**Article 14 - List of illustrative indicators on the Right to Liberty and Security of Person**

**Attributes/Indicators**

* **Disability-specific deprivation of liberty:[[1]](#endnote-1) Absolute ban on deprivation of liberty on the basis of actual or perceived impairment**
* **Non-disability specific forms of detention: criminal system and administrative detention**
* **Security of person and conditions of detention for persons with disabilities**

**Structural**

14.1 National constitution and legislation that recognizes the right of all persons with disabilities to liberty and security of persons on equal basis with others.

14.2 Legal requirement to collect data on the number of persons with disabilities deprived of liberty, disaggregated by age, sex, disability, ground of detention and place of detention (e.g. psychiatric institution, residential institution, prison, etc.; both public or privately run)[[2]](#endnote-2)

14.3 Legal requirement to establish a marker on all spending related to ensure persons with disabilities their right to liberty and security.[[3]](#endnote-3)

14.4 No provision in constitution and/or in legislation, directly or indirectly, allowing for any kind of deprivation if liberty on the basis of actual or perceived impairment, either alone or in combination with other grounds (e.g. care, treatment, alleged dangerousness, etc) or as a result of attitudinal, environmental, information, or communication related barriers..[[4]](#endnote-4)

14.5 Adoption of a transitional policy or plan for the release of persons with disabilities deprived of liberty on the basis of an actual or perceived impairment, including from mental health inpatient settings, and to cease the administration of restrictive and coercive measures including forced treatment.

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 while in detention).

14.7 Legislation that ensures that all administrative detention systems (e.g. immigration detention) are inclusive of persons with disabilities and are gender responsive and age-appropriate (e.g. accessible and inclusive procedures, facilities and services while in detention).

14.8 Adoption of legislation and policies to promote the use of restorative justice mechanisms and non-custodial measures to prevent incarceration.

14.9 Adoption of mandatory accessibility standards applicable to prisons and other centers of detention.

14.10 Provision in legislation ensuring the obligation to provide reasonable accommodation to persons with disabilities deprived of their liberty.

14.11 Provision in legislation prohibiting the use of seclusion and any method of restraint (physical, chemical[[5]](#endnote-5) and mechanic, etc.), including on persons with disabilities and the use of psychiatric medication or other intervention without the prior free and informed consent of the person concerned.

**Process**

14.11 Number of persons with disabilities deprived of liberty in a psychiatric inpatient settings or similar institutions, and proportion of them who have been informed about their right to be released, access housing, means of subsistence and other forms of economic and social support.[[6]](#endnote-6)

14.12 Awareness-raising campaign on their right to liberty and security of persons with disabilities directed to the general public, informing about the absolute ban on deprivation of liberty on the basis of actual or perceived impairment, and promoting their inclusion within the community and informing about related supports available to persons with disabilities and their families.

14.13 Number of complaints alleging disability-specific deprivations of liberty investigated, adjudicated in favor of the complainant, disaggregated by kind of mechanism, and proportion complied with by the government or duty bearer by releasing the person.

14.14 Training of staff of justice, police and penitentiary systems 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 accommodation and rules of conduct concerning interrogation, arrest and detention of persons with disabilities.

14.15 Number and proportion of persons with disabilities deprived of liberty in prisons and other detention centers, disaggregated by age, sex, disability, ground of detention,[[7]](#endnote-7) detention center and geographical area.

14.16 Proportion of persons with disabilities deprived of their liberty in the criminal system or in administrative detention promptly accessing free legal aid, disaggregated by age, sex, disability, place of detention and geographical location.[[8]](#endnote-8)

14.17 Budget allocated to provide legal aid services to persons with disabilities deprived of liberty in the criminal system or in administrative detention

14.18 Proportion of requests for procedural and age-appropriate accommodations granted to persons with disabilities in procedures related to deprivation of liberty.

14.19 Number of 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 any place of detention,[[9]](#endnote-9) investigated, adjudicated and proportion of these complied with by the government.

14.20 Budget allocated for the improvement of conditions of detention, including accessibility related measures.

14.21 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 programs, related to their right to liberty and security.[[10]](#endnote-10)

**Outcome**

14.22 Number of persons with disabilities currently deprived of liberty on the basis of actual or perceived impairment, disaggregated by age, sex and disability, and kind of institution/place of detention (e.g. psychiatric institutions, residences for persons with intellectual disabilities, etc.).

14.23 Number of persons with disabilities who are released from disability-specific deprivation of liberty disaggregated by age, sex 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.

14.24 Number and proportion of facilities of disability specific deprivation of liberty which have been closed down, disaggregated by place of detention (e.g. psychiatric inpatient settings – stand-alone institutions and/or units in general hospitals, residences for persons with intellectual disabilities, etc..).[[11]](#endnote-11)

14.25 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 age, sex, disability, ground of detention,[[12]](#endnote-12) detention center and geographical area.

14.26 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.[[13]](#endnote-13)

14.27 Proportion of cases in which, after appeal, a sentence was reduced or a criminal conviction vacated, disaggregated by age, sex, disability.

14.28 Number and proportion of persons with disabilities detained in any place of detention provided with reasonable accommodation, disaggregated by age, sex, disability, ground of detention,[[14]](#endnote-14) detention center and geographical area.

**ANNEX**

1. 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](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/40/54), paras. 14-24. See also, endnote iv, below. [↑](#endnote-ref-1)
2. Deprivation of liberty can encompass home confinement of persons with disabilities (see indicator 14.4 and endnote iv), which poses serious challenges to data collection as compared as data coming from administrative sources related to detention in prisons, psychiatric institutions, etc.. States should seek to produce and encourage data to tackle this issue through appropriate means. [↑](#endnote-ref-2)
3. 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.).

   Determining annually the amount spent on making non-disability specific detention systems inclusive of persons with disabilities, including specifying funds for enhancing accessibility and providing reasonable accommodations. [↑](#endnote-ref-3)
4. This includes notably any legislation which:

   - allows deprivation of liberty based on mental health condition, alone or in combination with other factors such as alleged danger or alleged need for care or treatment

   - allows deprivation of liberty based on legal incapacitation as a security measure

   - allows declaration of incompetence to be tried on criminal charges or incompetence to be held criminally responsible, and allows deprivation of liberty on those grounds

   - otherwise allows deprivation of liberty based on an actual or perceived impairment, alone or in combination with any other factors

   Including:

   - civil and/or civil procedure codes (civil detention)

   - general health or specific mental health legislation (forced hospitalization)

   - social welfare systems legislation, including of religious organizations (forced institutionalization in residential institutions or centers)

   - criminal code and criminal procedure code (diversion from regular due process and criminal system)

   - family law or related (home confinement by family of persons with disabilities)

   - imminent threat to liberty for non-compliance with imposed regimes such as forced treatment through community treatment orders (CTOs)

   Further, legislation should be purged of criminalization of “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 avoided as running contrary to criminal law principles. See A/HRC/40/54, para. 34. [↑](#endnote-ref-4)
5. Chemical restraint includes any administration of neuroleptic drugs without the prior free and informed consent of the person concerned. [↑](#endnote-ref-5)
6. 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. [↑](#endnote-ref-6)
7. For “ground of detention”, it should be distinguished between persons ‘convicted’ by a court decision, and those ‘preventively detained’ e.g. Facing criminal charges under preventive detention. [↑](#endnote-ref-7)
8. With respect to legal aid in the criminal system, see [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf). [↑](#endnote-ref-8)
9. This includes both places of disability-specific deprivation of liberty contrary to the CRPD while they still exist, and other places of detention accepted by the Convention (e.g. prisons). [↑](#endnote-ref-9)
10. 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, including consultation meetings, technical briefings, online consultation surveys, call for comments on drafts legislations and policies, among other participatory methods. In this regard, States must

    ensure that consultation processes are transparent

    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 (e.g. transport and other expenses to attend meetings and technical briefings). [↑](#endnote-ref-10)
11. In order to assess whether an institution (of any kind) has been closed down, the focus should be simultaneously on the current use of the facilities in practice and on whether the persons with disabilities who were institutionalized there have moved into the community, in order to prevent “renaming” or “recycling” of institutions (e.g. a residential institution for children with disabilities becoming a boarding school for special education). [↑](#endnote-ref-11)
12. For “ground of detention”, it should be distinguished between persons in pre-trial detention and those who have been convicted. [↑](#endnote-ref-12)
13. This indicator contributes to assess whether there is an overrepresentation of persons with disabilities among the convicted population. In this case, further inquiries and studies should be conducted in order to detect the causes and assess whether there is direct or indirect discrimination against persons with disabilities (e.g. due to lack of access to legal aid, lack of accessibility of communication, lack of procedural accommodations during legal proceedings, etc.). [↑](#endnote-ref-13)
14. For “ground of detention”, it should be distinguished between convicted persons and those in pre-trial detention, e.g. Facing criminal charges under pre-trial detention. [↑](#endnote-ref-14)