation or alternative signatures. Preventive administration built on exclusion does not produce institutional stability; rather, it deepens discrimination and undermines confidence in the legal system itself.

Financial inclusion policies and public service frameworks should also be explicitly linked to the principle of full legal capacity, ensuring that support arrangements are incorporated into standard procedures rather than treated as exceptional measures. This should be accompanied by the development of documentation and review mechanisms that ensure decisions are made within a structured, professional, and verifiable support framework. In this way, risk management shifts from a logic of protection through prohibition to one of regulation through empowerment, without confiscating individual will or placing on persons with disabilities the burden of proving their legal capacity in every transaction.

10.4 In the Criminal Justice Field and Justice Institutions

The criminal justice field represents the most sensitive test of commitment to the full legal capacity of persons with disabilities. This requires affirming the position of the victim with a disability as the holder of rights and will throughout all stages of inquiry, investigation, and trial, while providing structured professional support and expert assistance that enable the person to express themselves and participate effectively without substitution or guardianship. Exclusion under the pretext of protection, or forced representation, constitutes a form of procedural violence and undermines the guarantees of a fair trial.

This also requires the adoption of binding executive regulations governing procedures of inquiry, investigation, and trial that ensure disability inclusion and incorporate clear procedural accommodations and documented communication support mechanisms, grounded in the supremacy of the Convention on the Rights of Persons with Disabilities and the constitutional principles of equality and non-discrimination. In this way, risks are managed through professional support rather than exclusion, and criminal justice is redefined as a personal form of justice in which individual will is respected rather than administered by proxy.

10.5 At the Level of Regulating Support and Communication Experts

Addressing the existing gap in the number and regulation of support and communication experts for persons with disabilities, particularly persons with intellectual or mental disabilities, is a structural requirement for the practical activation of legal capacity. This requires initiating the establishment of a national framework for accrediting such experts, including qualification and licensing standards, clearly defined scopes of intervention, professional codes of conduct, safeguards for independence, and mechanisms for oversight and accountability. Such measures would transform support from sporadic individual discretion into a structured and documented professional practice.

The absence of regulation for this profession does not justify a return to guardianship on the pretext of institutional gaps. Rather, it necessitates institutionalizing support within clear rules that safeguard individual will, subject interventions to review, and prevent their transformation into disguised guardianship or substitute arrangements under the guise of assistance. In this way, support becomes an institutionalized and disciplined empowerment mechanism rather than an open discretionary space vulnerable to misuse.

10.6 At the Level of Governance and Risk Management

Institutionalizing the support model, to activate individual will as the core of legal capacity, requires the adoption of documentation mechanisms and periodic review processes that manage risks associated with the exercise of legal capacity without resorting to prior exclusion. The support model does not deny the possibility of error; rather, it regulates it through transparency, the recording of decision-making pathways, and the possibility of adjusting support arrangements as the situation or context evolves.

These mechanisms should be developed within a participatory institutional framework that ensures early and meaningful involvement of organizations representing persons with disabilities in accordance with Article 4(3) of the Convention on the Rights of Persons with Disabilities. Their participation should be recognized not merely as a formal step but as genuine partnership in policy design, the development of evaluation indicators, and the review of implementation. Such participation serves as a safeguard of legitimacy and accountability that prevents the reproduction of the same structural deficiencies under new labels, while strengthening an institutional culture that balances legal stability with respect for individual will.

11. Conclusion: Legal Capacity as a Test of Dignity and the Rule of Law

This paper demonstrates, through its analytical trajectory, that the full legal capacity of persons with disabilities, particularly persons with intellectual or psychosocial disabilities, is not a technical matter subject to postponement or selective interpretation. Rather, it constitutes **a decisive test** of respect for inherent human dignity, the rule of law, and the obligations set forth in the Convention on the Rights of Persons with Disabilities. Where legal capacity is denied in the name of protection, or individual will is suspended under the pretext of risk management, the law is transformed from a tool of empowerment into an instrument of exclusion, and from a framework of justice into a silent structure of control.

The paper has demonstrated that the central challenge in the Palestinian context does not lie in the absence of commitment or the lack of a legal reference framework, but in **a profound conceptual and operational gap between binding legal provisions and everyday practice**. This gap cannot be addressed through linguistic adjustments or partial reforms. Rather, it requires rebuilding the relationship between the state and the person with a disability based on full recognition of legal capacity and assigning the state the duty to provide support as a fundamental legal obligation, not as an administrative option or an exceptional arrangement.

The paper affirms that guardianship, regardless of the terminology used to describe it, **does not constitute protection**; that substituting a person's will does not remedy incapacity but rather produces it; and that supported decision-making is not a risk but a fundamental condition for the realization of justice. Legal capacity

cannot be exercised by proxy, measured through medical diagnosis, or granted conditionally. Rather, it must be exercised through diverse means that respect the person's will and adapt procedures accordingly, instead of excluding the individual.

The transition from a logic of guardianship to a logic of empowerment is neither a rights-based slogan nor a reckless leap. It is **a policy pathway that can be implemented** when the necessary political will exists, roles are clearly defined, and the functions of legislation, the judiciary, and public administration operate in complementarity. Such a transition does not threaten legal stability; rather, it strengthens it by redistributing responsibility based on support, documentation, and accountability, rather than exclusion and fear.

We conclude this paper with a fundamental truth: legal capacity is **an inherent right that cannot be diminished**, support is an obligation rather than an exception, and justice can only be realized when the person, **in the fullness of their will**, stands at the center of decision-making. Anything less, however well-intentioned, does not constitute protection but rather the reproduction of guardianship systems. It is not institutional caution but an unnamed fear: a fear of individual will, of difference, and of the responsibility that empowerment requires. When such fear is administered in the name of law and furnished with legal justifications, it does not safeguard the legal order; it empties it of meaning. It transforms justice from a practice grounded in dignity into a procedure without a voice and postpones a right that cannot be postponed.