

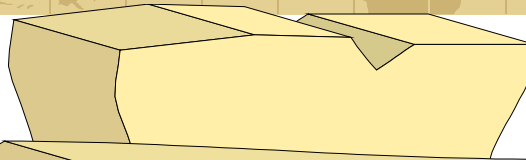
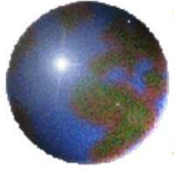
# *Convention on Rights of Persons with Disabilities & Mental Health Care*

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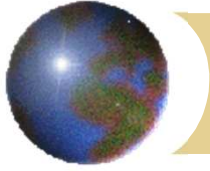


"....ALL PEOPLE ARE FREE AND EQUAL  
IN RIGHTS AND DIGNITY...."

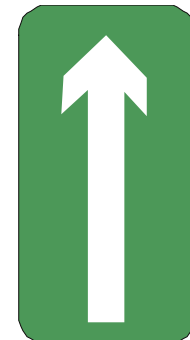
*Article 1*

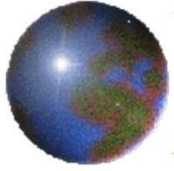
*Universal Declaration of Human Rights*





**The requirements of international human rights law should form the framework, and inform the spirit of any legislation concerning people with mental disorders or regulating mental health and social service systems.**

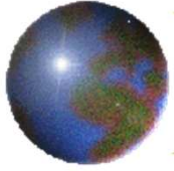




Widespread misconception that mental health legislation is only subject to the domestic discretion of Governments

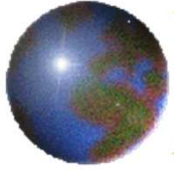


Governments are under an obligation to ensure that their policies and practices confirm to binding international human rights law



## *WHAT is the CRPD?*

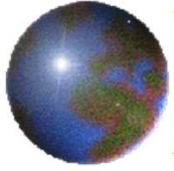
- ✚ Convention on **R**ights of **P**ersons with **D**isabilities
- ✚ The CRPD is the first new international human rights treaty of the new millennium
- ✚ The CRPD sets out a full range of, civil, cultural, economic, political, and social rights that governments are required to put into effect
- ✚ The CRPD supersedes previous human rights instruments (eg. MI Principles)



## *Why a Specific Convention ?*

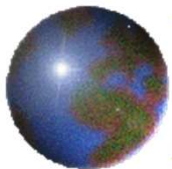
“Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of the society and violations of their human rights in all parts of the world”

CRPD creates NO NEW RIGHTS



## *CRPD – Timeline*

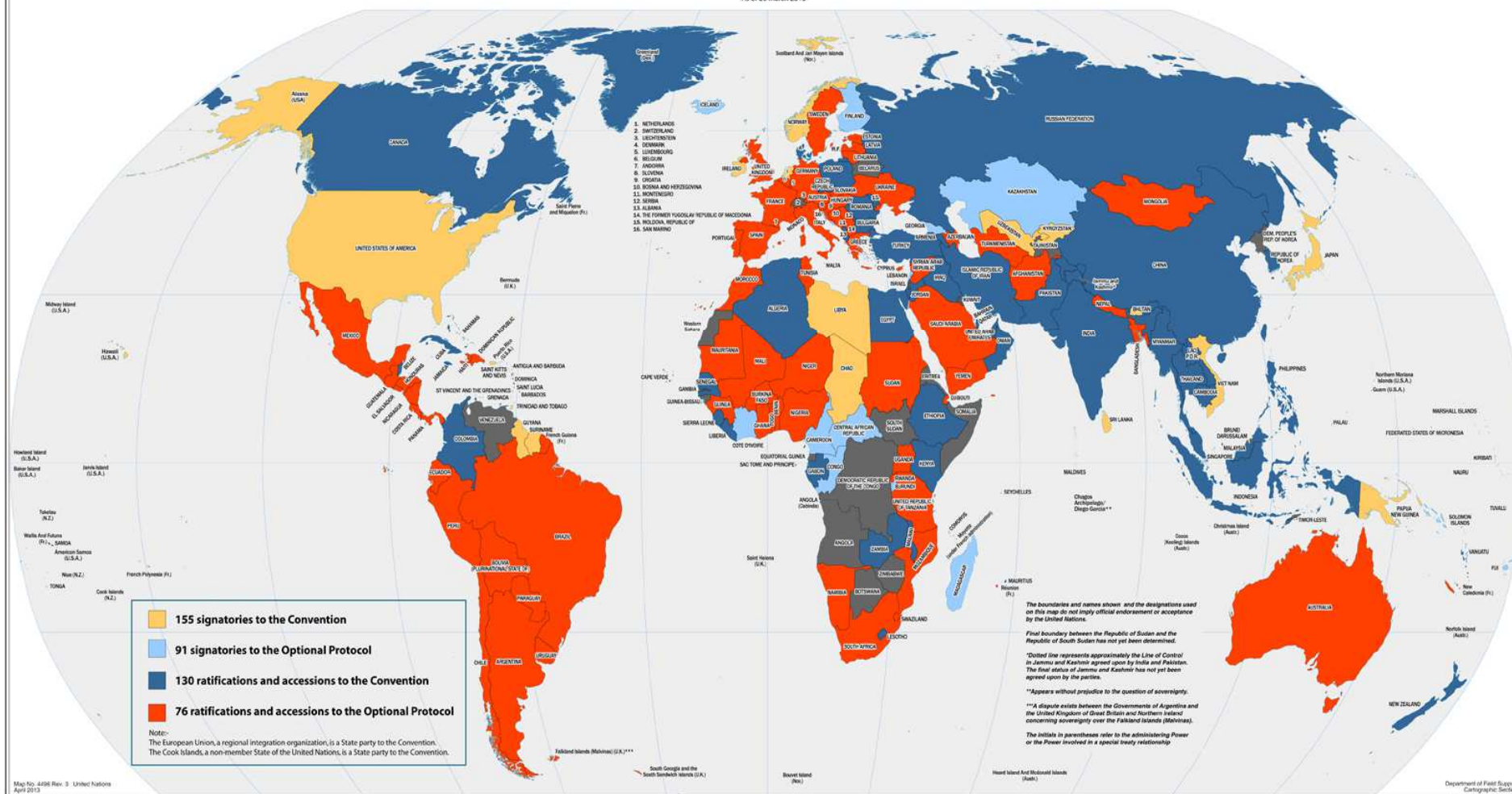
- ✚ Adopted by UNGA - 13th December 2006
- ✚ Opened for signature - 30th March 2007
- ✚ Entry into force - 3rd May 2008
- ✚ 155 Signatories to the Convention
- ✚ 130 Ratifications of the Convention
- ✚ 91 Signatories to the Optional Protocol
- ✚ 76 Ratifications of the Optional Protocol



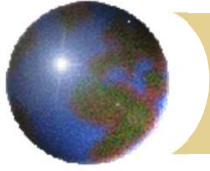
## CRPD and Optional Protocol Signatures and Ratifications

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

As of 20 March 2013



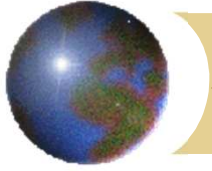




States may **sign** a Convention  
and/or OP (= a promise)

States may **ratify** the Convention  
and/or OP(= legally binding)

States may **implement** the  
Convention (= real people actually  
benefit!!!)



## *Paradigm Shift ?*

Objects of charity



**Subjects with rights**

Paternalism

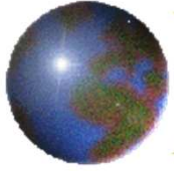


**Respect for human rights**

Burden on society

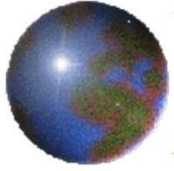


**Active members of society**



## *Who is covered under the CRPD ?*

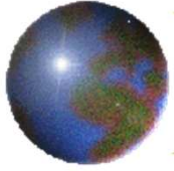
“Persons with disabilities **include** those who have long-term physical, **mental, intellectual** or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. (Art. 1)



## *How does CRPD define Disability?*

### Disability as a interaction construct

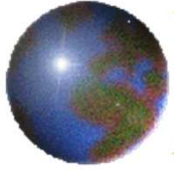
"Disability is an evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. (Preamble, CRPD)"



## *What is the purpose of the CRPD?*

'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'

(Art 1 of CRPD)

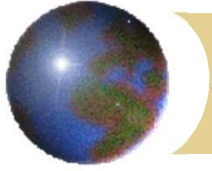


## *What obligations are created?*

General obligations, Art. 4, CRPD

Governments have three levels of obligation:

- ✚ *Respect*: States must refrain from interfering with the right of persons with disabilities
- ✚ *Protect*: States must take action to prevent non-state actors from interfering with the rights of persons with disabilities
- ✚ *Fulfil*: States must adopt appropriate legislative, administrative budgetary, judicial, promotional and other measures towards the full realization of the rights of persons with disabilities



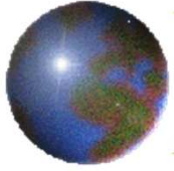
# *Obligations on State Parties*

## **Obligation of conduct**

“Progressive realisation”... but which rights are affected?

## **Obligation of result**

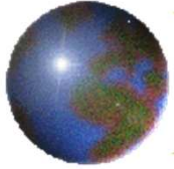
Immediately binding: e.g. non-discrimination



## *Key Principles of CRPD*

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.





# *Human Rights & Development*

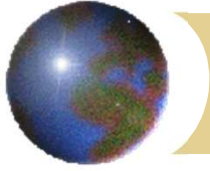
- **Developmental tool**

*“Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities”*

*“Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development ”*

Article 24 - Education

Article 27 – Work and Employment



# Convention Structure

Preamble

1. Purpose

2. Definitions

3. General principles

4. General obligations

5. Equality and non-discrimination

6. Women with disabilities

7. Children with disabilities

8. Awareness-raising

9. Accessibility

10. Right to life

11. Situations of risk and humanitarian emergencies

12. Equal recognition before the law

13. Access to justice

14. Liberty and security of the person

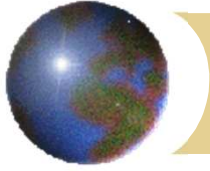
15. Freedom from torture or cruel, inhuman or degrading treatment or punishment

16. Freedom from exploitation, violence and abuse

17. Protecting the integrity of the person

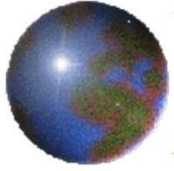
18. Liberty of movement and nationality

19. Living independently and being included in the community



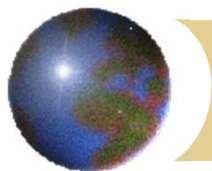
# Convention Structure

- 20. Personal mobility
- 21. Freedom of expression and opinion, and access to information
- 22. Respect for privacy
- 23. Respect for home and the family
- 24. Education
- 25. Health
- 26. Habilitation and rehabilitation
- 27. Work and employment
- 28. Adequate standard of living and social protection
- 29. Participation in political and public life
- 30. Participation in cultural life, recreation, leisure and sport
- 31. Statistics and data collection
- 32. International cooperation
- 33. National implementation and monitoring
- 34 to 40. International monitoring mechanism
- 41 to 50. Final clauses
- Optional protocol



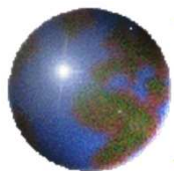
# International Monitoring

- **Conference of States Parties**
  - meets in order to consider any matter with regard to the implementation of the Convention (biennially or upon decision by the Conference)
- **Committee on the Rights of Persons with Disabilities**
  - a body of independent experts serving in their personal capacity
  - tasked with reviewing States' implementation of the Convention.



## *Treatment Gap - World*

Diagnosis	Treatment Gap %
Non-Affective Psychosis	32.2
Major Depression	56.0
Dysthymia	56.0
Bipolar Disorder	50.2
Generalized Anxiety Disorder	57.5
Panic Disorder	55.9
Obsessive Compulsive Disorder	59.5
Alcohol Abuse / Dependence	78.1



## *Treatment Gap - Europe*

Schizophrenia Treatment Gap

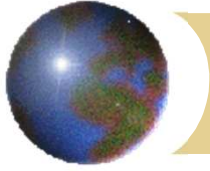
For Europe WHO Region

**35% to 45%**



## *WHO Recommends...*

**“Establish National Mental Health  
Programmes”**

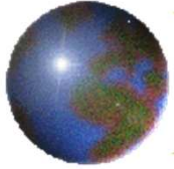


*CRPD says...*

## **Article 25 (a) : Health**

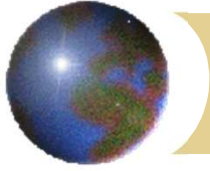
Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes





*WHO recommends...*

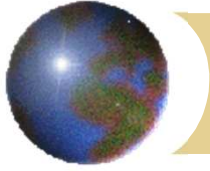
**“Make Mental Health Accessible in  
Primary Health Care”**



*CRPD says...*

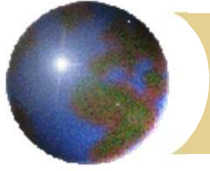
## **Article 25 (c): Health**

Provide these health services as close as possible to people's own communities, including in rural areas



## *WHO Recommends...*

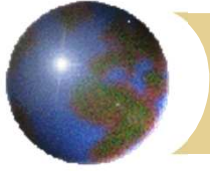
“Shift care away from institutions  
towards community care”



## *CRPD recommends...*

### **Article 19 (b) : Living Independently in the community**

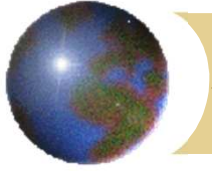
Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community



## *CRPD recommends...*

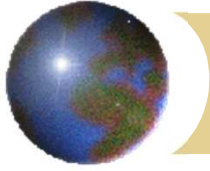
### **Article 26 Habilitation & Rehabilitation**

States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services



## *WHO Recommends...*

**“Educate the Public”**

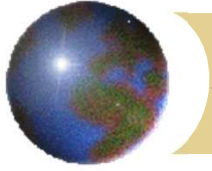


## *CRPD says...*

### **Article 8 : Awareness Raising**

States Parties undertake to adopt immediate, effective and appropriate measures:

- (a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
- (b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
- (c) To promote awareness of the capabilities and contributions of persons with disabilities.



## *WHO Recommends....*

“Improve and Increase the training of  
mental health professionals”

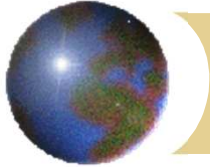




*CRPD says....*

**Article 26 (2) : Habilitation and Rehabilitation**

States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services



## **Article 15**

### **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

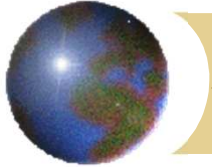
- All appropriate measures to prevent people with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment
- No one must be subjected to medical or scientific experimentation without his or her free consent

## **Article 16**

### **Freedom from exploitation, violence and abuse**

- All measures taken protect against and prevent exploitation, violence and abuse
- All appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of victims
- Recovery and reintegration must take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person

- Article 15 & 16 key to ending the abuses against people with mental disabilities



## *Advocacy Tool*

CRPD as an advocacy tool

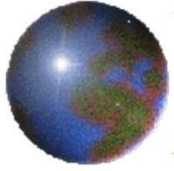
- Accessibility of mental health services

- Availability of mental health services

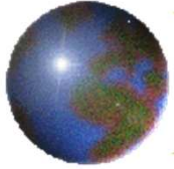
- Providing mental health services in an acceptable manner

- Improving quality of mental health services

And thus reducing the Treatment Gap in mental health services

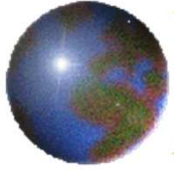


*So where are the arguments?*



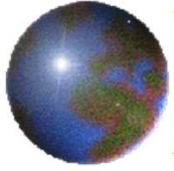
📍 Article 12

📍 Article 14



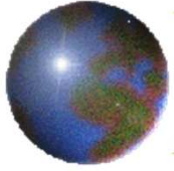
## *Article 12*

- ✚ Right to recognition everywhere as persons before the law
- ✚ Right to exercise their legal capacity on an equal basis with everyone else
- ✚ Right to support in exercising legal capacity



## *Debate around Art 12*

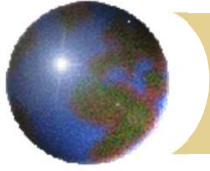
- ✚ What happens when someone needs a large degree (eg. 100%) support?
- ✚ Does this amount to substitute decision making?
- ✚ Does the Convention allow for substitute decision making in these exceptional circumstances?



## *What everyone agrees about Art 12*

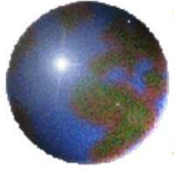
- ✚ Has implications for guardianship and mental health law
- ✚ Plenary Guardianship is not sustainable under CRPD
- ✚ Shift away from substituted decision making to supported decision making





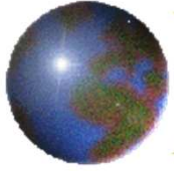
## *Art 14 : Liberty*

Persons with disabilities... are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the **existence of a disability shall in no case justify a deprivation of liberty**



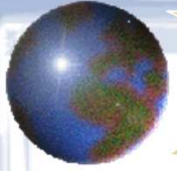
## *Debate around Art 14*

- ✚ Does Art 14 mean that disability alone cannot be a reason for deprivation of liberty?
- ✚ Does Art 14 mean that disability can never be used as a basis for depriving someone of their liberty?
- ✚ No non-consensual treatment ?



## *Article 12 & Article 14 imply ?*

- ✚ All persons with mental disorders have capacity at all times – Art 12
- ✚ No treatment without consent – Art 14
- ✚ Read together it is argued that CRPD means a complete ban on involuntary or non-consensual treatment ?



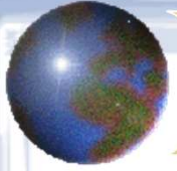
## *Incapacity*

Historically, incapacity is based on 3 different approaches

**Status approach :** presumes that a person with a specific type of disability (schizophrenia) lacks legal capacity

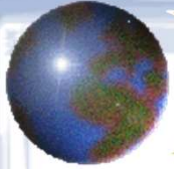
**Outcomes approach:** based on evaluations (right/wrong) of the decision made

**Functional approach:** based on a person's ability to perform a specific function, say for example understand a contract



## *Mental Capacity*

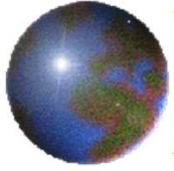
1. Understand the information relevant to the decision
2. Retain the information
3. Use the information as part of decision making process
4. Communicate the decision by any means



Mental Capacity = Legal Capacity

Or

Mental Incapacity = Legal Incapacity

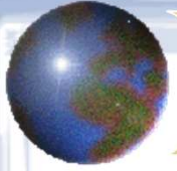


## *Legal Capacity & CRPD*

Legal capacity is a social or legal status which is independent of the person's ability or attributes

Legal capacity does not reflect a person's ability (or inability) to make decisions

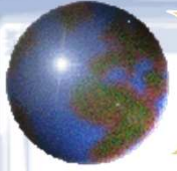
Legal capacity is about PERSONHOOD



## *Decision making Capability- Bach*

- Focus on ability rather than disability
- Decision making capability = ability (mental capacity) + support + accommodations
- Translates well into the CRPD's focus on supported decision making
- Recognizes that human beings are not always making 'in-dependent' decisions but rather are 'inter-dependent' on significant others

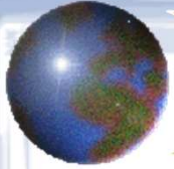




## *Decision Making Status*

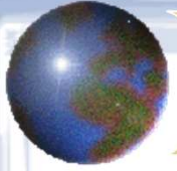
- Legally independent decision making status
- Supported decision making status
- Facilitated decision making status

Legal Capacity is not removed – but person can make decisions through any of the above status



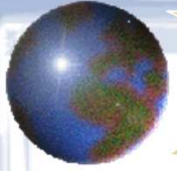
## *Independent decision making*

- Ability by himself or with assistance to understand information relevant to making a decision
- Ability by himself or with assistance to appreciate reasonably foreseen consequences of the decision



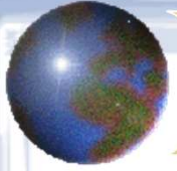
## *Supported Decision making status*

- Person acts in a way such that atleast one other person (*supporter*) who has personal knowledge of the person can
  - Ascribe to the persons actions, personal intent and will consistent with the person's identity
  - Take consequential actions to give effect to that will and/or intentions of the individual



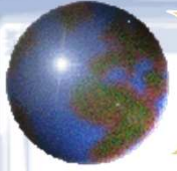
## *How should the supporter act?*

- Consult with the individual to ascertain current wishes
- Bound by the persons wishes expressed in a prior planning document and applicable to the current situation
- Be guided by any wishes/instructions expressed in the past and may be applicable in the current situation
- Be guided by the wishes expressed in current situation



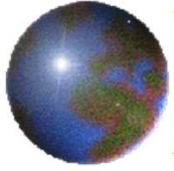
## *How should the supporter act?*

- Use reasonable diligence to ascertain the person's wishes and instructions
- Comply with the person's wishes and instructions that respects their dignity of risk
- Greater or lesser discretion in translating a person's will into action – depending on how much will has been expressed and taking into account best interests of the person



## *How is this different from substituted decision making ?*

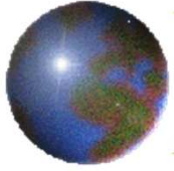
- Substitute decision makers not bound to comply with the person's wishes
- Supported decision makers are bound to comply with the person's wishes



## *Sweden-Personal Ombudsman*

1. Professional highly skilled person
2. No alliance with psychiatry, social services, family
3. Does what his/her client wants him to do
4. Long term engagement
5. User run NGO funded by State

<http://www.po-skane.org/ombudsman-for-psychiatric-patients-30.php>



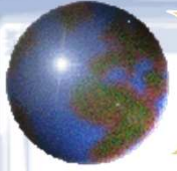
# *Supported Decision Making*

Prior Planning documents

Advance Directives -Scotland, Canada, US

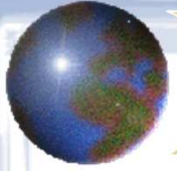
Enduring Power of Attorney





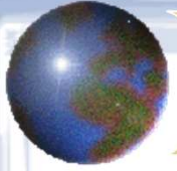
## *Facilitated Decision making status*

- Others facilitate the making of decisions based on **best interest principle**
- This would apply to
  - Those who are not legally independent or those who do not have a significant other who can understand their will/intentions
  - Individuals who have indicated as such in a prior planning document
  - There are significant others who know them well and are committed to acting for them, but are unable discern the person's current will or intentions to guide decision making



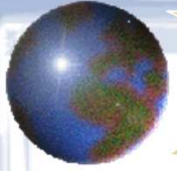
## *Facilitated Decision making status*

- Does not mean that the person does not have capacity to make decisions
- “Others are not able to discern a person's will and/or intentions sufficiently to assist its translation into decisions”



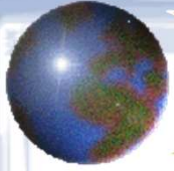
## *How is a facilitator appointed ?*

- Prior planning document – eg POA, advance directive
- By an administrative Tribunal



## *Best interest principle*

- Based on person's prior wishes, values, life history
- Improve the quality of person's life
- Prevent the quality of person's life from deteriorating
- Reduce the extent to which or rate at which a person's quality of life will deteriorate
- Decisions that outweigh the risk of harm



- Apply to one area, some areas or all areas of life
- No loss of legal capacity
- Temporary state
- Can move up/down the decision making status over time and for different decisions

