

Yokohama Declaration

Adopted by the First World Congress on Adult Guardianship Law,
Yokohama, Japan, October 4th, 2010,
revised and amended by the Fourth World Congress on Adult Guardianship Law,
Erkner/Berlin, Germany, September 16th, 2016.

- Draft -

I. Preamble

The right to equal recognition before the law is a key requisite for persons to be able to exercise their rights and freedoms on an equal basis with others. However, persons with an illness or a disability are still often restricted in exercising their legal capacity, or may even be deprived of their legal capacity completely, because of their illness or disability.

The World Congresses on Adult Guardianship Law, held in Japan (2010), Australia (2012), the USA (2014), and Germany (2016), have been encouraging international exchange of ideas, concepts, and practice concerning the support for, and the protection of, vulnerable adults. The congresses have demonstrated the progress and developments in the field of legal support and protection of adults, and conceptualized legal and social policy goals which replace incapacitation with an orientation towards autonomy and care. Above all they have addressed the question how modern, human rights-compliant, legal systems should best respond to the needs of people who may require support in the exercise of their legal capacity, and/or may not be capable of proactively and validly exercising legal capacity.

The First World Congress, held in Yokohama, Japan, in 2010 decided to issue the Yokohama Declaration to reconfirm the significance of systems for the legal support and protection of adults, and the international role they will play in years to come, while making a proclamation to the world on the proper use of such systems.

At the Fourth World Congress in Erkner/Berlin, Germany, in 2016, the international part of the Yokohama Declaration was revised and amended to emphasize the need to abolish incapacitation and move towards systems providing exclusively for the legal support and protection of adults which are orientated towards autonomy and care.

The organizing committees of the 2010 and 2016 congresses express their gratitude to all participants involved in the drafting and revision of this Yokohama Declaration. They hope that this revised declaration will contribute to the ongoing development of systems for the legal support and protection of adults around the world, and that it will continue to be reviewed.

II. International Part

1. WE ACKNOWLEDGE that:

- (1) throughout the world the number of adults who may require support and/or protection in the exercise of their legal capacity is increasing due to a combination of demographic factors, social changes, medical advances, and improvements in living conditions;
- (2) these developments have a major impact on resources for health care, pensions, benefits, housing, transport, and social services, and will be a serious socioeconomic issue for decades to come;
- (3) there is emerging evidence and awareness of the nature and extent of the abuse of such people in both family and institutional environments; and
- (4) despite an overall improvement in the protection of human rights, in many states the law relating to the exercise of legal capacity has been either neglected or not fully developed to take into account modern thinking with regard to autonomous and anticipatory actions and decisions, best practice when assessing needs for support in the exercise of legal capacity, and establishing the procedures for providing such support and necessary protection.

2. WE AFFIRM the guiding principles and provisions:

- (1) of the *United Nations Universal Declaration of Human Rights of 10 December 1948*, and subsequent UN Human Rights Conventions, particularly the *Convention of 13 December 2006 on the Rights of Persons with Disabilities*, which convention requires states parties to reaffirm the universality, indivisibility, interdependence, and interrelatedness of all human rights, and to reaffirm the full enjoyment of such rights without discrimination;
- (2) of the *Hague Convention of 13 January 2000 on the International Protection of Adults*, which regulates jurisdiction, applicable law, recognition, enforcement and co-operation; and
- (3) within their areas of application, of relevant regional and national human rights instruments such as the *European Convention on Human Rights and Fundamental Freedoms* (1950), the *African Charter on Human and People's Rights* (1981), and the *Canadian Charter of Rights and Freedoms* (1982).

3. WE DECLARE that in the context of the legal support and protection of adults:

- (1) all adults must be assumed to have the capability to exercise their legal capacity without support unless it is established that they require support or need protection in relation to a particular act or decision;
- (2) support and protection includes taking all practicable steps to enable the adult to exercise his or her legal capacity.

- (3) law and practice should recognize that requirements for support and protection are both “issue specific” and “time specific”, that they can vary in intensity and can vary according to the nature and effect of the particular act or the decision to be made, and that they can fluctuate in an individual from time to time.
- (4) measures established autonomously by an adult should have precedence over other measures relating to the exercise of legal capacity.
- (5) the imposition in any individual case of any measure of support and protection should be limited to the minimum necessary intervention to achieve the purpose of that measure.
- (6) measures of support and protection should be subject to periodic and regular review by an independent authority. The adult should have an effective right to institute such a review irrespective of his/her legal capacity.
- (7) measures in relation to the exercise of legal capacity should only be imposed where it is established that they are necessary and in accordance with international human rights law. They should not be applied in order to protect third parties.
- (8) all forms of incapacitation which restrict legal capacity irrespective of the existing capabilities of the adult should be abolished.

4. WE FURTHER DECLARE that any adult who requires support and/or protection in the exercise of legal capacity for any matter is entitled - if necessary - to have a legal representative. Such representative, and any other person accorded any role in relation to the exercise of legal capacity of another, shall:

- (1) involve the adult in all decision-making processes to the greatest possible extent;
- (2) encourage participation and help the adult to act independently in those areas where he or she is able;
- (3) provide the adult with assistance and support, and actively pursue things to which he or she may be entitled, such as pensions, benefits, or social services;
- (4) actively assist the adult to resume or assume independent or interdependent living wherever possible;
- (5) act in a manner which respects the rights, will and preferences of the adult;
- (6) respect and follow the adults wishes, values, and beliefs to the greatest possible extent;
- (7) respect the adult’s civil and human rights, and take action on his or her behalf whenever those rights are threatened;
- (8) be alert to, and seek to avoid, any conflict between his or her own interests and the interests of the adult for whom he or she is acting;
- (9) not take advantage of his or her position;
- (10) act honestly and in good faith;
- (11) act with due care and diligence when acting on behalf of the adult;

- (12) limit interference in the adult's life to the greatest possible extent by choosing the least intrusive, least restrictive, and most normalising course of action;
- (13) protect the adult from ill-treatment, neglect, abuse, and exploitation;
- (14) keep accurate accounts records, and be ready to produce them immediately whenever required to do so (a) by the adult, or (b) by the court, tribunal, or public authority that appointed him or her;
- (15) act within the scope of the authority conferred upon him or her (a) by the adult, or (b) by the court, tribunal, or public authority that appointed him or her, or (c) by law; and
- (16) keep under review the continuing need for any measure of support or protection.

5. AND WE FURTHER DECLARE that:

- (1) law and practice should address the development of professional standards; ensure unimpeded, personal and effective access to the court, tribunal or public authority for the adult irrespective of his/her legal capacity; provide appropriate instruments of control; and guarantee a satisfactory infrastructure.
- (2) such infrastructure should include adequately resourced provision for guidance, training and availability of advice for relatives and volunteers who are accorded formal roles in relation to the exercise of legal capacity of others.
- (3) this revised and amended Yokohama Declaration should be disseminated and communicated to public bodies and national governments to raise awareness of the issues involved, and to obtain the support required to implement the provisions that we have acknowledged, affirmed, and declared herein.

The World Congresses on Adult Guardianship Law 2010 and 2016
WCAG2010 and WCAG 2016 Organizing Committees
All Participants of WCAG2010 and WCAG 2016