



DATE DOWNLOADED: Thu Oct 7 04:34:32 2021

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Bluebook 21st ed.

Ilze Grobbelaar-Du Plessis, *The Right of Persons with Intellectual Disabilities to Political Participation: The Legal Capacity to Vote - Zsolt Bujdosó v Hungary* Communication No. 4/2011 (Committee on the Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011), 83 THRHR 455 (2020).

ALWD 6th ed.

Grobbelaar-Du Plessis, I. ., *The right of persons with intellectual disabilities to political participation: The legal capacity to vote - zsolt bujdoso v hungary communication no. 4/2011 (committee on the rights of persons with disabilities)* (un doc crpd/c/d/4/2011), 83(3) THRHR 455 (2020).

APA 7th ed.

Grobbelaar-Du Plessis, I. (2020). *The right of persons with intellectual disabilities to political participation: The legal capacity to vote zsolt bujdoso hungary communication no. 4/2011 (committee on the rights of persons with disabilities)* (un doc crpd/c/d/4/2011). *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)*, 83(3), 455-[xii].

Chicago 17th ed.

Ilze Grobbelaar-Du Plessis, "The Right of Persons with Intellectual Disabilities to Political Participation: The Legal Capacity to Vote - Zsolt Bujdosó v Hungary Communication No. 4/2011 (Committee on the Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011)," *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)* 83, no. 3 (August 2020): 455-[xii]

McGill Guide 9th ed.

Ilze Grobbelaar-Du Plessis, "The Right of Persons with Intellectual Disabilities to Political Participation: The Legal Capacity to Vote - Zsolt Bujdosó v Hungary Communication No. 4/2011 (Committee on the Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011)" (2020) 83:3 THRHR 455.

AGLC 4th ed.

Ilze Grobbelaar-Du Plessis, 'The Right of Persons with Intellectual Disabilities to Political Participation: The Legal Capacity to Vote - Zsolt Bujdosó v Hungary Communication No. 4/2011 (Committee on the Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011)' (2020) 83(3) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)* 455.

MLA 8th ed.

Grobbelaar-Du Plessis, Ilze. "The Right of Persons with Intellectual Disabilities to Political Participation: The Legal Capacity to Vote - Zsolt Bujdosó v Hungary Communication No. 4/2011 (Committee on the Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011)." *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)*, vol. 83, no. 3, August 2020, p. 455-[xii]. HeinOnline.

OSCOLA 4th ed.

**THE RIGHT OF PERSONS WITH INTELLECTUAL DISABILITIES
TO POLITICAL PARTICIPATION: THE LEGAL CAPACITY
TO VOTE**

Zsolt Bujdosó v Hungary Communication No. 4/2011 (Committee on the
Rights of Persons with Disabilities) (UN Doc CRPD/C/D/4/2011)

Opsomming

**Die reg van persone met intellektuele gestremdhede tot politieke deelname:
Die regsbevoegdheid om te kan stem**

Die Konvensie oor die Regte van Persone met Gestremdhede (A/RES/61/106) is by wyse van 'n resoluie op 13 Desember 2006 deur die Algemene Vergadering van die Verenigde Nasies aanvaar. Artikel 29 van die Konvensie waarborg die politieke regte van gestremde persone op 'n gelyke basis met ander mense. Staatspartye moet op 'n gelyke basis die doeltreffende en volle deelname van persone met gestremdhede aan politieke en openbare lewe verseker. Die Konvensie beskik oor 'n moniteringsprosedure kragtens die Opsionele Protokol, waarvolgens enige individu of groep individue by die Komitee oor die Regte van Persone met Gestremdhede 'n klagte (of mededeling) kan indien as dié staat enige van sy verpligting ingevolge die Konvensie verbreek het. In *Zsolt Bujdosó v Hongarye* het ses klaers so 'n kommunikasieproses ("communication") by die Komitee ingedien, waarna die Komitee die mededeling ondersoek en sy menings en aanbevelings hierop gelewer het. Die ses klaers is persone met intellektuele gestremdhede wat weens 'n beperking op hul regsbevoegdheid as gevolg van voogdyskap kragtens 'n geregtelike beslissing van die kiesersregister van hul land verwyder is. Die Komitee kom tot die gevolgtrekking dat die staatsparty versuim het om sy verdragsverpligtinge kragtens artikel 29 (alleen gelees en in samehang met artikel 12) van die Konvensie na te kom. Die Komitee bevind verder dat die beoordeling van individue se regsbevoegdheid (artikel 12 van die Konvensie) op grond van hul gestremdheid deur 'n hof of ander tribunaal diskriminerend van aard is.

1 Introduction

Traditionally, the ability and liberty of persons with disabilities to fully exercise political rights as active citizens have been curtailed predominantly by the existence of obstacles and/or barriers such as exclusionary legal provisions, and inaccessible voting procedures and voting facilities. However, a greater awareness internationally of human rights and human needs has given rise to a shift in how persons with disabilities are viewed. In response to this growing awareness and the international community's realisation that the continued denial of human rights and discrimination, exclusion and dehumanisation of persons with disabilities no longer were acceptable, the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (A/RES/61/106) were adopted by the General Assembly of the United Nations (UN) on 13 December 2006. Under the CRPD, persons with disabilities must be accorded the same access to political participation (article 29) as others and their legal capacity (article 12) must equally be presumed (Series and Nilsson "Article 12 CRPD Equal recognition before the law" in Bantekas, Stein and Demetres (eds) 2018 *The UN convention on the rights of persons with disabilities, a commentary* 340–341 348 353 363 366) ("Series and Nilsson").

In 2011, the Office of the UN High Commissioner for Human Rights (OHCHR) published a thematic study on the participation in political and public

life by persons with disabilities (UN Doc A/HRC/19/36). In paragraph 68 of the study the UN High Commissioner observed that the CRPD heralds a new era for the political participation of persons with disabilities (Grobbelaar-du Plessis and Njau “Article 29 CRPD participation in political and public life” 2018 *The UN convention on the rights of persons with disabilities, a commentary* 843 860 (“Grobbelaar-du Plessis and Njau”); Combrinck “Everybody counts: The right to vote of persons with psychosocial disabilities in South Africa” 2014 *ADRY* 84–85).

In the same year, the Committee on the Rights of Persons with Disabilities (CRPD Committee), empowered to hear complaints related to violations of the CRPD (Optional Protocol to the CRPD), had to resolve a complaint lodged by *Zsolt Bujdosó v Hungary Communication* (“*Zsolt*”) where the state party had failed to eliminate discrimination on the basis of disability, and had failed to respect the obligation to guarantee political rights to persons with disabilities, including the right to vote, on an equal basis with other citizens of their country. The key barrier that the authors in *Zsolt* faced was the restriction on their legal capacity due to partial or general guardianship pursuant to judicial decision, which resulted in the automatic deletion of their names from the electoral registers of their country. The complainants in *Zsolt* consequently lost their right to political participation (Grobbelaar-du Plessis and Njau 846; Series and Nilsson 341 348 353 363 366) and their right to vote on the basis of their perceived lack of legal capacity arising from their status as being intellectually disabled (Grobbelaar-du Plessis and Njau 860).

It is important to note that monitoring bodies of international human rights instruments, such as the CRPD Committee, are appealed to only as a last resort when domestic remedies have been exhausted (art 2(d) of the Optional Protocol to the CRPD; Grobbelaar-du Plessis and Nienaber “Disability and reasonable accommodation: *HM v Sweden Communication 3/2011*” 2014 (30) *SAJHR* 371; and Nowak *Introducing the international human rights regime* (2003) 49). The CRPD Committee had to resolve such a complaint lodged by *Zsolt*, where the complainants exhausted their domestic remedies in Hungary.

Below follows an overview of the facts that gave rise to the complaint against the state party. The decision of the treaty-monitoring body, the CRPD Committee, is highlighted and the reasons for the treaty-monitoring body’s decision are discussed. The discussion concludes with an examination of the implications of the decision in *Zsolt* for the political rights – particularly the right to vote – of people living with disabilities in South Africa.

2 Facts

As indicated before, the authors of the communication were six Hungarian nationals with intellectual disabilities who had been placed under partial or general guardianship pursuant to separate judicial decisions. As an automatic consequence of their placement under guardianship, the authors were removed from the electoral register, pursuant to article 70, paragraph 5 of the 1949 Constitution of the Republic of Hungary (which provided that persons placed under total or partial guardianship did not have the right to vote) that was applicable at the time. Due to the direct application of the constitutional provision, and the restriction on their legal capacity, the authors were disenfranchised and prevented from participating in the parliamentary and municipal elections of their country in 2010 (*Zsolt* para 2).

2.1 Complaint by authors

The authors maintained that they were able to understand politics and could participate in elections if they were allowed to do so, and argued that the automatic ban is unjustified and in breach of article 29 (participation in political and public life) read alone and in conjunction with article 12 (equal recognition before the law) of the CRPD (*Zsolt* para 3.1).

Regarding the exhaustion of domestic remedies, the authors alleged that no effective remedy was available to them, as an application to have their guardianship lifted submitted under the Hungarian Civil Code (art 21, para 2) would have remedied the violation of their right to vote only if their legal capacity had been restored fully. This was not possible and desirable for the authors as persons with intellectual disabilities who acknowledged that they require support in managing their affairs in certain areas of their lives. While challenging guardianship under the Civil Code was the only remedy available to the authors, it did not constitute an effective remedy since the court does not have the power to consider and restore a person's constitutional right to vote (*Zsolt* para 3.2). Similarly, the authors argued that a complaint lodged under paragraph 82 of Act C of 1997 on Electoral Procedure regarding the deletion of their names from the electoral register would have been dealt with by the relevant city court, which does not have the power to restore the authors' right to vote and to order their inclusion in the electoral list. The authors argued that none of these authorities had the power to restore their right to vote or to order their inclusion in the electoral list as their exclusion was based on the article 70, paragraph 5 of the Hungarian Constitution of 1949 (*Zsolt* para 3.3).

2.2 State party's responding observations

The state party pointed out that, since the authors' complaint was filed with the CRPD Committee, article 70, paragraph 5 of the 1949 Constitution of the Republic of Hungary (which provided that persons placed under total or partial guardianship did not have the right to vote) had been significantly amended. According to the state party, the Fundamental Law of Hungary repealed this provision which automatically excluded all persons under guardianship from suffrage, which consequently restricted or excluded them from exercising their right to vote. The Fundamental Law of Hungary which entered into force on 1 January 2012 requires judges to make decisions on suffrage that take the individual circumstances of each case into consideration (art XXIII of the Fundamental Law of Hungary) after an individual assessment by the court. A person can therefore only be disenfranchised by a court on the basis of their intellectual disability if all the relevant information was taken into consideration (*Zsolt* para 4.3).

The result of this amendment (along with amendments to several other relevant provisions regarding guardianship procedure) was that placement under guardianship alone was not a ground for exclusion from suffrage. A court has to make a decision on the exclusion from suffrage in respect of every person in guardianship procedures. This means that a court, when ruling on placement under guardianship that restricts or excludes legal capacity, also has to decide on the exclusion of legal capacity to vote. In this regard, the court excludes any adult whose discretionary power required for exercising suffrage (a) has been significantly reduced, whether permanently or recurrently, due to his or her mental state, intellectual disability or addiction, or (b) is permanently missing in

its entirety, due to his or her mental state or intellectual disability. The courts rely on expert opinions of forensic psychiatrists to decide on exclusion from suffrage (*Zsolt* para 4.4).

However, subject to review of any guardianship procedure, a person under guardianship may request the termination of the exclusion to vote and reclaim suffrage without losing the protection offered by guardianship (*Zsolt* para 4.4), which has to take place no later than five years after the guardianship ruling becomes absolute (*Zsolt* para 4.5) or, alternatively, may be revised during the course of the next compulsory review (*Zsolt* para 4.6).

2.3 Third-party intervention

The Harvard Law School Project on Disability (“the interveners”) submitted a third-party intervention to support the authors’ communication. The interveners noted that all persons with psychosocial and/or intellectual disabilities lose their right to vote after an individual assessment by a court that they lack the capacity to vote. In this regard, the interveners argued that the Hungarian legislation (art XXIII, para 6 of the Fundamental Law of Hungary) permits the disenfranchisement of persons with disabilities on the basis of a perceived lack of capacity to vote arising from their disabled status (*Zsolt* para 5.2).

The interveners stressed that article 29 of the CRPD provides an unconditional right to vote for all persons with disabilities which is not subject to any exceptions or limitations. The interveners argued that the provision of the CRPD therefore does not provide for any implicit restrictions on the basis of real or perceived ability to vote, whether imposed by:

- “(a) an overall ban on broad categories of disabled persons;
- (b) bans on all persons with particular types of disabilities who are presumed to have limited voting capability; or
- (c) through an individualized assessment of the voting capacity of specific individuals with disabilities” (*Zsolt* para 5.2).

In this regard the interveners contended that the disenfranchisement of the authors is predicated on an unacceptable and empirically-unfounded stereotyping that all persons with disabilities are incapable, of exercising political choice. They noted that a common justification of the individual assessment of voting capacity is the proportional nature of the restrictions on this fundamental right (*Zsolt* para 5.4).

The interveners invited the CRPD Committee to explicitly rule on individualised assessments of voting capacity which they argued was in itself a violation of article 29 of the CRPD (*Zsolt* para 5.5 and Series “Discrimination, capacity and voting rights” 10 June 2014 *The Small Places*, available at <https://thesmallplaces.wordpress.com/2014/06/10/discrimination-capacity-and-voting-rights>, accessed 05-04-2020). The interveners submitted that the right to vote is a fundamental right which should never be subjected to a proportionality assessment and justification for three reasons. The first was that capacity assessments constitute discrimination on the basis of disability (article 2 of the CRPD). Secondly, that capacity assessments inevitably result in disenfranchising capable individuals and, thirdly, that in practice capacity assessments lead to the disenfranchisement of a large number of persons with disabilities (*Zsolt* para 5.6).

3 Decision by the Committee on the Rights of Persons with Disabilities (CRPD Committee)

The CRPD Committee found that the automatic deletion of the authors' names from the electoral registers, by application of article 70, paragraph 5, of the 1949 Constitution of the Republic of Hungary in force at the time of submission of their communication, breached article 29 of the CRPD (read alone and in conjunction with art 12 of the CRPD). The CRPD Committee took note of the state party's arguments that, as that particular article had been repealed with the adoption of the Fundamental Law of Hungary which provides for an individualised assessment of a person's right to vote based on his or her legal capacity, the state party's laws are now in conformity with article 29 of the CRPD (*Zsolt* para 9.2). However, the CRPD Committee recalled that article 29 of the CRPD requires state parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. In this regard, the CRPD Committee noted that article 29 of the CRPD does not provide for any reasonable restriction or exception for any group of persons with disabilities. The Committee found that an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualised assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the CRPD. The CRPD Committee concluded that article XXIII, paragraph 6 of the Fundamental Law, which allows courts to deprive persons with intellectual disability of their right to vote and to be elected, is in breach of article 29 of the CRPD (*Zsolt* paras 9.4 and 9.7).

With regard to legal capacity, the CRPD Committee recalled that state parties under article 12, paragraph 2, of the CRPD must recognise and uphold the legal capacity of persons with disabilities "on an equal basis with others in all aspects of life", including political life, which encompasses the right to vote. The CRPD Committee further recalled that under article 12, paragraph 3 of the CRPD, state parties have a positive duty to take the necessary measures to guarantee to persons with disabilities the actual exercise of their legal capacity. Accordingly, the CRPD Committee was of the view that the authors were deprived of their right to vote, based on their perceived or actual intellectual disability. The CRPD Committee concluded that the state party failed to comply with its obligations under article 29 of the CRPD, read alone and in conjunction with article 12 of the CRPD (*Zsolt* paras 9.5 and 9.7).

The CRPD Committee consequently found the assessment of individuals' capacity to be discriminatory in nature. The CRPD Committee held that these measures cannot be purported to be legitimate, nor are they proportional to the aim of preserving the integrity of the state party's political system. In this regard, the CRPD Committee further recalled that the state party is required under article 29 of the CRPD to adapt its voting procedures by ensuring that they are appropriate, accessible and easy to understand and use and, where necessary, allow persons with disabilities, upon their request, assistance in voting. The CRPD Committee noted that adapting its voting procedures will ensure that persons with intellectual disabilities cast a competent vote, on an equal basis with others, while guaranteeing voting secrecy (*Zsolt* para 9.6).

Since the CRPD Committee was of the view that the state party had failed to fulfil its obligation under article 29, read alone and in conjunction with article 12 of the CRPD, it made the following recommendations:

- (a) That the state party must remedy the deletion of the authors' names from the electoral registers. The state party should also provide them with adequate compensation for moral damage incurred as a result of being deprived of their right to vote in the 2010 elections, as well as for their legal costs in filing the communication (*Zsolt* para 10(a)).
- (b) The state party must take measures to prevent similar violations in the future. It must do this by doing the following:
 - (i) Consider repealing article XXIII, paragraph 6, of the Fundamental Law, and article 26, paragraph 2, and transitional provisions of the legislation, as they are contrary to articles 12 and 29 of the CRPD (*Zsolt* para 10(b)(i));
 - (ii) Enact laws that recognise, without any "capacity assessment", the right to vote for all persons with disabilities. This should include those who need greater support. Laws that are enacted should provide for adequate assistance and reasonable accommodation in order for persons with disabilities to exercise their political rights (*Zsolt* para 10(b)(ii)); and
 - (iii) Uphold and guarantee the right to vote of persons with disabilities, on an equal basis with others, as required by article 29 of the CRPD. This should be done by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use. Where necessary, at their request, the state party must allow them to be assisted in voting by a person of their choice (*Zsolt* para 10(b)(iii)).

The CRPD Committee further requested the state party to translate the views and recommendations of the Committee into the official languages of the state party and to publish and circulate them in accessible formats, in order to reach all sectors of the state party's population (*Zsolt* para 11).

4 Discussion: Legal capacity and the right to vote of persons with psychosocial and/or intellectual disabilities

4.1 Article 29 of the CRPD and its interrelatedness to article 12 of the CRPD

The denial or restriction of legal capacity historically has been used to deny or limit political participation, especially the right to vote, of persons with disabilities (UN Human Rights Committee (HRC), "General comment 25 on the right to participate in public affairs, voting rights and the right of equal access to public service (Art 25)" UN Doc CCPR/C/21/Rev1/Add7 para 4, where the HRC states that "[t]he exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable"; Combrinck 2014(2) *ADRY* 84; Grobbelaar-du Plessis and Njau 859; and Thuo "Implementation of political participation standards for persons with intellectual disabilities in Kenya" 2016(2) *Strathmore Law Journal* 99 101 116).

Article 12 of the CRPD restores the legal capacity of persons with disabilities, enabling them to contribute to society through their own decision-making and participation in political and public life (Combrinck 2014(2) *ADRY* 86; Grobbelaar-du Plessis and Njau 848; and Series and Nilsson 341 348 353 363 366). The CRPD provision therefore is considered to be a tool that empowers

persons with disabilities to make decisions for themselves (Dhanda “Legal capacity in the disability rights convention: Stranglehold of the past or lodestar for the future?” *Syracuse Journal of International Law and Commerce* 2 (2007) 429; Broderick and Ferri *International and European disability law and policy: Text, cases, and materials* 2019 163–164 (“Broderick and Ferri”).

Since 3 May 2008, when the CRPD entered into force, the CRPD Committee expressed its concerns regarding restrictions and the enjoyment of political rights in a number of concluding observations on initial state party reports and urged state parties to the CRPD to remove these restrictions (“Concluding observation on the initial report of Colombia” UN Doc CRPD/C/COL/CO/1 (29 September 2016) para 64; “Concluding observations on the initial report of Uganda” UN Doc CRPD/C/UGA/CO/1 (12 May 2016), para 56; “Concluding observation on initial report of Thailand” UN Doc CRPD/C/THA/CO/1 (12 May 2016) 9 para 59; “Concluding observations on initial report of Gabon” UN Doc CRPD/C/GAB/CO/1 (2 October 2015), 9 para 62; “Concluding observations on initial report of Kenya” UN Doc CRPD/C/KEN/CO/1 (30 September 2015) 11 para 51; “Concluding observations on initial report of Brazil” UN Doc CRPD/C/BRA/CO/1 (29 September 2015) 7 para 53; “Concluding observations on initial report of Paraguay” UN Doc CRPD/C/PRY/CO/1 (15 May 2013), 6 para 69; “Concluding observations on initial report of Italy” UN Doc CRPD/C/ITA/CO/1 (5 October 2106) 9 para 73; “Concluding observation on initial report of Ukraine” UN Doc CRPD/C/UKR/CO/1 (2 October 2015) 8 para 55; “Concluding observations on the initial report of Mauritius” UN Doc CRPD/C/MUS/C/CO/1 (30 September 2015) 7 para 39; “Concluding observations on the initial report of the Czech Republic” UN Doc CRPD/C/CZE/CO/1 (15 May 2015) 8 para 58; “Concluding observations on the initial report of Denmark” UN Doc CRPD/C/DNK/CO/1 (20 October 2015) 9 para 61; “Concluding observations on the initial report of the European Union” UN Doc CRPD/C/EU/CO/1 (2 October 2015) 9 para 69; “Concluding observations on initial report of Azerbaijan” UN Doc CRPD/C/AZE/CO/1 (11 May 2014) 7 para 45; and “Concluding observation on initial report of Ethiopia” UN Doc CRPD/C/ETH/CO/1 (3 November 2016) 1, 9 para 64).

The “opportunity to enjoy” political rights on “an equal basis with others” is inextricably linked to the recognition of legal capacity of persons with disabilities (Series and Nilsson 341 348 353 363 366). This is explained in the CRPD Committee’s first interpretive General Comment on article 12 (“General Comment 1 Article 12 Equal recognition before the law” UN Doc CRPD/C/GC/1 (11 April 2014) para 31; Combrinck 2014 (2) *ADRY* 87; Series and Nilsson 340 347; and Series 2014 *The Small Places*). Without recognising a person with a disability as a person before the law, the ability to assert, exercise and enforce rights is significantly compromised (UN Doc CRPD/C/GC/1 para 31). The CRPD Committee explains in General Comment 1 that legal capacity includes the capacity to be both a holder of rights and an actor under the law. This capacity entitles a person to full protection of his or her rights by legal systems (UN Doc CRPD/C/GC/1 para 12; Grobbelaar-du Plessis and Njau 847; and Series and Nilsson 351).

However, the CRPD Committee notes that legal capacity and mental capacity are distinct concepts. The CRPD Committee explains that where legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency), mental capacity refers to the decision-making skills of

a person (UN Doc CRPD/C/GC/1 para 13; Broderick and Ferri 164; Grobbelaar-du Plessis and Njau 847; and Series and Nilsson 352). Mental capacity naturally varies from one person to another and may be different depending on many factors, including environmental and social factors. However, article 12 of the CRPD makes it clear that “unsoundness of mind” and other discriminatory labels are not legitimate reasons for the denial of legal capacity (UN Doc CRPD/C/GC/1 para 13; and Series and Nilsson 354).

This means that perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity of persons with disability (UN Doc CRPD/C/GC/1 para 13). The concepts of mental and legal capacity should not be conflated so that where a person is considered to have impaired decision-making skills (often because of a cognitive or psychosocial disability), that their legal capacity to make a particular decision, such as political rights, is consequently removed (UN Doc CRPD/C/GC/1 para 15 and Series and Nilsson 341 348 353 363 366). Article 12 of the CRPD accordingly does not permit discriminatory denial of legal capacity simply on the diagnosis of an impairment, or where a person makes a decision that is considered to have negative consequences or where a person’s decision-making skills are considered to be deficient (UN Doc CRPD/C/GC/1 para 15; Broderick and Ferri 165; Series and Nilsson 353–354; Series 2014 *The Small Places*; and Thuo 2016 (2) *Strathmore Law Journal* 109).

The CRPD Committee affirms in the first interpretative general comment that all persons with disabilities have full legal capacity, which is indispensable for the exercise of civil, political, economic, social and cultural rights. Article 12 of the CRPD does not provide for any exception or restrictions to legal capacity. However, the provision does require state parties to take appropriate measures to provide access “to the support that persons with disabilities may require in exercising their legal capacity” (UN Doc CRPD/C/GC/1 para 8; Broderick and Ferri 165 167–168; Grobbelaar-du Plessis and Njau 857–858; Series and Nilsson 366–368). These measures include mechanisms and legislation that provide support in decision-making (supported decision-making) when a person with psychosocial and/or intellectual disability exercises their legal capacity (“Concluding observation on the initial report of South Africa”, CRPD/C/ZAD/CO/1 para 22 (a)). This means that practices of which the purpose or effect violate article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others (UN Doc CRPD/C/GC/1 para 9).

In order to fully realise the equal recognition of legal capacity in all aspects of life (UN Doc CRPD/C/GC/1 para 3) it is important to recognise the legal capacity of persons with disabilities in public and political life as provided for in article 29 of the CRPD (UN Doc CRPD/C/GC/1 para 48; and Series and Nilsson 341 348 353 363 366). The CRPD Committee notes that the denial of legal capacity to persons with disabilities has led to them being deprived of many fundamental rights, including their right to vote (UN Doc CRPD/C/GC/1 para 8). The denial or restriction of legal capacity of persons with disabilities has further been used to deny them the right to political participation (UN Doc CRPD/C/GC/1 para 48; and Series and Nilsson 341 348 353 363 366), and therefore the “opportunity to enjoy” their political rights on “an equal basis with others” (Combrinck 2014 (2) *ADRY* 86; Series and Nilsson 354; and Series 2014 *The Small Places*). Furthermore, any exclusions or restriction of political rights

of persons with disabilities on the basis of disability may constitute “discrimination on the basis of disability” within the ambit of article 2 of the CRPD (UN Doc A/HRC/19/36 para 70; *Zsolt* para 9.4) and is contrary to the CRPD.

It is clear from the first general interpretative comment that a person’s decision-making ability cannot constitute justification for their exclusion from exercising their political rights (UN Doc CRPD/C/GC/1 para 48; and Series and Nilsson 341 348 353 363 366). The same was correctly confirmed in *Zsolt* where the CRPD Committee recalled that under article 12, paragraph 2 of the CRPD state parties must recognise and uphold the legal capacity of persons with disabilities “on an equal basis with others in all aspects of life”, including political life (*Zsolt* paras 9.4 and 9.5 and Series and Nilsson 354).

4.2 Article 29, paragraph (a) of the CRPD and exclusions or restrictions to the right to vote

It is worth noting that the OHCHR’s 2011 thematic study (UN Doc A/HRC/19/36 para 68) observed that the “legal landscape changed dramatically since the adoption of the General Comment” by the OHCHR relating to article 25 of the International Covenant on Civil and Political Rights (“ICCPR”) (“General comment 25: The rights to participate in public affairs, voting rights and the right of equal access to public service” UN Doc CCPR/C/21/Rev1/Add7 (12 July 1996) para 33). The OHCHR’s thematic study argued that the majority of voting restrictions no longer are compatible with the prohibition of discrimination, in particular with regard to limitations concerning the right to vote and stand for election on the basis of psychosocial and/or intellectual disabilities. The OHCHR contended that restrictions on political rights, including the right to vote, are not based on disability itself, but rather on a lack of legal capacity. Restrictions and/or exclusions with regard to political rights, including the right to vote in the absence of a lack of legal capacity, would be inconsistent with the provisions of the CRPD (UN Doc A/HRC/19/36 para 28; Cera “Article 29 participation in political and public life” in Valentina Della Rina, Rachele Cera, Guisepe Palmisano (eds) *The United Nations convention on the rights of persons with disabilities: A commentary* (2017) 531; Combrinck 2014 *ADRY* 84; Grobbelaar-du Plessis and Njau 859–860; Mgiijima-Konopi “Regional developments: The jurisprudence of the committee on the rights of persons with disabilities and its implication for Africa” 2016 *ADRY* 275; and Thuo 2016 *Strathmore Law Journal* 115–116). Similarly, the report of the Special Rapporteur on the rights of persons with disabilities states that persons with disabilities must enjoy the right to vote and to be elected on an equal basis with others. The report notes that no one should be restricted, either in law or in practice, in the enjoyment of political rights on grounds of disability (“Report of the Special Rapporteur on the rights of persons with disabilities” UN Doc A/HRC/31/62 (12 January 2016) para 19).

Article 29 of the CRPD requires state parties to guarantee to persons with disabilities the equal and effective enjoyment of political rights, including the right to vote and be elected to office. The provision does not foresee any reasonable restriction, nor does it allow for any exceptions for any group of persons with disabilities (UN Doc A/HRC/19/36 para 29; Grobbelaar-du Plessis and Njau 846 859; Series and Nilsson 366 and Thuo 2016 (2) *Strathmore Law Journal* 107). The provision establishes the right to vote and be elected without any exception

and aims to address obstacles and/or barriers encountered by persons with disabilities in the enjoyment of such rights (Cera 530; Grobbelaar-du Plessis and Njau 843 850–851 859). The obstacles and/or barriers that persons with disabilities may encounter in exercising their right to vote fall into three categories. These are, firstly, inaccessible polling places; secondly, inaccessible vote recording technologies; and, lastly, disability-based voting restrictions (Cera 530; Broderick and Ferri 171; and Grobbelaar-du Plessis and Njau 843–844 850–853 859), which affect mostly persons with psychosocial and/or intellectual disabilities (*Zsolt* 5.2).

Article 12(2) of the CRPD recognises that persons with disabilities enjoy legal capacity “on an equal basis with others in all aspects of life” and does not provide for any exceptions (Series and Nilsson 354). Article 29(a) of the CRPD similarly does not provide for any restrictions and/or exceptions for any group of persons with disabilities, including persons with psychosocial and/or intellectual disabilities in the equal and effective enjoyment of their political rights, including their right to vote and to be elected. However, article 12(3) of the CRPD does require from state parties to take appropriate measures to “provide access by persons with disabilities to the support they may require in exercising their legal capacity” (UN Doc A/HRC/19/36 para 30; Broderick and Ferri 171–173; Grobbelaar-du Plessis and Njau 858; Series and Nilsson 366–368; and Thuo 2016 (2) *Strathmore Law Journal* 108). Appropriate measures, as previously pointed out, will include mechanisms and legislation that provide support in decision-making (supported decision-making) when a person with psychosocial and/or intellectual disability exercises her legal capacity (“Concluding observation on the initial report of South Africa”, CRPD/C/ZAD/CO/1 para 22(a)).

The OHCHR’s thematic study in 2011 noted that the adoption of positive measures by state parties from the specific perspective of disability further extends to the duty of states to ensure that barriers and/or obstacles to “effectively and fully” participate in decision-making processes of “political and public life” are removed (UN Doc A/HRC/19/36 para 15; and Grobbelaar-du Plessis and Njau 843 850–851). Article 29(a), subparagraphs (i) and (ii) of the CRPD list a number of measures that state parties are required to take in order to ensure that persons with disabilities are able to exercise their political rights on an equal basis with other citizens. These measures *inter alia* address accessibility and assistance and include ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; protecting the right of persons with disabilities to vote by secret ballot; and allowing assistance in voting, where necessary and at the express request of the person concerned, by a person of his or her own choice (UN Doc A/HRC/19/36 para 51; Broderick and Ferri 173; Grobbelaar-du Plessis and Njau 851 854–858; and Thuo 2016 (2) *Strathmore Law Journal* 109).

The Convention guarantees that persons with disabilities should be “allowed assistance” to vote when they “request” assistance (art 29(a)(iii)). This means that not all persons with disabilities require assistance to vote, and more importantly, state parties should not compel persons with disabilities to be assisted during voting (Grobbelaar-du Plessis and Njau 851 854–858). “Assistance in voting” therefore is not mandatory, but at the discretion of the individual desiring support during the exercising of the right to vote. The person providing assistance and/or support is only an enabling measure in order to

exercise and enjoy the right to vote. The assistance provided by “a person of their own choice” needs to be tailored to the will, preference and needs of the person with the disability, thereby respecting the individual autonomy and legal capacity of persons with disabilities (Broderick and Ferri 172–173; Grobbelaar-du Plessis and Njau 851 854 857–858; Series and Nilsson 366–368 369; and Thuo 2016 (2) *Strathmore Law Journal* 109).

This was confirmed in *Zsolt* where the CRPD Committee found that the state party was under an obligation to take measures to prevent violations by, amongst others, providing support, adequate assistance and reasonable accommodation in order for persons with disabilities to be able to exercise their political rights (*Zsolt* para 10(ii)). The CRPD Committee further confirmed that Hungary was under the obligation to uphold and guarantee in practice the right to vote for persons with disabilities, on an equal basis with others, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use and, where necessary, at their request, allowing assistance in voting by a person of their choice (*Zsolt* para 10(iii) and Grobbelaar-du Plessis and Njau 851 854–858).

5 Implications for South Africa of the findings of the CRPD Committee in *Zsolt*

5.1 Introduction

Section 231(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) determines that the negotiation and signing of international agreements are the responsibility of the executive. The CRPD and Optional Protocol were signed by the former Minister of Foreign Affairs on 30 March 2007 (Parliamentary Monitoring Group “Convention on the rights of persons with disabilities: Briefing by the office on the status of disabled persons and Department of Foreign Affairs” at <https://pmg.org.za/committee-meeting/8098/> accessed 05-04-2020).

South Africa follows a dualist approach regarding the incorporation of international instruments into its national law (Dugard, Du Plessis, Maluwa and Tladi *Dugard’s International law: A South African perspective* (2018) 72) (“Dugard”). This is determined by section 231(2) of the Constitution that determines that an international agreement, such as the CRPD, “binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces” (Parliament). The CRPD, therefore, was binding on South Africa only after parliamentary approval in terms of section 231(2) of the Constitution (*DA v Minister of International Relations* 2017 (3) SA 212 para 51 61–63; Dugard 77).

Therefore, for an international agreement such as the CRPD to become part of our national law, it must be enacted into law by national legislation (section 231(4) of the Constitution; *AZAPO v President of the Republic of South Africa* 1996 (4) SA 671 (CC) para 26; and Dugard 79). To date Parliament has failed to pass legislation that will incorporate the CRPD and the Optional Protocol into our law. Nevertheless, the Department of Social Development spearheaded the updating of the 1997 White Paper on an Integrated National Disability Strategy and Cabinet approved the White Paper on the Rights of Persons with Disabilities (WPRPD) on 9 December 2015 (*Government Gazette* 39792 9 March 2016; and Kamga “Disability rights in South Africa: Prospects for their realisation under

the White Paper on the Rights of Persons with Disabilities” 2016 *South African Journal on Human Rights* 569). The approval of the WPRPD by Cabinet provides guidance for the implementation of the CRPD which will enhance the CRPD and Optional Protocol’s enforceability and domestication when the WPRPD’s policy consideration later are adopted and enacted by Parliament in disability-specific legislation (Kamga 572).

5 2 Implementation of the CRPD in South Africa

When becoming a party to an international or regional human rights treaty, state parties agree to be bound by the provisions of the treaty (Grobbelaar-du Plessis and Nienaber 2014 (30) *SAJHR* 372). South Africa, as state party to the CRPD and the Optional Protocol, is obligated to take all legislative, administrative and other measures to implement the rights recognised in the CRPD (art 41(a) of the CRPD) and to take all measures, including legislative measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities (art 41(b) of the CRPD). Furthermore, as state party to the CRPD and the Optional Protocol, South Africa must implement the CRPD in its national law and is subject to monitoring of its treaty obligations by the CRPD Committee (art 33 of the CRPD). Article 33 of the CRPD provides that states must designate national focal points for the implementation of the CRPD, coordination mechanisms, implementation mechanisms, and legal and administrative frameworks to promote and monitor its implementation, and finally states must ensure the participation of civil society. The monitoring of the state party’s obligations, amongst others, consists of the receiving and consideration by the CRPD Committee of a comprehensive initial report and subsequent reports (art 35 of the CRPD) from the state party. In 2014, South Africa submitted its initial state party report (“Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of State parties due in 2009 South Africa” UN Doc CRPD/C/ZAF/1 (23 November 2015) (“Initial State Party Report”) to the CRPD Committee on the measures taken to give effect to their obligations in terms of the CRPD and the progress made in the implementation of the CRPD.

5 3 Initial state party report to the CRPD Committee and articles 12 and 29 of the CRPD

All legally-binding international human rights treaties, including the CRPD, have monitoring mechanisms to foster accountability by state parties, and to ensure that they fulfil their commitments and obligations (United Nations “From exclusion to equality – Realizing the rights of persons with disabilities: Handbook for parliamentarians on the convention on the rights of persons with disabilities and its optional protocol” 2007 25; Grobbelaar-du Plessis and Nienaber 2014 *SAJHR* 372). The CRPD fosters accountability through the working of article 35 which states that a state party must submit a comprehensive report on the measures taken to give effect to its obligations and report on the progress made in the implementation of the standards contained in the CRPD. South Africa submitted its initial state party report to the CRPD Committee towards the end of 2014 in which the South African government, among others, reported on the measures taken to give effect to the right to political participation and public life of persons with disabilities (art 29 of the CRPD).

South Africa reported in its initial state party report that the right to vote of citizens with disabilities is guaranteed in section 19 of the Constitution which

concerns the right to make political choices, to form political parties, participate in the activities of political parties, to vote in elections for any legislative body established in terms of the Constitution, to do so in secret, and to stand for public office and, if elected, to hold office (Initial State Party Report para 332). The Electoral Act 73 of 1998 and the Local Government Municipal Electoral Act 27 of 2000 respectively regulate elections at national, provincial and local spheres of government (Initial State Party Report para 333).

In terms of section 1 of the Electoral Act, a “voter” is a South African citizen who is 18 years or older and whose name appears on the national common voters’ roll. To enter their names on this voters’ roll, citizens are required to register as voters. Of importance to the current discussion is that the chief electoral officer, who is responsible for registering voters may, in terms of subsections (8)(c) and (d) of the Electoral Act, not register persons who have been declared by the High Court to be “of unsound mind or mentally disordered” or have been detained under the Mental Health Act 18 of 1973, repealed and replaced by the Mental Health Care Act 17 of 2002; Initial State Party Report para 333). Furthermore, section 47(1)(d) of the Constitution provides that “[e]very citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except . . . (d) anyone declared to be of unsound mind by a court of the Republic . . .”. The disqualification of membership to the National Assembly in this provision corresponds with section 106(1)(d) of the Constitution relating to disqualification of membership to the provincial legislatures (Initial State Party Report, para 332), and section 158(1)(c) of the Constitution that provides for disqualification as member of a Municipal Council.

In 2014, the South African government indicated to the CRPD Committee in the Initial State Party Report that the applicable Constitutional provisions above and subsections (8)(c) and (d) of the Electoral Act of 1998, which exclude certain categories of persons with psychosocial disabilities from inclusion on the voters’ roll, need to be reviewed to comply with articles 12 and 29 of the CRPD (Initial State Party Report, para 340). However, South Africa indicated in its Initial State Party Report that the number of voters with disabilities who participate in elections (art 31 of the CRPD and the obligation to collect data and statistics), are not available given the constitutional imperative to maintain secrecy of votes cast (art 19(3)(a) of the Constitution) and the regulatory requirements on the details to be entered into the national common voters’ roll (Initial State Party Report, para 335). Since South Africa reported on its challenges with the implementation of article 29 of the CRPD, and indicated what its envisaged proposed amendments to the Constitution and Electoral Act of 1998 are, the CRPD Committee, in their concluding observations to South Africa’s Initial State Party Report (“Concluding observations on the initial report of South Africa”, UN Doc CRPD/C/ZAF/CO/1 of 23 October 2018), did not provide specific recommendations to the implementation of political participation and public life (art 29 of the CRPD) in this regard.

However, of importance to the current discussion is that the South African government reported in their Initial State Party Report that anecdotal evidence showed that persons in mental health care facilities are often excluded from participating in special voting procedures (Initial State Party Report, para 339). In this regard, the CRPD Committee noted in their concluding observations to the Initial State Party Report their concern about the current guardianship and

mental health laws, which maintain substituted decision-making regimes (making decisions on behalf of persons with disabilities; UN Doc CRPD/C/ZAD/CO/1 para 22(a)). This will inevitably affect the right to political participation of persons with psychosocial and/or intellectual disabilities. The CRPD Committee was particularly concerned about the absence of mechanisms and legislation that provide for support in decision-making when exercising legal capacity (UN Doc CRPD/C/ZAD/CO/1 paras 22 and 23). It is important to note that the mechanisms and legislation that support persons with psychosocial and/or intellectual disabilities in decision-making should uphold their autonomy, rights and their will and preferences in all areas of life (including political participation) as guaranteed in the CRPD (UN Doc CRPD/C/ZAD/CO/1 para 22(a)). It is therefore no surprise that the CRPD Committee recommended that South Africa has to repeal all legislation that provides for substituted decision-making and adopt legislation on supported decision-making measures (UN Doc CRPD/C/ZAD/CO/1 para 23(a)).

The lack of data collection on persons with disabilities under guardianship in South Africa (UN Doc CRPD/C/ZAD/CO/1 para 22(b)), makes it difficult to estimate how many persons with psychosocial and/or intellectual disabilities are affected by the current guardianship and mental health laws. For current purposes, the lack of data collection also makes it difficult to estimate the number of persons with psychosocial and/or intellectual disabilities that are potentially disenfranchised in mental health institutions. The importance of statistics and data collection (article 31 of the CRPD) in South Africa is highlighted by the CRPD Committee in their concluding observations to the Initial State Party Report (UN Doc CRPD/C/ZAD/CO/1 para 22(b) and Initial State Party Report para 335). In this regard, the Committee recommends that the data on these persons should be disaggregated by age, gender and type of impairment (UN Doc CRPD/C/ZAD/CO/1 para 22(b)).

The CRPD Committee expects the next periodic report of South Africa by 3 June 2022, in which South Africa has to include comments on its implementation of the recommendations made in the concluding observations by the CRPD Committee (art 35 of the CRPD; UN Doc CRPD/C/ZAD/CO/1), amongst others, the recommendations about political rights and participation (arts 12 and 29 of the CRPD) with regard to guardianship and mental health laws.

5 4 Implications of the CRPD Committee's findings in *Zsolt* for South Africa

Human rights and fundamental freedoms that are codified in international human rights instruments, such as the CRPD and its Optional Protocol, are first and foremost protected by the state party's national legal system (Nowak 49). A clear imperative to comply with international law, and particularly international human rights law, is provided for in the South African Constitution. First, section 233 of the Constitution requires courts to interpret legislation in compliance with international law (Dugard 89). Second, the Bill of Rights is subject to a special interpretative regime in terms of section 39 of the Constitution, which pays particular attention to international law (Dugard 89). South African courts, therefore, have a constitutional obligation to interpret legislation in line with international human rights law (ss 39 and 233 of the Constitution; *S v Okah* 2018 1 SACR 492 (CC) para 26; and Dugard 92). According to Dugard, the Constitutional Court and ordinary courts have shown a great willingness to be

guided by international human rights law (*SATAWA v Garvas* 2013 1 SA 83 (CC); *Rahim v Minister of Home Affairs* 2015 4 SA 433 (SCA); and Dugard 90).

The above implies that, should a South African court review current legislative provisions that exclude persons with psychosocial and/or intellectual disability from inclusion on the voters' roll, that court has to favour an interpretation that is consistent with the CRPD and its Optional Protocol (to comply with arts 12 and 29 of the CRPD; and Initial State Party Report, para 340). Similarly, when a court reviews current guardianship and mental health laws which maintain substituted decision-making regimes as pointed out by the CRPD Committee in their concluding observations to the Initial State Party Report, a court will have to favour an interpretation that is consistent with articles 12 and 29 of the CRPD.

The recommendations made by the CRPD Committee in *Zsolt* (paras 10(b)(ii) and (iii)) to prevent similar violations of the right to political participation in the future, have important implications for South Africa as a state party to the CRPD. As can be seen from the analysis of legal capacity and the right to vote in paragraphs 4.1 and 4.2 above, a generalised approach to the right to vote of persons with disabilities cannot justify their disenfranchisement. Every person who is disenfranchised through an assessment by a court, suffers a violation of his or her right to vote (*Zsolt* paras 4.3 and 5.4). In fact, the South African government reported that certain provisions of the Constitution and the Electoral Act of 1998 (Initial State Party Report paras 333 and 340), that require the chief electoral officer not to register persons who have been declared by the High Court to be "of unsound mind or mentally disordered" or have been detained under the Mental Health Act (as repealed and replaced by the Mental Health Care Act) to be inconsistent with articles 12 and 29 of the CRPD and the right to political participation. This was confirmed by the CRPD Committee's concerns regarding South Africa's current guardianship and mental health laws in their concluding observations to the Initial State Party Report (UN Doc CRPD/C/ZAD/CO/1 paras 22 and 23). Article 12 of the CRPD makes it clear that "unsoundness of mind" and other discriminatory labels are not a legitimate reasons for the denial of legal capacity (UN Doc CRPD/C/GC/1 para 13; Series and Nilsson 354).

This means that the current constitutional provisions (sections 47(1)(c), 106(1)(c) and 158(1)(c) of the Constitution) and subsections (8)(c) and (d) of the Electoral Act of 1998 which exclude certain categories of persons with psychosocial disabilities from inclusion on the voters' roll, need to be reviewed to comply with articles 12 and 29 of the. Furthermore, as recommended by the CRPD Committee in their concluding observations, South Africa should embark on legislative reform regarding legislation that provides for substituted decision-making and adopt legislation on supported decision-making measures (UN Doc CRPD/C/ZAD/CO/1 para 23(a)). However, it is important to note that legislative reform regarding decision-making of psychosocial and/or intellectual disabilities should uphold their autonomy, rights and the will and preferences in all areas of life (including political participation) (UN Doc CRPD/C/ZAD/CO/1 para 22(a)).

It should further be noted that the CRPD guarantees that persons with disabilities be given assistance to vote only when they "request" such assistance (art 29(a)(iii)). This means that not all persons with disabilities require assistance to vote and, importantly, state parties such as South Africa should not compel persons with disabilities to be assisted during voting (Grobbelaar-du Plessis and

Njau 851 854–858). “Assistance in voting” is not mandatory and only an enabling measure in order to exercise and enjoy the right to vote.

6 Conclusion

As can be seen from the views and recommendations adopted by the CRPD Committee in *Zsolt* (as well as the concluding observations to South Africa’s Initial State Party Report UN Doc CRPD/C/ZAD/CO/1 paras 22 and 23) and the analysis of legal capacity and the right to vote above in paragraphs 4.1 and 4.2, an assessment by a court to be “of unsound mind or mentally disordered” cannot automatically justify the disenfranchisement of persons living with disabilities.

The approach adopted by the CRPD Committee in *Zsolt* is entirely consistent with the purpose of the CRPD to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. It is important for state parties, such as South Africa and other African countries, to note that every person who is disenfranchised even if this is done through an assessment of their individual circumstances, suffers a violation of his or her right to vote. The CRPD Committee correctly found that an assessment of an individual’s capacity to be discriminatory in nature. State parties should take note of the obligations imposed by articles 12 and 29 of the CRPD and the decision of the CRPD Committee in *Zsolt* (as well as the concluding observations to state parties’ initial state party reports), which should influence an understanding of the right to vote of persons with disabilities by regional and national courts and tribunals. Measures such as the individual assessment of capacity of persons with disabilities cannot be considered legitimate, nor is it proportional to the aim of preserving the integrity of the state party’s political system. If the approach adopted by the CRPD Committee in *Zsolt* is followed, state parties will ensure the protection of the political rights of persons with disabilities.

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POLICY ON PLAGIARISM

1 INTRODUCTION

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5.1 Duplication

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Articles should as a rule not exceed 7 000 words. An article must contain the author's initials and surname, academic qualifications, a brief description of his or her position in the organisation to which he or she is attached, as well as a brief summary (approximately 300 words) in Afrikaans if the article is in English, and vice versa. The summary should also have a translated title. Authors are requested to make use of *footnotes* instead of endnotes.

Notes, case notes and book reviews: The author's initials and surname and the organisation to which he or she is attached, must be supplied. Footnotes should not be used – all references are made in brackets in the text itself. *Case notes* have a title, with the name of the case as sub-title. The same rule regarding summaries applies as in case of articles. In case of *book reviews* the title of the book under review is also the title of the review. The name of the author of the book, the edition (if not the first), publisher, place of publication, year of publication, the number of pages and the price (both soft and hard cover where appropriate) should be supplied. (Consult a recent copy of *Tydskrif*.)

The following applies to all manuscripts:

- **Format** Manuscripts should be submitted in MS Word format. Font: Times New Roman.
- **Abbreviations** are not used in the text; in *footnotes* (and bracketed references in case of notes) recognised abbreviations are used extensively. Punctuation and spaces are not used in abbreviations: eg, cf, USA, *THRHR*, RSA, BA, LLB, Unisa, *SALJ*. *Examples:* s for section (plural ss); ff for and further; para for paragraph (plural paras); 2ed for second edition; AJ for acting judge; J for judge; JA for judge of appeal; JP for judge president, AJA for acting judge of appeal; CJ for chief justice; reg for regulation; ch for chapter; and cf for compare.
- **Quotations** correspond exactly with the original, that is, with italicisation, capital letters, full stops, etcetera, unchanged. All changes or insertions in quotations are made in square brackets, for example: “[I]n . . .” Authors are requested to check quotations carefully.

- **Capital letters** The use of capital letters in Afrikaans contributions are limited as far as possible: die regter, die appèlafdeling, die parlement, die minister, die hof, die regter-president. All footnotes start with a capital letter.
- **Headings** Consult this edition for examples.
- **Quotation marks** Use double quotation marks, with single quotation marks *inside* a quotation. Where a full sentence is quoted, the quotation marks are placed after the full stop; in other cases they are placed before the comma, colon or semi-colon.
- **Italics** Quotations (also in Latin) are *not* italicised (underlined). Words and expressions in a language other than that of the contribution, are in italics: *dolus, fait accompli, Grundnorm*.

References

- **Cases** The names of the parties and the “v” between them are in italics (or underlined). The words “and another”, “and others” etcetera are omitted. The English references to pre-1947 decisions are also used in Afrikaans contributions. *Examples:* *Botha v Botha* 1979 3 SA 792 (T); *Talbot v Von Boris* 1911 1 KB 854; *Ex parte F* 1963 1 PH B9 (N); *Re Waxed Papers Ltd* 1937 2 All ER 481 (CA); *Shatz v Josman* 1935 NPD 142.
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- **Journals** Names of journals are in italics (underlined) and not abbreviated (except *LJ*, *LR* and *Univ*): *Harvard LR*, *Yale LJ*, *De Rebus*, *De Jure*. But: *THRHR*, *SALJ*, *TSAR*, *CILSA*, *SASK*, *SA Merc LJ*, *LQR*, *JRS*. The volume number is omitted (except where the page numbers of a journal are not continuous – such as *Codicillus*): 1971 *THRHR* 12; 1979 *SALJ* 307; 1987 (2) *Codicillus* 13.
- **Legislation** The title and number of an Act are not italicised and are rendered thus: The Bills of Exchange Act 34 of 1964; The Companies Act 61 of 1973. References to legislation in the text may also be informal (as soon as it is clear to the reader which Act is referred to): the 1926 Act, the Companies Act of 1926.
- **Old authorities** See 1985 *THRHR* 125.