

# Article 23:

## List of illustrative indicators on respect for the home and the family

ADVANCE VERSION

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The *Human Rights Indicators on the CRPD* were produced with the financial support of the European Union. Its contents are the sole responsibility of OHCHR and do not necessarily reflect the views of the European Union.



### Right to respect for the home and the family

Attributes/ Indicators	Non-discrimination in family life	Parental rights of persons with disabilities	Right of children with disabilities to grow up in a family environment within the community
<b>Structure</b>	<p>23.1 Legislation enacted on family life which is inclusive of persons with disabilities, and which provides for the right to support or assistance for persons with disabilities and their families.</p> <p>23.2 No provision in the law relating to family life which restricts directly or indirectly on the basis of disability, the right to marry on the basis of free and full consent, to found a family, to decide on the number and spacing of children (including equal access to sexual and reproductive health-care services) and the right to adopt and to be adopted.<sup>i</sup></p> <p>23.5 Adoption of regulations and policies to ensure equal access to sexual and reproductive health-care services and family planning services for persons with disabilities.</p>	<p>23.6 Legislation enacted which prohibits the separation of children from their parents on the basis of the disability of one or both of the parents.<sup>iii</sup></p> <p>23.7 Adoption of policies to ensure the provision of support to parents with disabilities who request it to carry out their child-rearing responsibilities, including financial support, counseling, community based and personal assistance services.<sup>iv</sup></p>	<p>23.3 Legislation enacted which explicitly prohibits the separation of children from their parents on the basis of the disability of the child.</p> <p>23.4 Legislation enacted which ensures the right of children with disabilities without parental care to alternative care in a family setting within the community.<sup>ii</sup></p> <p>23.8 Adoption of a moratorium on new admissions to institutions of children with disabilities (idem 19.2.3).<sup>v</sup></p> <p>23.9 Adoption of a national policy for the deinstitutionalisation of children with disabilities, including timeframes and measurable goals.<sup>vi</sup></p> <p>23.10 Adoption of a national policy to ensure support to families<sup>vii</sup> of children with disabilities to prevent family separation, including the provision of appropriate and adequate social services for quality family-based alternative care options, to ensure the right of children with disabilities to a family life and inclusion in the community.<sup>viii</sup></p>
<b>Process</b>	<p>23.11 Budget allocated on measures to provide support or assistance to parents with disabilities to exercise their child-rearing responsibilities.</p> <p>23.12 Number and proportion of judges, notaries, health-care professionals, social workers, and related professionals trained on non-discrimination on the basis of disability, in particular concerning the right to marry, right to found a family, sexual and reproductive rights, adoption, parental rights, the obligation to provide procedural accommodations in legal proceedings, reasonable accommodation, accessible and alternative forms of communication, etc.</p>	<p>23.13 Budget allocated on measures to deinstitutionalize children with disabilities compared to the budget allocated to institutional care.<sup>ix</sup></p> <p>23.14 Number and proportion of staff of residential institutions for children, social workers and related professionals trained on the rights of children with disabilities to facilitate their deinstitutionalization.</p> <p>23.15 Budget allocated on measures to ensure the provision of support to children with disabilities and their families, and to provide alternative care in a family setting within the community.</p>	

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<b>Process (Continued)</b>	<p>23.16 Awareness raising campaigns and activities to promote and inform persons with disabilities, their families and the general public, on the rights of persons with disabilities in family life and relationships (including equal access to sexual and reproductive health-care services), on the right of children with disabilities to live in a family setting within the community, and to combat related negative attitudes, myths and stereotypes.</p> <p>23.17 Consultation processes undertaken to ensure active involvement of children and adults with disabilities, including through their representative organizations, children-led initiatives, etc., in the design, implementation and monitoring of laws, regulations, policies and programmes related to the rights of persons with disabilities in family life and relationships, including the right of children with disabilities to live in a family setting within the community. <sup>x</sup></p> <p>23.18 Proportion of received complaints on the right to respect for home, family and relationships, alleging discrimination on the basis of disability and/or involving 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; each disaggregated by kind of mechanism</p>	<p>23.21 Number and proportion of households with children with at least one parent with disability.</p> <p>23.22 Number of persons with disabilities accessing mainstream assistance and support services for the exercise of parental responsibilities, disaggregated by sex, age and disability, type of assistance/support, and proportion they represent out of persons accessing those services.</p> <p>23.23 Number of persons with disabilities accessing disability specific assistance and support services for the exercise of parental responsibilities, disaggregated by sex, age and disability, type of assistance/support, and proportion they represent out of all persons with disabilities requesting those services.</p> <p>23.24 Level of satisfaction of persons with disabilities with support services for the exercise of parental rights. <sup>xii</sup></p>	<p>23.25 Number of children with disabilities and their families accessing assistance and support services, disaggregated by sex, age and disability of the child(ren), type of assistance/support, and proportion they represent out of all families requesting those services.</p> <p>23.26 Number and proportion of children with disabilities in alternative care as compared to all children in alternative care ((in a family setting / in small group homes or other residential care facilities), disaggregated by sex, age, disability and kind of setting. (idem 7.26)</p>
<b>Outcome</b>	<p>23.19 Proportion of women and girls who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care (based on SDG indicator 5.6.1) by age and disability, geographical location (idem. 6.19).</p> <p>23.20 Number of persons with disabilities victims of discrimination on the basis of disability regarding family life and relationships whose rights have been restored or their violations remedied. <sup>xi</sup></p>		

- i This includes:
- No provision restricting rights directly or indirectly on the basis of disability, such as on the basis of decision-making skill, mental capacity, legal capacity status, etc.
  - No provision restricting the right to marry on the basis of disability, including through any form of deprivation of legal capacity (e.g. guardianship), in particular to persons with intellectual disabilities and persons with psychosocial disabilities.
  - No requirement conditioning the right to marry, including health related requirements, that directly or indirectly discriminates on the basis of disability. E.g. requiring judicial authorization for persons with intellectual disabilities to marry.
  - No requirement of a mandatory prenuptial medical examination which applies exclusively to persons with disabilities as a pre-condition to marry, to freely choose their partner, to receive financial assistance grants related to marriage, or for any other purpose that may restrict these rights on the basis of disability.
  - No restriction to parental rights on the basis of disability, including no provision allowing for the separation of children from their parents, or removal of custody from the parents, on the basis of the disability of one or both of the parents.
  - No restriction imposed on adults on the basis of disability concerning guardianship, wardship, trusteeship, adoption of children or similar institutions, where these arrangements exist in national legislation.
  - No provision allowing involuntary practices (including where consent is given by a third party, such as parents or guardians, in contradiction with Article 12 of the CRPD), such as forced sterilization, which violate the right of persons with disabilities, including children with disabilities, to retain their fertility and to preserve their identities.
- ii The reference to “alternative care in a family setting within the community” encompasses situations where the immediate family is unable to care for a child with disabilities, and requires States to undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting, in accordance with Article 23(5) of the CRPD.
- iii The actual or perceived disability of a parent, on its own or jointly with other considerations, should be prohibited as justification to discontinue or remove parental rights including custody rights. Determination of the best interest of the child should be based on non-discriminatory criteria.
- iv This should include a diverse range of non-mandatory support measures, including e.g. social protection benefits and support services which are tailored to the particular needs and circumstances of parents with disabilities (e.g. support measures for single parents with disabilities), parenting skills training programmes inclusive of persons with disabilities, parent peer support groups inclusive of parents with disabilities or those created by and for parents with disabilities, etc. All support services and related information and communications should be made accessible for all persons with disabilities, taking into account the principle of universal design.
- v This moratorium includes new admissions to both large and small group homes for children. For more details on what constitutes an “institution” in the context of this indicator related to children with disabilities, see CRPD Committee, [general comment no. 5](#) on Article 19, CRPD/C/GC/5, para. 16(c) in fine.
- vi On deinstitutionalization of adults with disabilities, see the indicators on Article 19 of the CRPD.
- viii Support measures must include the availability of early and comprehensive information, services and support to children with disabilities and their families, and be tailored to the particular needs and circumstances of the child with disability and the family, e.g. funding for parents of deaf children to learn sign language. All support services and related information and communications should be made accessible for all persons with disabilities, taking into account the principle of universal design. Information, services and support related to psychosocial disability should avoid medicalization of children’s distress and ensure that the child is supported directly and confidentially to express themselves within and outside the family.
- viii Policies should explicitly call for prioritising investments in social services to support families and communities to prioritize family preservation; if the immediate family is unable to care for the child, alternative care within the wider family should be prioritised, then quality family-based alternative care options, including kinship and foster care within family-based settings. See CRPD Committee, [general comment no. 5](#) on article 19 of the CRPD.
- ix This indicator requires the total amounts in order to compare the allocation of public budget in both directions.
- x 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>xi</sup> This indicator includes for instance:

- Persons formerly deprived of legal capacity on the basis of disability whose legal capacity is restored, restoring in turn family rights, including parental rights (e.g. regaining custody of their children)
- Persons with disabilities who have been subjected to forced sterilization, forced abortions, forced contraception, etc., and are entitled to reparation and redress.

<sup>xii</sup> Surveys on the level of satisfaction of persons with disabilities for the exercise of parental rights may prove useful as an assessment tool that captures the view of right holders.