

REALISING ARTICLE 12 OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN GHANA: SUBSTITUTED OR ENHANCED DECISION MAKING?

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BACKGROUND AND CONTEXT

Viewing disability from human rights perspective involves an evolution in thinking and acting by states and all actors of society so that persons with disability are no longer considered as recipients of charity or objects of others' decision but holders of rights.³

Ghana passed the Persons with Disability Act (PWDA) in 2006, signed and ratified the CRPD in 2007 and 2012 respectively.⁴ This was because the critical role of the legal system in facilitating social and human development in a state cannot be overlooked⁵ since the essential services provided by the judiciary through the courts contribute significantly to state-building, entrenching democratic culture and protecting human rights.⁶

Despite this, Persons with Disabilities (PWDs) are discriminated against in the legal system due to their condition. To address this anomaly, the United Nations (UN) adopted the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 to promote and protect the rights and dignity of PWDs through ensuring their full enjoyment of all human rights and fundamental

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³ Office of the United Nations High Commissioner for Human Rights (UNHCR) 'Monitoring the Convention on Rights of Persons with Disabilities: Guidance for Human Rights Monitors' (2010) 17 *Professional Training Series* 9.

⁴ 'Disability Act falls short of UN CRPD: Report' Ghana News Agency, 1 July 2013 available at <http://globalaccessibilitynews.com/2013/07/01/disabilityactfallsshortofuncrpdreport/> (Accessed on 19 March 2015).

⁵ R Bowd 'Access to justice in Africa Comparisons between Sierra Leone, Tanzania and Zambia' (2009) 13 ISS Policy Brief 1.

⁶ World Bank 'Making Inclusion Operational: Legal and Institutional Resources for World Bank Staff on the Inclusion of Disability Issues in Investment Projects' (2004) 1 Law and Development Working Paper Series.

freedoms.⁷ This convention was classified by the then UN Secretary General as the most rapidly negotiated treaty of its type in the history of the UN system.⁸ Human rights and international law experts argue that the implementation and enforceability of the CRPD will face critical institutional, social and constitutional challenges⁹ due to the gaps that exist between the provisions of the Convention and the domestic laws and practices in states that are parties to the treaty.

This article critically analyses the implications of Article 12 of the CRPD on article 5 of the PWDA as both laws seek to promote equal standing before the law by PWDs. It argues that Ghana can achieve tremendous success in implementing Article 12 of the CRPD through amending the PWDA to enhance the opportunities of PWDs in making their own social and legally effective decisions. The article begins with a brief overview of Article 12 of the CRPD and Article 5 of the PWDA. It then presents a critical analysis of the implications of Article 12 of the CRPD on Article 5 of the PWDA and concludes by offering policy guidelines on how it can be effectively implemented in Ghana.

EQUAL RECOGNITION: SUBSTITUTED OR ENHANCED DECISION

Article 12 of the CRPD to a greater degree delineates the civil rights provided in the International Covenant on Civil and Political Rights particularly the right to equality before the law.¹⁰ It also places emphasis on the areas that PWDs have historically been discriminated against and describes specific key areas that State Parties must take into consideration to guarantee the right to equal recognition before the law for PWDs on equal basis. Based on the importance of Article 12, the United Nations Committee on the Rights of Persons with Disabilities (referred to as the Committee) organised an interactive platform with State Parties, experts, Disabled Persons' Organisations (DPOs), Non-governmental Organisations (NGOs), UN agencies and others to debate on the legal capacity of PWDs.¹¹ Through the forum, the Committee remarked on the major misunderstanding of the obligations of State Parties under

⁷ United Nations Convention on the Rights of Persons with Disability Article 1.

⁸ Office of the United Nations High Commissioner for Human Rights (n 1 above).

⁹ L Bicks 'Limited access to legal services for people with mental disabilities' (2015) *Werksmans Attorneys* 2.

¹⁰ UN Committee on the Rights of Persons with Disabilities (UNCRPD) 'General Comment Number One: Equal recognition before the law' (2014) Eleventh Session 1.

¹¹ UN Committee on the Rights of Persons with Disabilities (n 8 above) 2.

Article 12 of the CRPD due to the states' inability to understand the shift from substituted decision making to supported decision-making as required by the Convention.

The Committee's General Comment One explains the responsibility of State parties under the various provisions of article 12 of the Convention. Despite the comprehensive nature of the CRPD, arguably, Article 12 remains the most contentious provision and yet, the most significant.¹² It gives recognition to the legal capacity of all PWDs and also empowers them to exercise their right on equal basis with all others.¹³ Based on this, the Committee has expressed the obligation of State Parties to provide the needed support for PWDs to exercise their legal capacity in order to access justice and/ or other related matters. This requires State Parties such as Ghana to take measured approach in implementing the Convention.¹⁴

Henceforth, the Committee's general comment one implores states to review existing relevant laws to correct the age long practice whereby PWDs have been continually denied the ability to make their own decisions. This is very necessary to correct the assertion by Quinn that 'PWDs in this regard have been treated as mere objects to be managed instead of being subjects of their individual interests and the exercise thereof.'¹⁵

SUPPORTED DECISION MAKING UNDER ARTICLE 5 OF THE GHANA PERSONS WITH DISABILITY ACT

About 10 per cent of the population of Ghana are PWDs.¹⁶ Despite the fact that the 1992 Constitution of Ghana and international conventions guarantee the rights of PWDs in Ghana; there is still a wide gap between aspirations and accomplishments in that these provisions have yet to offer practical protection of PWDs against discrimination particularly in the legal system. The Parliament of Ghana enacted the Persons with Disability Act (PWDA) 715 in 2006 to

¹² T Minkowitz 'The United Nations Convention on the Rights of Persons with Disabilities and the Right to be free from non-consensual psychiatric interventions' (2007) 34 Syracuse Journal of International Law and Commerce 405.

¹³ UNCRPD (n 5 above) Article 12(3).

¹⁴ UN Committee on the Rights of Persons with Disabilities 'Concluding observations of the Committee on the Rights of Persons with Disabilities on the initial report of Tunisia' (2011) UNCRPD/C/TUN/CO/1 22.

¹⁵ G Quinn 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities' (2008) 1 *European Yearbook of Disability Law* 105.

¹⁶ N Oye-Lithur, S Shyamala & N Sashay 'The Simplified Version of Disability Rights in Ghana' (2007) Commonwealth Human Rights Initiative Africa 6.

address the challenges faced by PWDs even though it has not yet signed and ratified the CRPD by then. The PWDA discusses the basic issues on the rights of PWDs in the Ghanaian context. The primary objective of the PWDA is to provide a legal mechanism for PWDs to fully enjoy their human rights and freedoms without discrimination.¹⁷

Specifically, the PWDA protects and promote the rights of PWDs to family life, right to participate in social and entertainment activities, right to equal housing conditions, freedom from abuse and all forms discrimination as well as the provision of required facilities for a PWDs who are parties to judicial proceeding to be able to have equal access and recognition before the law.

Article 5 of the PWDA stipulates that *'when a PWD is party in judicial proceedings, the body settling the matter shall consider his or her condition and make the necessary logistics available to enable him or her to effectively partake in the procedure.'*¹⁸ The PWDA further provides that anyone who violates or fails to respect the rights enshrined in the Act commits a crime punishable by a prison sentence of not more than three months or a fine of fifty penalty units.¹⁹

IMPLICATIONS OF ARTICLE 12 OF UNCRPD ON ARTICLE 5 OF THE PWDA OF GHANA

This section critically examines the implications of article 12 of the CRPD on article 5 of the PWDA of Ghana and discusses the synergies, gaps and challenges in applying them to enable PWDs to fully realise their human rights and fundamental freedoms in Ghana. It concludes by proffering policy guidelines to the government and other actors for the implementation article 12 of the CRPD in Ghana.

Critique of the Standards Set by the Committee

The Committee in its endeavour to set the standards puts all the states parties at an equal platform. The human rights-based model of disability applied by the Committee may not apply universally based on the resource differences between the developed and the developing states. It is recommended that the Committee should have considered all the factors that place states on

¹⁷ Ghana Persons with Disability Act (PWDA) 715 of 2006 Article 4.

¹⁸ PWDA (n 16 above) Article 5.

¹⁹ PWDA (n 16 above) Article 30.

different platforms before suggesting the necessity for the uniform implementation of the model. It is a fact, emanating from history, that there are developed states such as the United States, United Kingdom, among others. These states have put in place some, if not all, of the necessary safeguards that support the mental health care of the PWDs. These safeguards include necessary laws, infrastructures and technological requirements that support the functioning and well-being of the PWDs.

The fact remains that these states are able to put up these safeguards because they have enough resources to do so contrary to developing countries whose priorities still focuses on economic development and other priority areas. I agree that all states must uniformly embrace all the necessary technological safeguards to support mental health care of the PWDs as well as necessary legal apparatus. This is on the understanding that ‘frugal innovation thinking, many existing capacities of tablets, smart phones and even “dumb phones” can be repurposed to serve diagnostic, monitoring, and therapeutic functions.’²⁰ Technology has proven to be working well for the support of decision making, and one good example is that of Steve Hawking who is able to use gadgets made out of technological innovations to communicate, rather than someone else communicating on his behalf.²¹

The article argues against the total prohibition of substituted decision-making regimes such as guardianship, conservatorship and mental health laws. It is impossible in Ghana and many other African countries. Firstly, this means the total overhaul of the system of especially mental health care in many countries, which needs time, and resources, including technological resources. Secondly, while there are mentally impaired persons who may not require substituted support; there are special cases of PWDs who may still rely on guardianship and conservatorship to transact. For instance, a person with severe mental disability may be incapable of making decisions about whether to have an operation.²² In this case, doctors and families will not leave the patient to die, but will try and save their lives. The abolishment of these regimes would trigger negative impacts on the people with high-level mental disabilities. It is important to note that there are circumstances, such as severe illnesses, where substituted decision making

²⁰ General Comment (n 8 above).

²¹ ‘About Stephen Hawking’ Available at <http://www.hawking.org.uk/index.html> (accessed 26 March 2015)

²² D Greenley *Guardianship: Disability Right* (n.d) 333.

precedes supported decision making. Thus, substituted decision making regimes are still useful, and their total overhaul makes it impossible for the supported decision making regime to thrive.

Also, the Committee requires States parties to ensure availability of service at nominal or no cost, and therefore, lack of financial resources should not be used by states as a barrier to supporting PWDs in the exercise of legal capacity. This requirement by the Committee is achievable only with the guarantee of the availability of resources. As already stated above, least developed states grapple with the challenges of the availability of resources and majority depend on foreign aid and support. The ever lack of resources excuses for the provision of individualized services and support poses great challenges of the implementation of the provisions of the CRPD,²³ especially article 12. The Committee should nonetheless consider the steps taken and whether the highest attainable standards of care have been achieved by those states commensurate with their resources.

As a general view, not all the standards set by the Committee are unrealistic. There are those standards which states can achieve immediately, while some need progressive realisation. Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the obligations of States Parties requires states to use the maximum of its available resources to progressively achieve the full realisation of the rights recognised in the ICESCR. This is also applicable to the civil and political rights. The right to legal capacity is a civil and political right, which gives PWDs a leeway to other rights, including socio-economic rights such as right to medication. Their realisation can better and preferably be achieved progressively, rather than immediately. The general notion that civil and political rights, being negative rights, do not need the resources to be realised is untrue. Realising the right to legal capacity and decision making with regard to the right to medication of PWMDs would need the training of doctors, social workers, and their families, among others, which require resources.

After a cursory looked at the weaknesses the standards set, it is now significant to examine whether Ghana has adhered to these standards.

²³ European Foundation 'Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons with Disabilities' (2008) 5.

CONNECTION BETWEEN ARTICLE 12 OF THE CRPD AND ARTICLE 5 OF THE PWDA OF GHANA

Although the PWDA was passed long before Ghana signed and ratified the CRPD, it is without doubt that the Act complements the CRPD in protecting the rights of PWDs and safeguard the realisation of their full potential as well as their total involvement in the society from politics to self-determination and personal development.²⁴ The primary object of article 5 of PWDA of Ghana is to guarantee the right of PWDs to fully participate in legal proceedings that they are involved in. Meanwhile, article 12 of the CRPD asserts the right to equal recognition before the law and obligate State Parties to recognise that PWDs enjoy equal legal capacity with others in all areas of life. A critical comparative review of article 5 of the PWDA and article 12 of the CRPD reveals some obvious inconsistencies and synergies.²⁵

The interpretation of the term ‘legal capacity’ according to the Committee’s general comments does not simply mean the capacity to have rights but the capacity to act on such rights. This is in tandem with the principle of article 5 of the PWDA; but the critical question is how to deal with PWDs in the Ghanaian context that might not be able to exercise their legal capacity even with the required support due to the severity of their condition. Even though article 12(3) addresses this question by obligating all State Parties to ‘take appropriate measures to provide the required support for PWDs in exercising their legal capacity’ the meaning of the word support conforms to the concept of supported decision-making which makes it difficult for the courts to use substituted decision-making under certain situations. Article 5 of the PWDA obligates the judiciary to fully implement supported decision-making facilities and abandon the highly discredited concept of substituted decision-making which had been the practice before the passing of the PWDA.²⁶

The requirement of article 12(3) stipulates that State Parties should provide the necessary support for PWDs to exercise their legal capacity to ensure that even those with the most difficult conditions are able to enjoy their legal capacity as provided by the CRPD. Therefore article 5 of

²⁴ RD Dinerstein ‘Implementing Legal Capacity under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making’ (2012)2 *Human Rights Brief* 19, 8.

²⁵ Law and Development Associates ‘Gap Analysis Report on the Persons with Disability Act 2006’ (2013).

²⁶ AL Pearl ‘Article 12 of the United Nations Convention on the Rights of Persons with Disabilities and the Legal Capacity of Disabled People: The Way Forward’ (2014) 1 *Leeds Journal of Law & Criminology* 17.

the provisions of PWDA falls short of this requirement which builds from the preamble of the CRPD that ‘recognises the need to promote and protect the human rights of PWDs including those who need intensive support to exercise their legal capacity.’ In light of this, the desired supports such capacity-related interventions that respects the rights and preferences of the person should be tailored to the circumstance of the person as observed by article 12(4). The notable delineation of the form of support that are needed under article 5 of the PWDA and the concrete observation of the social and interactive pattern that runs throughout the Convention portrays disability not a thing in and of itself but as a product of the dealings between an individual and the environment. On this premise, article 5 of the PWDA has failed to adequately respond to the required support that PWDs need to fully enjoy equal recognition before the law as enshrined in article 12 of the CRPD.

Despite the significant provisions under article 12 of the CRPD and the gap between it and the PWDA, the latter has not been amended to be responsive to demands and requirements of the former therefore encouraging the predominance of a legal regime that relies on substituted decision-making instead of supported decision-making. Comparatively, the supported decision making that Article 12 promotes makes the individual the primary decision maker by acknowledging that the PWD may need some form of support to make and communicate his or her decision. Therefore, this creates a gap between article 12 of the CRPD and article 5 of the PWDA since article 12 obligates State Parties to pass relevant laws and adopt administrative measures to facilitate the effective implementation of the rights guaranteed in the provisions.

CHALLENGES IN IMPLEMENTING THE CRPD COMMITTEE’S INTERPRETATION OF ARTICLE 12 OF THE CRPD IN GHANA

Despite explicit commitment by Ghana to implement the CRPD and article 12 in particular, the failure of the PWDA 715 of Ghana to clearly delineate the legal framework to regulate the issue of legal capacity and equal recognition before the law have therefore put the onus on the discretion of judiciary and other quasi-judicial bodies. This critically affects the implementation of article 12 of the CRPD and contradicts the affirmation of equality before the law by all persons under the aforementioned article which seeks to ensure the quality of such recognition with respect to the passing of appropriate laws and their applications. Therefore, achieving legal

capacity and equal recognition before the law for PWDs is major challenge in Ghana's effort of implementing the CRPD.

The application of article 5 of the PWDA of Ghana particularly in the area of ensuring legal capacity of PWDs has in itself undermine their legal capacity because the practice have actually resulted in having their legal capacities removed or restricted.²⁷ This is a major contravention to article 12 of the CRPD. Essentially, the current application and practice of both the CRPD and PWDA relating to the provisions of appropriate facilities to PWDs who are parties to judicial proceedings has been misunderstood and misapplied specifically at the detriment of persons with intellectual disabilities and persons with mental health problems in Ghana. The courts have been practicing substituted decision-making instead of supported decision-making which is deemed as expensive; this violates the fundamental rights of PWDs touching on the issue of legal capacity and equal recognition before the law. This problem is critical because the interpretation by the Committee posits that 'State parties must desist from restraining PWDs of their legal capacity by providing them with supportive facilities to make it possible for them to make legally effective decisions.'²⁸

Another difficulty in implementing article 12 of the CRPD as interpreted by the Committee is the interplay between hard and soft law. Even though article 12 is considered as a hard law and by effect, a hard obligation for states to ensure equal recognition before the law especially article 12(2) that states 'State parties shall recognise that PWDs enjoy legal capacity on an equal basis with others in all aspects of life' article 12(3) is rather soft law because it posits that 'State parties shall take appropriate measures to provide access to PWDs through providing them with the support that they need to exercise their legal capacity.'²⁹ This anomaly creates avenues for State parties such as Ghana to depend on affordable means in applying article 12 and therefore loosing the core objective and prominence of article 12 of the CRPD because of the interrelated nature of the sub-clauses.

From a practical perspective, unfortunately in Ghana, because of social stigma attached to mental health, the legal capacity and decision making abilities are taken away people of who show the

²⁷ Law and Development Associates (n 24 above).

²⁸ UN Committee on the Rights of Persons with Disabilities (n 9 above) 4.

²⁹ J Allain 'Treaty interpretation and the United Nations Convention on the Rights of Persons with Disabilities' (2009) Disability Action Centre on Human Rights for People with Disabilities 11.

slightest signs of psychosocial disturbance. Families and sometimes guardians quickly step in and make all decisions for persons with disabilities, which include sometimes dragging them to prayer camps (Christian religious homes) or psychiatric hospitals for treatment without their consent.³⁰ In many of these prayer camps where priests claim to have powers to heal, persons with psychosocial disturbances are forced to fast, forced to consume medications even when they protest and worst of all chained to trees.³¹

Taking away the legal capacity of PWD's is very deeply rooted in tradition and cultural belief. Many local languages in Ghana label persons with mental disabilities as feeble minded and incapable of making decisions. For example, the Akans ethnic group in Ghana refer to people with intellectual disabilities as “nea wanyin agya n’adwene ho” meaning, as “feeble minded.”³² The Ga’ ethnic group also refers to people with intellectual disabilities as “buulu” meaning stupid.³³ These cultural tags and ideologies make it difficult for person with psycho social disturbances to be allowed to make decisions.

In a Human Rights Watch research titled *Like a Death Sentence* many person with mental disabilities complained that they were injected with all sorts of medications and could not protest because even when the side effects of drugs are serious.³⁴

Article 68 69, 70, 71, 73 and 74 of Ghana’s Mental Health Act 2012 (MHA) which deals with the legal capacity of persons with disability largely favours families, guardians and medical officers to ‘protect’ persons with psychosocial disturbances.

Article 68(2) of the MHA states that:

‘family members or a social welfare officer may apply to the court for the appointment of a guardian and on the assessment by a clinical team of mental health professionals including a psychiatrist, the appointment may be made’.³⁵

³⁰ Human Rights Watch, “*Like a Death Sentence*”: *Abuses against Persons with Mental Disabilities in Ghana*,” October 2012.

³¹ Human Rights Watch (n 29 above).

³² J Agbenyega, *The Power of Labelling Discourse in the Construction of Disability in Ghana*, A paper presented at the Australian Association for Research in Education Conference, Newcastle, Association of Active Educational Researchers (AARE), December 2003.

³³ Agbenyega (n 31 above).

³⁴ Agbenyega (n 31 above).

This provision directly encourages guardianship and with the ‘connivance’ of health professional, the choice to make decisions is taken away from persons with psychosocial disturbance.

The MHA also encourages guardians to consult with the incapacitated person ‘where possible’ and responsible for taking treatment, financial and any other welfare decisions on behalf of the incapacitated person using a ‘high standard of substituted judgment’.³⁶ “High standard of substituted judgment” is ambiguous and not fully explained. In reality, the above provision entrusts guardians to make all decisions and it is also obvious that there is no avenue to cross check whether the ‘incapacitated person’ has been consulted or not.

A mental health advocate with the Mental Health Society of Ghana, Doris Appiah Dankwa who has a bipolar disorder states that “as soon as you get a mental disability, you nearly lose all your rights, even to give your opinion”.³⁷ Doris Appiah Dankwa who was sharing experiences of how she eventually managed bipolar disorder in a Human Rights Watch publication complained that all her complains on side effects of medications were ignored because everyone felt she was incapable of making decisions.³⁸ Therefore, this severely affects the implementation of the interpretation of article 12 by the Committee in its general comment one that makes it clear that ‘unsoundness of mind is not a justifiable ground to deny PWDs of their legal capacity.’³⁹

TOWARDS AN EFFECTIVE IMPLEMENTATION OF ARTICLE 12 OF THE CRPD IN GHANA

The interpretation and implementation of the CRPD is in its early stages in Ghana and therefore, even though the CRPD have assumed domestic status after Ghana ratified it in 2012, the legal and administrative applications of the PWDA does not reflect its legislative purposes and interpretations. This phenomenon widens the existing gap between the two laws despite their common objective. Therefore, there is the urgent need for institutional and legal reforms to meet

³⁵ Ghana Mental Health Act (MHC) 2012.

³⁶ MHC (n 34 above) 5.

³⁷ Bicks (n 8 above).

³⁸ UN Committee on the Rights of Persons with Disabilities (n 9 above).

³⁹ UN Committee on the Rights of Persons with Disabilities (n 9 above) 4.

the standards set by the CRPD as well as a shift from substituted decision which disadvantage PWDs. ‘This paradigm shift must aim at retaining the individual as the primary decision maker as well as recognise that the individual’s autonomy can be expressed in multiple ways.’⁴⁰

In order to ensure the above, the government and other actors must make financial commitments and budgetary allocations for the procurement of all the required facilities as well as for the recruitment of professionals such as sign linguists to guarantee practical support for PWDs to exercise their legal capacity and enjoy equal recognition before the law.

The government can also explore other alternatives such the use of authenticated power of attorney, advance directives, health proxies and other mechanisms that can provide a more targeted support to PWDs and at the same time deal with the stigma and indignity of being determined incapable or as lacking legal capacity for all purposes. Therefore, the courts should identify the specific areas that the PWDs need support and therefore retain full decision-making capacity in all other areas of their lives.⁴¹ Also, PWDs themselves should be important resources in ensuring true understanding and application of what supported decision-making means because it is very pivotal for the implementation of article 12 of the Convention.

Finally, the government and the other actors should promote and facilitate capacity building and human resource development to perform the necessary task associated with fully implementing article 12 of the CRPD and article 5 of the PWDA of Ghana. The Committee has observed that is very significant for states to train policy makers and other actors for the efficient and smooth implementation of a truly supported decision-making at the domestic level. This tailored-made training should be realistic and practical as well as should be underpinned by concrete legal and institutional frameworks that guarantee autonomy, equality as well as discrimination of all forms.

CONCLUSION AND RECOMMENDATIONS

Equal recognition before the law has been envisaged by the Committee as very essential elements for the full enjoyment of fundamental rights and freedom by PWDs. This article guarantees that the respect for the inherent dignity and individual autonomy of PWDs ‘including

⁴⁰ Dinerstein (n 23 above) 9.

⁴¹ Dinerstein (n 23 above) 11.

the freedom to make their own individual choices⁴² as well as ‘full and effective participation in society’⁴³ without discrimination. Again, equal recognition before the law is an effective mechanism to engender greater acceptance and integration of PWDs into the society.⁴⁴ For this to be realised, there is the need for social, institutional and legal reforms backed by effective application and implementation of these reforms at the various levels of the legal system.

The Ghanaian government must undertake a process of constructive dialogue through which the various stakeholders and experts can share good practice and examine the various practical initiatives to inform the development on supported decision-making models appropriate for the Ghanaian legal system. Similarly, the disability rights community should encourage the State to interpret Article 12 as well as amend the PWDA in a manner that would make it consistent with the principles of the CRPD in order to deliver substantial improvements in the lives of PWDs.

Finally, it is clear that the MHA does not fully recognise that persons with mental disabilities are entitled to equal recognition before the law and so to realise article 12 of the CRPD in Ghana, the MHA should be amended with urgency. Persons with Mental disability should be supported to make decision and wholly subjected to decisions made by guardians. Amending laws is not enough, because people have become stiff in the culture of disregarding persons with mental disability so, it would take greater sensitisation to realise article 12 of the CRPD.

⁴² UNCPRD (n 6 above) Art 3(a).

⁴³ UNCPRD (n 6 above) Article 3(c).

⁴⁴ UNICEF ‘The Right of Children with Disabilities to Education: A Right-Based Approach to Inclusive Education’ (2012).