

What has Article 12 got to do with it?

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Convention on the Rights of Persons with Disabilities



United Nations

194 countries in the world part of the United Nations

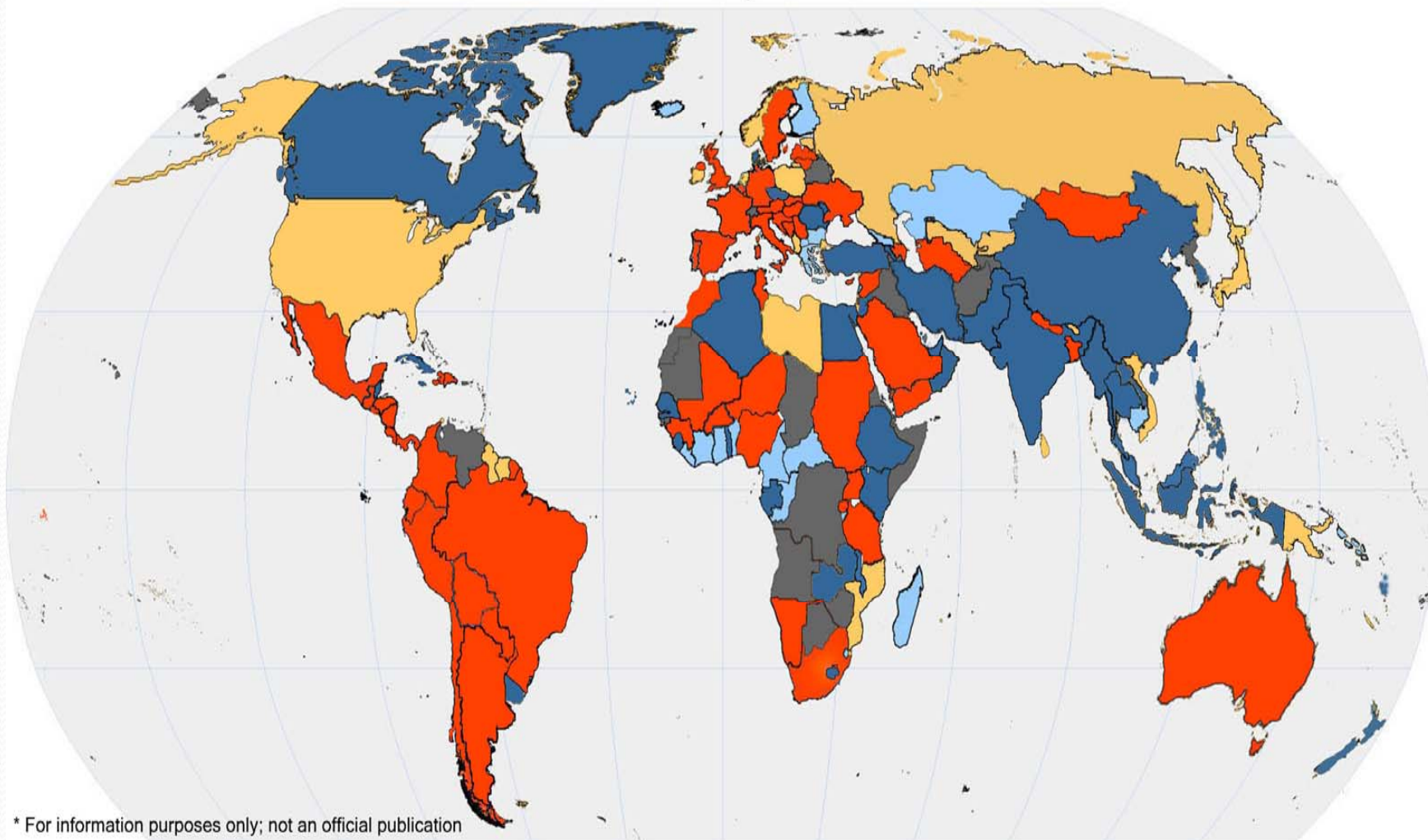
- **153 signatures**
- **110 ratifications**

Optional protocol

- **90 signatures**
- **63 ratifications**



■ Not Signed ■ Signed Convention ■ Signed Convention & Protocol ■ Ratified Convention ■ Ratified Convention & Protocol



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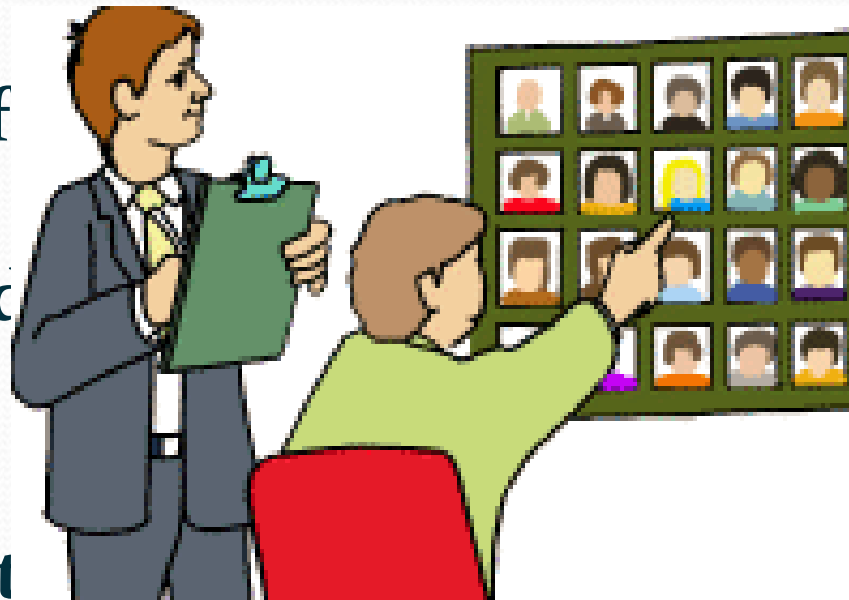
International Disability Caucus

- People with all kinds of disabilities from all around the world
 - People with intellectual disability and people with mental health difficulty worked together
 - Advocates supported by Inclusion International made important statements about being heard - about closing institutions and about making decisions.
- Robert Martin – II



Article 3 – General Principles

- Dignity and Autonomy
- Non discrimination
- Freedom to make ones own choices,
- Independence of others
- Participation and inclusion
- Accessibility
- Equal opportunit ,
- Respect for difference





Past – before the CRPD

**Substitute Decision
Making**

Non

Person

**Supported Decision
Making**

Person



Article 12.

**Being treated equally
by the law.**

**Article 12 is key to Ireland
ratifying the Convention**



Article 12 – Heartbeat of CRPD

Equal recognition before the law

- 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.**

From the moment you are born

Article 12

Equal recognition before the law

2. States Parties shall recognize that persons with disabilities **enjoy legal capacity on an equal basis with others in all aspects of life.**

Capacity to act – vote, relationships, marriage, buy a house.

“Open up possibilities and fend off unwarranted intrusions into the person’s life.”

Making Decisions about ourselves or everyone



Supported Decision Making

- 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.**

Assisted /Technical Support
Circle of supports,
Community of interpretation
Capacity of the decision



Safeguards

- 4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.**

Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights,

- will and preferences of the person,**
- are free of conflict of interest and undue influence,**
- are proportional and tailored to the person's circumstances,**
- apply for the shortest time possible and**
- are subject to regular review by a competent, independent and impartial authority or judicial body.**

The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

Guardianship - not a panacea?

Countries that have had guardianship argue that:

- Avoid legal declaration of not being equal before the law
- PROMOTE independence, dignity Freedom of choice
- Put PERSON first – not guardian
- Expense – legal representation
- Experience before courts negative
- Hard to remove
- Corporate Guardians –

It doesn't do what it says on the tin – does not protect persons rights

Amita Dhandra addressing the Adhoc Committee on behalf of IDC asserted:

Paternalism has never protected

“It has not been recognised that disability has been long equated with incompetence. This equation has not just been confined to social prejudice but has passed into law.”

Control money

Equal right to

- *Inherit property**
- *Control financial affairs**
- *Bank loans, mortgages**
- *Not deprived of their property**





Property and Financial Affairs

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities **to own or inherit property, to control their own financial affairs** and to have **equal access to bank loans, mortgages and other forms of financial credit**, and shall ensure that **persons with disabilities are not arbitrarily deprived of their property.**

Article 12

- Disabled people are to be respected as people like everyone else.
- As citizens
- In contracts
- Supported decision making
- Will and preferences



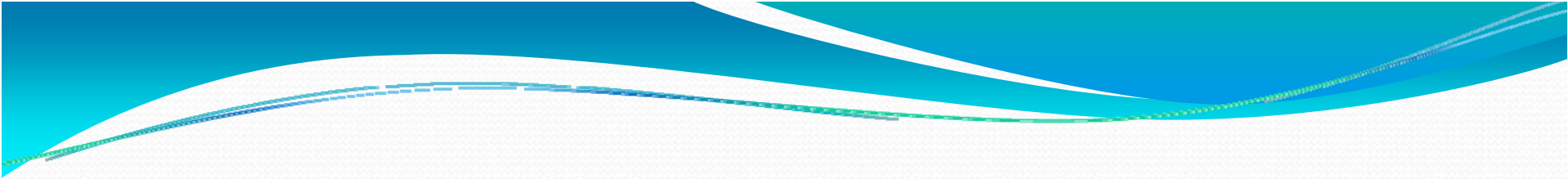
Circles of support and visionary person centred services

- Directed by **Will and preferences of the person**- ascribed by at least one person – **Community of interpretation** - **Not best interests principle**
- People picked by person - **Accountability is to the person not organisation** - Independent voice
- Normative pathway
- Dispel Legal Fiction of Rationality – we all make decisions in planned ways **Irrational choices are reality – defines who we are!** - **Right to make bad decisions** - **Dignity of Risk**
- **Shift from cognitive tests and functional tests? – functional support approach**
- **Family and friends support in decision making**
- **Contracts – house, marriage, BANKS!**
- **Prevent enforced treatment**
- Visionary – imagination - creative
- “Get the person”
- If it feels easy – **BEWARE**
- Examples - Nidus BC Canada - Representational agreements

New Decision Making paradigm – Personhood intact

- Advance planning – make will & wishes known
- Autonomous
- Provision of Information in appropriate way
- Accommodation – technical support including accessible and easy to read formats – **Shift in onus – our responsibility to communicate!**
- Advocate Support – in range of ways
- Supported Decision Making - Can they appoint network or representative – **responsible to person – circles of support – effective support**
- Co Decision Making – Appoint – directed by will and wishes
- Facilitated Decision Making - Appoint time limited - directed by will and wishes

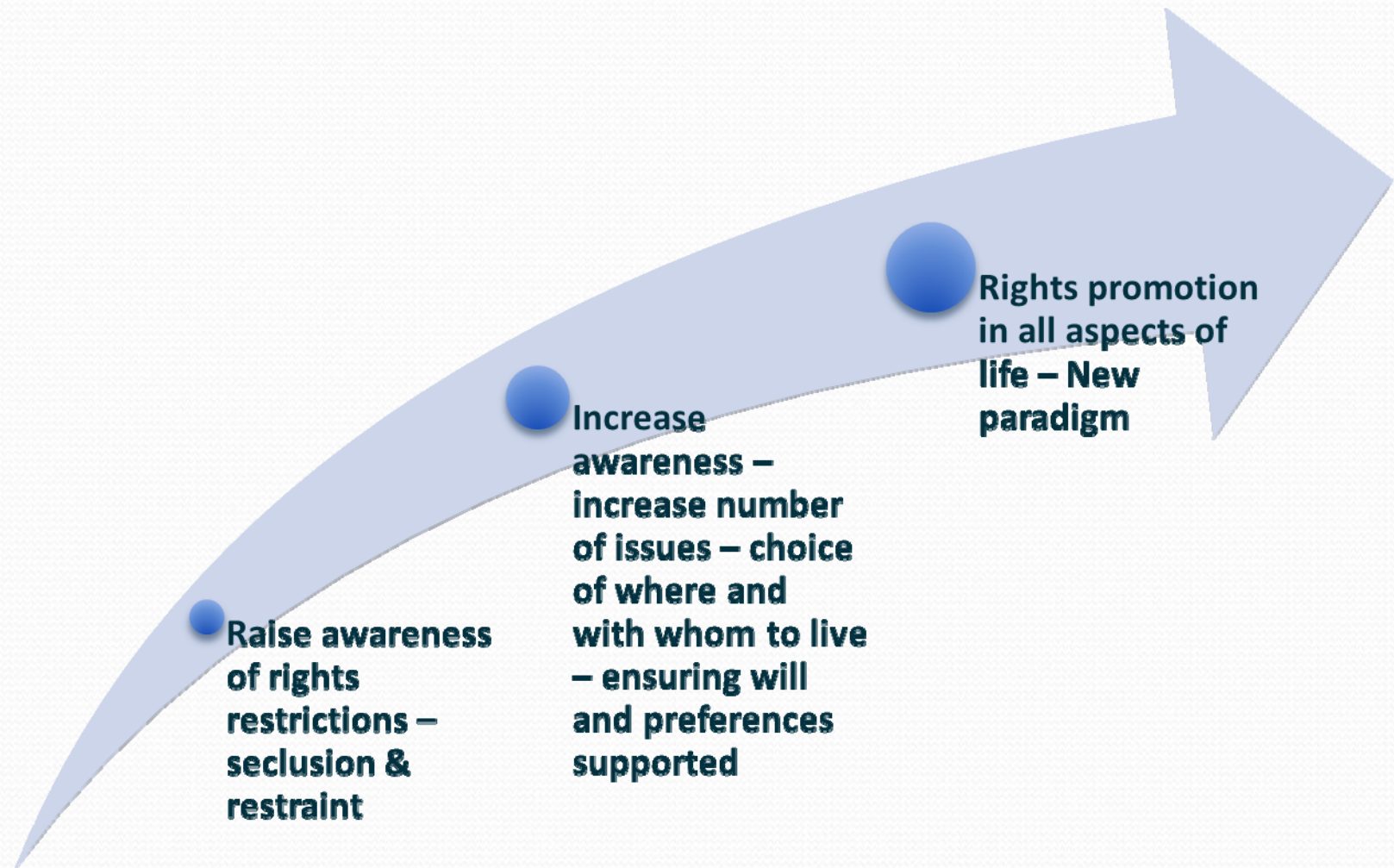
Onus on supporters to Maximise persons Decision Making Capacity

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- Coalition Core principles for reform of Irish Legal Capacity Law
 - Signed by Board of National Federation of Voluntary Bodies

 - Rights Training
 - Staff
 - Children and Adults
 - Families

 - National Federation of Voluntary Bodies submissions

Steps on ladder



3rd April – Coalition event on legal capacity legislation

- **Lana Kerzner** (Canadian lawyer specialising in disability law and policy): The Canadian perspective on legal capacity law and supported-decision making
- **Anna Nilsson** (European expert on legal capacity): Supported decision-making and the Swedish Personal Ombudsman System
- **Genevra Richardson** (Professor of Law Kings College London): Reflections on legal capacity law in England and Wales and the interface between legal capacity law and mental health law
- Irish professionals and experts by experience.
- 10:30 to 1:30 pm, 3 April 2012 at the Radisson Blu Royal Hotel, Golden Lane, Dublin 2.

Resources

- Human Rights – Yes www.hrusa.org
- Harvard Disability project www.hpod.org
- Disabled Persons International www.dpi.org
- RatifyNow www.ratifynow.org
- Easy to read versions
- ww.fedvol.ie/_fileupload/File/UN%20Convention%20for%20Persons%20with%20Disabilities.pdf
- Children's version www.unicef.org
- UN www.un.org/disabilities
- International Disability Alliance www.internaionaldisabilityalliance.org
- Office of High Commissioner Human Rights www.unhchr.org
- Inclusion international www.inclusion-international.org
- Inclusion Europe www.inclusion-europe.org