Article 12: Illustrative indicators on equal recognition before the law

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Right to recognition everywhere as equal before the law			
Attribute/type of indicator	**Universal legal capacity[a]**	**Supported decision-making[b]**	**Safeguards on the provision of support**
Structure	12.1: Legislation enacted that: • Recognizes the capacity of persons with disabilities to create, modify and end legal relationships on an equal basis with others • Protects the right and exercise of legal capacity of persons with disabilities against interference in all aspects of life • Abolishes all forms of substituted decision-making[c] • Requires public and private actors to respect the individual's exercise of legal capacity at all times[d] • 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 12.2: No provision in legislation or regulations that: • Restricts the legal capacity of persons with disabilities on the basis of actual or perceived impairment[e] • Restricts the enjoyment and exercise of legal capacity on the basis of actual or perceived impairment with respect to any right[f] • Limits or denies access to court of persons with disabilities, including for the purposes of invoking the restoration of legal capacity	12.3: Legislation enacted that: • Recognizes supported decision-making arrangements and ensures that they respect the person's autonomy, will and preferences, and is made available to all persons • Ensures that informal and formal support arrangements are available, accessible and adequate, and permit the creation and implementation of various supported decision-making schemes • Recognizes the support person(s) and support arrangement by the individual requesting support • For formal arrangements, establishes a mechanism to verify the identity of the support person(s) in order to challenge the actions of the support person(s) if they are alleged not to be in accordance with the individual's will and preferences[g] • 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[h] • Provides for the right to refuse or modify a support relationship • 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 on, and evaluation of, support mechanisms in consultation with concerned groups • Abolishes the concept of "best interests" in the determination of the type and extent of support provided to persons with disabilities • Ensures accessibility and the duty to accommodate in all contexts requiring an exercise of legal capacity[i] • 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[j]	

<table>
<tr><td></td><td colspan="2">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,[k] geographical location, migrant status and minority or indigenous background, among others
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</td></tr>
<tr><td rowspan="2">Process</td><td>12.6: Number of requests for procedural and age-appropriate accommodations in processes seeking restoration of legal capacity and proportion of them that have been granted and provided
12.7: Number and proportion of persons with disabilities restricted in their legal capacity[l] who have been informed by public authorities that their legal capacity has been, or could be, restored</td><td>12.8: Protocols on quality standards for supported decision-making adopted covering formal and informal support arrangements, modification or termination of support in accordance with the individual's will and preferences, and the right to refuse support[m]
12.9: Budget allocated to and spent on programmes to provide supported decision-making for the exercise of legal capacity of persons with disabilities[n]
12.10: Number of research and development initiatives undertaken[o] 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
12.11: Number of functioning programmes and services providing a broad range of person-centric support disaggregated by the type and intensity of support, and number of beneficiaries disaggregated by sex, age, gender, disability, place of residence[p] and geographical location, including within institutions
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
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[q]
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</td></tr>
<tr><td colspan="2">12.15: Number of 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; and proportion of population who gained access to those campaigns and activities, disaggregated by age, sex, disability, profession and geographical location[r]
12.16: Number and proportion of judges, notaries and other legal professionals trained on the right to legal capacity of persons with disabilities and the right to support for decision-making, disaggregated by profession
12.17: Number of consultation processes undertaken on the design, implementation and monitoring of laws, regulations, policies and programmes related to equal recognition before the law, supported decision-making and safeguards for the exercise of legal capacity; and proportion of persons with disabilities who participated in those processes, disaggregated by age, sex, disability and geographical location[s]</td></tr>
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	12.18: Proportion of complaints received alleging restrictions to the exercise of legal capacity, either in law or in practice, or other violations of article 12 of the Convention on the Rights of Persons with Disabilities 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 type of mechanism
Outcome	12.19: Number of persons with disabilities formally deprived of their legal capacity (either fully or partially),[t] disaggregated by sex, age and disability 12.20: Number of persons with disabilities whose full legal capacity has been restored, disaggregated by sex, age and disability 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 and duration of support received 12.22: Number and proportion of persons with disabilities reporting that their requirements for supported decision-making have been met, disaggregated by sex, age and disability

[a] Universal legal capacity encompasses the enjoyment *and* exercise of legal capacity on an equal basis with others. See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014); and report of the Special Rapporteur on the rights of persons with disabilities (A/HRC/37/56, paras. 13–22).

[b] "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 that respond to different situations and the choices of different individuals. One individual may choose to make use of several different support arrangements that 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 and self-advocacy support); they may include measures related to universal design and accessibility to enable persons with disabilities to perform legal acts or conduct social transactions; they may involve advance planning (e.g. advance directive); they may constitute the development and recognition of diverse non-conventional methods of communication, including non-verbal forms; they may also mean that these methods of communication are made available in the languages or forms best understood by them. See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014); and report of the Special Rapporteur on the rights of persons with disabilities (A/HRC/34/58).

[c] Including those made on the assessment of mental capacity skills.

[d] Including in situations of mental distress.

[e] Including plenary or partial guardianship, judicial interdiction, curatorship, conservatorship and other substitute decision-making regimes.

[f] Including the right to marry, to family, to exercise parental rights, to sexual and reproductive health and rights, to vote, to stand for election and hold public office, to give or withdraw informed consent in health-care and rehabilitation services, to have access to justice, to enter into a contract, to own or inherit property and to control their own financial affairs, including having equal access to bank loans, mortgages and other forms of financial credit, by, for example:

- Establishing exceptions to the full enjoyment and exercise of legal capacity or specific rights for persons with disabilities
- Creating disability-neutral responses that disproportionately and adversely affect the exercise of legal capacity or specific rights by persons with disabilities

[g] 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 Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) (para. 29).

[h] See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) (para. 17).

[i] Such as legal proceedings, health care and financial transactions.

[j] Including non-verbal forms of communication.

[k] For example, residing in an institution, in the community or within a family.

[l] Under plenary or partial guardianship, judicial interdiction, curatorship, conservatorship or other substituted decision-making regimes.

[m] Quality standards are applicable regardless of the type of support.

[n] 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.

[o] Including pilot projects on formal and informal forms of support in decision-making and peer support networks, inclusive of researchers with disabilities and organizations of persons with disabilities.

[p] For example, residing in an institution, in the community or within a family.

[q] Advance directives can include, for example, instructions on how to deal with future emotional crises and/or to appoint a person to support them in those particular circumstances, and/or instructions on personal, patrimonial or financial matters. See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) (para. 17); and report of the Special Rapporteur on the rights of persons with disabilities (A/HRC/37/56, para. 32).

[r] 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 and safeguards against abuse; non-discrimination in legal capacity, including ensuring the provision of reasonable accommodation; and the prevention and elimination of informal substitute decision-making or coercive interventions in family and community settings.

[s] 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 Convention on the Rights of Persons with Disabilities and general comment No. 7 (2018) of the Committee on the Rights of Persons with Disabilities, including consultation meetings, technical briefings, online consultation surveys, and 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 the provision of appropriate and accessible information
- Not withhold information or condition or prevent representatives of persons with disabilities from freely expressing their opinions
- Include both registered and unregistered organizations
- Ensure early and continuous involvement of persons with disabilities
- Cover related expenses of participants

[t] Including through substitute decision-making regimes, such as plenary or partial guardianship, interdiction, curatorship and conservatorship.