

# Article 14:

## List of illustrative indicators on liberty and security of the person

ADVANCE VERSION

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### Right to liberty and security of the person\*

Attributes/ Indicators	<b>Disability-specific deprivation of liberty:** Absolute ban on deprivation of liberty on the basis of actual or perceived impairment</b>	<b>Non-disability specific forms of deprivation of liberty: criminal and administrative detention</b>	<b>Security of person and conditions of detention for persons with disabilities</b>
<b>Structure</b>	<p>14.1 National constitution and legislation that recognizes the right to liberty and security of person of all persons with disabilities on an equal basis with others.</p> <p>14.2 Legal requirement to collect data on the number of persons with disabilities deprived of liberty, disaggregated by sex, age, disability, ground of detention and place of detention (e.g. psychiatric institution, residential institution, prison, etc.; both public or privately run).<sup>i</sup></p> <p>14.3 Legal requirement to establish a marker on spending related to ensure the right to liberty and security of persons with disabilities.<sup>ii</sup></p> <p>14.4 No provision in the constitution and/or in legislation which, directly or indirectly, allows any kind of deprivation of liberty on the basis of actual or perceived impairment, either alone or in combination with other grounds (e.g. care, treatment, risk to self or others, etc.) or as a result of attitudinal, environmental, information, or communication related barriers.<sup>iii</sup></p> <p>14.5 Adoption of transitional legislation, policies and/or plans to secure the immediate release of persons with disabilities deprived of liberty on the basis of an actual or perceived impairment, including those deprived of liberty in mental health inpatient settings, and the immediate cessation of restrictive and coercive measures including forced treatment.</p>	<p>14.6 Legislation that provides for a criminal and penitentiary system inclusive of persons with disabilities (e.g. accessible and inclusive procedures, facilities and services in detention).</p> <p>14.7 Legislation that ensures that all administrative detention systems (e.g. immigration detention) are inclusive of persons with disabilities, gender responsive and age-appropriate (e.g. accessible and inclusive procedures, facilities and services in detention).</p> <p>14.8 Adoption of legislation and policies to promote the use of restorative justice mechanisms and non-custodial measures to prevent incarceration.</p>	<p>14.9 Adoption of mandatory accessibility standards applied to prisons and other centers of detention. (idem 15/17.10)</p> <p>14.10 Provision in legislation ensuring the obligation to provide reasonable accommodation to persons with disabilities deprived of their liberty. (idem 15/17.11)</p> <p>14.11 Provision in legislation prohibiting the use of seclusion and any method of restraint which are medically-ordered (physical, chemical<sup>iv</sup> and mechanic, etc.) and the use of psychiatric medication or other interventions without the free and informed consent of the person concerned, including on persons with disabilities.</p>

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<b>Process</b>	<p>14.12 Number of persons with disabilities deprived of liberty in psychiatric inpatient settings or similar institutions, and proportion of them who have been informed of their right to leave detention, access housing, means of subsistence and other forms of economic and social support.<sup>v</sup></p> <p>14.13 Awareness-raising campaign on the right to liberty and security of persons with disabilities directed to the general public and health and social services on the absolute ban on deprivation of liberty on the basis of actual or perceived impairment, including any mental health-related detention and forced medication and other forced interventions, promoting their inclusion within the community and providing information about related supports available to persons with disabilities and their families.</p> <p>14.14 Proportion of received complaints alleging deprivation of liberty on the basis of disability 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; each disaggregated by kind of mechanism.</p>	<p>14.15 Number and proportion of staff of justice, police, penitentiary systems, other kinds of detention centres, trained on the rights of persons with disabilities, including the prohibition of seclusion, restraints, and the administration of psychiatric medication or other interventions without the free and informed consent of the person concerned; accessibility; the obligation to provide reasonable and procedural accommodations, including concerning information and communications in the context of arrest interrogation and detention of persons with disabilities.</p> <p>14.16 Number and proportion of persons with disabilities deprived of liberty in prisons and other detention centers, disaggregated by sex, age, disability, ground of detention,<sup>vi</sup> type of detention center and geographical location.</p> <p>14.17 Proportion of persons with disabilities deprived of their liberty in the criminal system or in administrative detention promptly accessing free legal aid, disaggregated by sex, age, disability, place of detention and geographical location.<sup>vii</sup></p> <p>14.18 Budget allocated to provide legal aid services to persons with disabilities deprived of liberty in the criminal system or in administrative detention</p> <p>14.19 Proportion of requests for procedural and age-appropriate accommodations granted to persons with disabilities in procedures related to deprivation of liberty.</p>	<p>14.20 Proportion of received complaints by or on behalf of persons with disabilities alleging lack of accessibility, denial of reasonable accommodation, torture or any form of ill-treatment (including seclusion, forced medication and restraints) in <u>any</u> place of detention,<sup>viii</sup> 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); each disaggregated by kind of mechanism.</p> <p>14.21 Budget allocated for the improvement of conditions of detention, including accessibility related measures.</p>
	<p>14.22 Consultation processes undertaken to ensure 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 their right to liberty and security.<sup>ix</sup></p>		

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<b>Outcome</b>	<p>14.23 Number of persons with disabilities <u>currently</u> deprived of liberty on the basis of actual or perceived impairment, disaggregated by sex, age and disability, type of institution/ place of detention (e.g. mental health institution, social care or residential institution, residences for persons with intellectual disabilities, etc.) and legal ground for the institutionalization or detention.<sup>x</sup></p> <p>14.24 Number of persons with disabilities <u>currently</u> deprived of liberty as a result of diversion from prosecution on the basis of actual or perceived impairment (e.g. “unfitness to stand trial” followed by the application of a security measure), disaggregated by sex, age and disability and type of institution/ place of detention.</p> <p>14.25 Number of persons with disabilities who are released from disability-specific deprivation of liberty disaggregated by sex, age and disability, and place of detention (e.g. psychiatric institutions, residences for persons with intellectual disabilities, etc.), and proportion of them who have been provided with access to housing, means of subsistence and other forms of economic and social support.</p>	<p>14.26 Number of persons deprived of liberty in prisons and other detention centers (non-disability specific) and proportion of them who are persons with disabilities, disaggregated by sex, age disability, ground of detention,<sup>xi</sup> detention center and geographical area.</p> <p>14.27 Conviction rate of persons with disabilities as compared to the general conviction rate, disaggregated by age, sex, disability, crime/ground and whether accessed legal aid or lawyer of the person’s choice.<sup>xii</sup></p> <p>14.28 Proportion of cases in which, after appeal, a sentence was reduced or a criminal conviction vacated, disaggregated by sex, age, disability.</p>	<p>14.29 Number and proportion of persons with disabilities deprived of liberty in any place of detention provided with reasonable accommodation, disaggregated by age, sex, disability, ground of detention,<sup>xiii</sup> detention center and geographical area.</p>

- \* See the CRPD Committee’s Guidelines on article 14 of the CRPD, [Annex to the Bi-Annual Report 2016, A/72/55](#)
- \*\* For more information on ‘disability-specific deprivation of liberty’, see report by the Special Rapporteur on the Rights of Persons with Disabilities, [A/HRC/40/54](#), paras. 14-24. See also endnote iii, below.
- <sup>i</sup> Deprivation of liberty also encompasses home confinement of persons with disabilities (see indicator 14.4, endnote iii), which poses serious challenges for data collection compared to data coming from administrative sources related to deprivation of liberty in prisons, psychiatric institutions, etc. States should aim to produce and support data collection to address this issue through appropriate means.
- <sup>ii</sup> In particular, markers on spending should contribute to:
- comparing budget allocated to support services in the community for persons with disabilities released from disability-specific deprivation of liberty vis-à-vis budget invested in institutions (maintenance, services, etc.) to track and verify policy commitment to the right to liberty and security of person of persons with disabilities through resource allocation.
  - determining annually the amount spent on rendering non-disability specific detention systems inclusive of persons with disabilities, including specifying funds for enhancing accessibility and providing reasonable accommodations.
- <sup>iii</sup> This includes:
- civil, administrative, social services legislation permitting forced institutionalization, including upon authorization of a third-party.
  - general health or specific mental health legislation permitting involuntary hospitalization or treatment, including upon authorization of a third-party, for any duration and for any purpose.
- criminal law and procedure permitting diversion from prosecution on the basis of being deemed “unfit to stand trial” or “non-criminally responsible” leading to the application of security measures including deprivation of liberty and forced treatment.
  - family law or related legislation permitting home confinement by family of persons with disabilities, or permitting the family to authorize or petition the institutionalization or hospitalization of an adult or child.
  - imminent threat to liberty and/or security of the person for non-compliance with imposed regimes such as forced treatment through community treatment orders (CTOs) or through power conferred on health, mental health or social service personnel or public authorities to detain individuals for observation and evaluation.
  - Further, legislation should be amended to ensure the removal of provisions which have the effect of criminalizing “atypical behavior” which negatively and disproportionately impacts on persons with disabilities, namely persons with intellectual disabilities, persons with psychosocial disabilities, persons with dementia and autistic persons, and must be eliminated as running contrary to non-discrimination and criminal law principles. See [A/HRC/40/54](#), para. 34.
- <sup>iv</sup> Chemical restraint includes any administration of neuroleptic drugs without the free and informed consent of the person concerned.
- <sup>v</sup> See CRPD Committee Guidelines on Article 14, paragraph 24, citing “United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court”, Guideline 20, [A/HRC/30/36](#), para. 126.
- <sup>vi</sup> For “ground of detention”, a distinction should be made between convicted persons and those in pre-trial detention, e.g. facing criminal charges under pre-trial detention.
- <sup>vii</sup> With respect to legal aid in the criminal system, see [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#).
- <sup>viii</sup> This includes both places of disability-specific deprivation of liberty contrary to the CRPD where they continue to exist, and other places of detention (e.g. prisons).
- <sup>ix</sup> 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.
- <sup>x</sup> For ‘legal grounds of detention’, see endnote iii above indicating the different rationale behind deprivations of liberty on the basis of impairment and the legislation that typically still include provisions legitimizing it, in contradiction with Article 14 of the CRPD.
- <sup>xi</sup> For “ground of detention”, a distinction should be made between persons in pre-trial detention and those who have been convicted.

- <sup>xii</sup> This indicator contributes to assessing whether there is an overrepresentation of persons with disabilities among the convicted population. In such cases, further inquiries and studies should be conducted in order to identify the causes of direct or indirect discrimination against persons with disabilities (e.g. due to lack of access to legal aid, lack of accessibility of communications, lack of procedural accommodations during legal proceedings, etc.).
- <sup>xiii</sup> For “ground of detention”, a distinction should be made between convicted persons and those in pre-trial detention, e.g. facing criminal charges under pre-trial detention.