

# Article 12:

## Illustrative indicators on equal recognition before the law

ADVANCE VERSION

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The *Human Rights Indicators on the Convention on the Rights of Persons with Disabilities (CRPD)* are a component of the [SDG-CRPD Resource Package](#) developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR). This is an advance version of the SDG-CRPD Resource Package. A final version will be issued upon completion of OHCHR review processes.

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**Right to recognition everywhere as equal before the law**

Attributes/ Indicators	Universal legal capacity*	Supported decision-making**	Safeguards on the provision of support
<b>Structure</b>	<p>12.1 Legislation enacted that:</p> <ul style="list-style-type: none"> <li>recognises the capacity of persons with disabilities to create, modify and end legal relationships on an equal basis with others;</li> <li>protects the right and exercise of legal capacity of persons with disabilities against interference in all aspects of life;</li> <li>abolishes all forms of substitute decision-making;<sup>i</sup></li> <li>requires public and private actors to respect the individual's exercise of legal capacity at all times;<sup>ii</sup></li> <li>provides prompt and effective remedies to overturn and redress any restriction in law or in practice of an individual's legal capacity or failure to respect their decision-making on the basis of actual or perceived impairment.</li> </ul> <p>12.2 No provision in legislation or regulations that:</p> <ul style="list-style-type: none"> <li>restrict the legal capacity of persons with disabilities on the basis of actual or perceived impairment;<sup>iii</sup></li> <li>restrict the enjoyment and exercise of legal capacity on the basis of actual or perceived impairment with respect to any right;<sup>iv</sup></li> <li>Limit or deny access to court of persons with disabilities including for the purposes of invoking restoration of legal capacity.</li> </ul>	<p>12.3 Legislation enacted that:</p> <ul style="list-style-type: none"> <li>recognises supported decision-making arrangements and ensures that they respect the person's autonomy, will and preferences and is made available to all persons;</li> <li>ensures that informal and formal support arrangements are available, accessible, adequate and permit the creation and implementation of various supported decision-making schemes;</li> <li>recognises the support person(s) and support arrangement by the individual requesting support;</li> <li>for formal arrangements, establishes a mechanism to verify the identity of the support person(s) to challenge the actions of support person(s) if alleged not to be in accordance with the individual's will &amp; preferences;<sup>v</sup></li> <li>includes advance planning for support and decision-making, in which the individual concerned defines the moment in which an advance directive enters into force and ceases to have effect;<sup>vi</sup></li> <li>provides for the right to refuse/modify a support relationship;</li> <li>provides safeguards against conflicts of interest, undue influence and abuse of support arrangements and ensures that the support provided respects the rights, autonomy, will and preferences of the individual requesting support, with remedies for violations and regular reporting and evaluation of support mechanisms in consultation with concerned groups;</li> <li>abolishes the concept of "best interests" in the determination of the type and extent of support provided to persons with disabilities;</li> <li>ensures accessibility and the duty to accommodate in all contexts requiring an exercise of legal capacity;<sup>vii</sup></li> <li>allows for interpretation of the person's will and preferences exclusively in cases when it has not been possible, following significant efforts to determine them using diverse methods of communication.<sup>viii</sup></li> </ul>	
	<p>12.4 Statutory requirement to collect data on persons being restricted of legal capacity and restoration of legal capacity, disaggregated by sex, age, disability, place of residence,<sup>ix</sup> geographical location, migrant status, minority/indigenous background, etc.</p>		
	<p>12.5 Mandatory courses within legal education (in universities and other educational institutions) on the right to legal capacity of persons with disabilities and right to support for decision-making.</p>		

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<b>Process</b>	<p>12.6 Number of requests of procedural and age-appropriate accommodations in processes seeking restoration of legal capacity and proportion of them that have been granted and provided.</p> <p>12.7 Number and proportion of persons with disabilities restricted of their legal capacity* who have been informed by public authorities that their legal capacity has been/can be restored.</p>	<p>12.8 Quality standards for supported decision-making adopted covering formal and informal support arrangements, modification/termination of support in accordance with the individual's will and preferences, and the right to refuse support.<sup>xi</sup></p> <p>12.9 Budget allocated and spent on programmes to provide supported decision-making for the exercise of legal capacity of persons with disabilities.<sup>xii</sup></p> <p>12.10 Research and development is undertaken,<sup>xiii</sup> to explore, define and meet the needs of diverse impairment groups and constituencies, in close consultation with that population and their representative organizations in all stages of the activity.</p> <p>12.11 Number of functioning programmes and services providing a broad range of person-centric support with disaggregated by the type and intensity of support, and number of beneficiaries disaggregated by sex, age, disability, place of residence<sup>xiv</sup> and geographic location.<sup>xv</sup></p> <p>12.12 Number of persons trained to provide support in decision-making for persons with disabilities respecting the individual's will and preferences, including on advance planning.</p> <p>12.13 Number of persons having made advance plans in accordance with their will and preferences, disaggregated by sex, age, disability, and matters covered by the advance plan.<sup>xvi</sup></p> <p>12.14 Existence of mechanisms and procedures for the monitoring of formal or informal support arrangements that ensure the participation of persons with disabilities, including through their representative organizations, in the monitoring process.</p>	<p>12.15 Awareness raising campaigns and activities targeting persons with disabilities, notaries, judges and court staff, health care providers, financial service providers and other actors involved in the exercise of legal capacity (supporters, family members and communities) about the right to legal capacity of persons with disabilities and right to request support for decision-making.<sup>xvii</sup></p> <p>12.16 Number and proportion of judges, notaries and other legal professionals trained on the right to legal capacity of persons with disabilities and right to support for decision-making, disaggregated by profession.</p> <p>12.17 Consultation processes undertaken to ensure the active involvement of persons with disabilities, including through their representative organizations, in the design, implementation and monitoring of laws, regulations, policies and programmes, related to equal recognition before the law, and supported decision making and safeguards for the exercise of legal capacity.<sup>xviii</sup></p> <p>12.18 Proportion of received complaints alleging restrictions to the exercise of legal capacity, either in law or in practice, or other violations of Article 12 of the CRPD that have been investigated and adjudicated; proportion of those found in favour of the complainant; and proportion of the latter that have been complied with by the government and/or duty bearer (e.g. private school); each disaggregated by kind of mechanism.</p>

*Right to recognition everywhere as equal before the law*

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<b>Outcome</b>	<p>12.19 Number of persons with disabilities formally deprived of their legal capacity (either fully or partially),<sup>xix</sup> disaggregated by sex, age, and disability.</p> <p>12.20 Number of persons with disabilities whose full legal capacity has been restored, disaggregated by sex, age and disability.</p> <p>12.21 Number of persons who formally requested support for decision-making and the proportion who received it, disaggregated by sex, age, disability, and type/duration of support received.</p> <p>12.22 Number and proportion of persons with disabilities reporting that their requirements for supported decision-making have been met, disaggregated by sex, age, disability.</p>		

- \* Universal legal capacity encompasses the enjoyment *and* exercise of legal capacity on an equal basis with others. See CRPD Committee’s General Comment no. 1, report of the Special Rapporteur on the rights of persons with disabilities, A/HRC/37/56, paras. 13-22.
- \*\* “Support” is a broad term that encompasses both informal and formal support arrangements, of varying types and intensity. It should encompass a range of measures which respond to different situations and the choices of different individuals. One individual may choose to make use of several different support arrangements which work in complementarity. Support arrangements may consist of choosing one or more trusted support persons to assist in the exercise of legal capacity for certain types of decisions (e.g. peer support, self-advocacy support); it may include measures relating to universal design and accessibility to enable persons with disabilities to perform legal acts or conduct social transactions; it may involve advance planning (e.g. advance directive); it may constitute the development and recognition of diverse non-conventional methods of communication, including non-verbal forms and that they are made available in the languages/forms best understood by them. See CRPD Committee’s General Comment no. 1, and report of the Special Rapporteur on the rights of persons with disabilities, A/HRC/34/58.
- i including those made on the assessment of mental capacity skills.
- ii Including in situations of mental distress.
- iii Including plenary or partial guardianship, judicial interdiction, curatorship, conservatorship and other substituted decision-making regimes.
- iv including: the right to marry, to family, to exercise parental rights, sexual and reproductive health and rights, right to vote, stand for election and hold public office, to give/withdraw informed consent in healthcare and rehabilitation services, to access justice, to enter into a contract, to own or inherit property, to control their own financial affairs including having equal access to bank loans, mortgages and other forms of financial credit, for example through :
- establishing exceptions to the full enjoyment and exercise of legal capacity or specific right(s) for persons with disabilities; and/or
  - creating disability-neutral responses that disproportionately and adversely impact the exercise of legal capacity or specific right(s) by persons with disabilities.
- v Legal recognition of the support person(s) formally chosen by a person must be available and accessible, and States have an obligation to facilitate the creation of support, particularly for people who are isolated and may not have access to naturally occurring support in the community. This must include a mechanism for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge the action of a support person if they believe that the support person is not acting in accordance with the will and preferences of the person concerned. See CRPD Committee’s General Comment no. 1, para. 29.
- vi See CRPD Committee’s General Comment No. 1, para. 17.
- vii such as legal proceedings, health care and financial transactions;
- viii including non-verbal forms of communication.
- ix residing in an institution, in the community, within a family, etc.
- x under plenary or partial guardianship, judicial interdiction, curatorship, conservatorship or other substituted decision making regimes.
- xi quality standards are applicable regardless of the type of support.
- xii including the provision of financial and technical assistance to civil society organizations to enable the creation and implementation of various supported decision-making schemes that address the needs of diverse impairment groups and constituencies in ways that are appropriate and acceptable from their own point of view.
- xiii including pilot projects on formal and informal forms of support in decision-making and peer support networks, inclusive of researchers with disabilities and organisations of persons with disabilities.
- xiv residing in an institution, in the community, within a family, etc.
- xv by the type and intensity of support, age, gender and type of impairment, as well as geographic location of beneficiaries, including within institutions.
- xvi E.g. advance directives can include instructions on how to deal with future emotional crises and/or to appoint a person to support them in those particular circumstances, and/or on personal, patrimonial or finance matters (See CRPD Committee’s General Comment no. 1, para 17; A/HRC/37/56, para 32)

- xvii Awareness raising campaigns and activities should include information on: the right to have decision-making respected at all times including in situations of distress; the right to free and informed consent, strategies for supported decision-making, safeguards against abuse; non-discrimination in legal capacity, including ensuring the provision of reasonable accommodation; the prevention and elimination of informal substitute decision-making or coercive interventions in family and community settings.
- xviii This indicator requires verifying concrete activities undertaken by public authorities to involve persons with disabilities in decision-making processes related to issues that directly or indirectly affect them in line with article 4(3) of the CRPD and General Comment no. 7 of the CRPD Committee, including consultation meetings, technical briefings, online consultation surveys, calls for comments on draft legislation and policies, among other methods and mechanisms of participation. In this regard, States must
- ensure that consultation processes are transparent and accessible;
  - ensure provision of appropriate and accessible information;
  - not withhold information, condition or prevent organizations of persons with disabilities from freely expressing their opinions;
  - include both registered and unregistered organizations;
  - ensure early and continuous involvement;
  - cover related expenses of participants.
- xix including through substitute decision-making regimes such as plenary or partial guardianship, interdiction, curatorship, conservatorship.