

# From interdiction to full legal capacity

## Abstract

Interdict and allow, a verbal antinomy with a conceptual distance that constitutes semantic extremes with deep meaning that humanity has gone through, from the enormous prohibition or interdiction of the legal capacity of people with disabilities, to the full permission of the exercise and enjoy your rights. In search of real legal equality, the Convention on the Rights of Persons with Disabilities introduced for “all members of the human family” (Preamble), a notable advance within the plexus of human rights, including dignity. With the interest that those postulates are fulfilled to the highest degree, and do not become empty or meaningless statements, through this essay some formal and practical deficits will become visible, in order to formulate recommendations for the exercise of the full legal capacity.

**Keywords:** interdiction, legal capacity, disability, dignity

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## Introduction

The advent of the new social model, which transformed the prohibition of rights to the full legal capacity of enjoyment and exercise of people with disabilities (also people with disabilities or PwD), has had difficulties in its application. This is because humanity's attitudinal change is not automatic, since it must undergo a transition process that will take years to achieve ideal harmony with that model. It has also been an immense challenge for legislators to regulate the new paradigm, which explains the commission of certain errors in that construction. The Convention on the Rights of Persons with Disabilities (hereinafter the Convention or CRPD), introduced within the plexus of human rights, including that of human dignity, a notable advance in the search for real legal equality for “all members of the human family” (CRPD Preamble, literal a). These postulates must be fulfilled to the highest degree, so that they do not become empty or meaningless statements. The following question is worth asking: “Does Colombia comply formally and practically with the Convention, in accordance with the principles that have inspired it, among them “respect for inherent dignity, individual autonomy, including the freedom to make one's own decisions?” decisions, and the independence of people” (CRPD, article 3)?” It is considered that the commitments acquired by Colombia, as a State Party, in relation to the Convention, require certain formal and practical advances for their compliance. It is not enough that it is legislated, but that it is done well, and on the other hand, that the practical execution of the laws is a reality so that these formal advances do not remain in a vacuum.

This essay is aimed at reflecting on intellectual and mental disabilities especially, insofar as the dimension of human sensitivity that it awakens is profound. So much so that the United Nations<sup>1</sup> points out that “15% of the world's population, like one billion people, live with some form of disability,”<sup>1</sup> including also the sensory and physical. Hence the need to address the study of the probable regulatory and practical deficit to approach, step by step, the full protection of PwD. That is why Palacios<sup>2</sup> states that “people with psychosocial or intellectual diversities live in a situation of special vulnerability with regard to the exercise of their human rights.” And later he maintains: “... the theoretical foundations of the assistance model still need to be further developed, and much more the instrumental methods of implementing said model in the different internal legal systems.” These methods are what give an ontic figure to the exercise of the

rights accredited by legislation to all people. This is where efforts must be applied so that PwD can be successful for the real recognition of their prerogatives. This is a transformation of ecumenical interest that also attracts the attention of both Human Rights defenders and the community in general. And it is constantly relevant since the advent of international regulations that have managed to move humanity with its “paradigm change” in favor of intellectual and mental PwD for their full legal capacity.<sup>3</sup>

The main objective is to analyze some national and international norms on disability, from the semantic perspective and their paradigmatic evolution. And the specific objective is to analyze the formal and practical advances in compliance with the CRPD. Legislative measures to protect PwD are based on the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities (“CIADDIS”, 1999), the first international human rights instrument specifically dedicated to persons with disabilities and in the Universal United Nations system, the CRPD, 2006.<sup>22</sup>

The Convention includes as persons with disabilities “those who have physical, mental, intellectual or sensory deficiencies” (CRPD, art. 1, second subsection). The States Parties must guarantee them the full exercise of their legal capacity to enjoy and exercise. In accordance with the principles that have inspired it, the CRPD enshrines among them “respect for the inherent dignity, individual autonomy, including the freedom to make one's own decisions, and the independence of people” (art. 3). The States Parties undertake, among many other things, to “take all pertinent measures so that no person, organization or private company discriminates on the basis of disability (article 4, literal e). In the case of Colombia and as scrutinized in this study, there is a deficit in the fulfillment of this postulate, as will be indicated when presenting the research results. In Spain, Law 8 of June 2, 2021, which came into force on September 3, 2021, reformed civil and procedural legislation, in order to establish support for “people with disabilities in the exercise of their legal capacity.” (BOE, no. 132 of 06/03/2021). This legislation appears in compliance with the CRPD ratified by that country with Law 26/2011 of adaptation to the Convention.

From a formal perspective, Spain has created regulations aimed at protecting the population with disabilities. A normogram in this sense is presented in Table 1.

<sup>1</sup>Wildebeest. *5 things you should know about people with disabilities*. 2021.

<sup>2</sup>In: <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/r/dpd/default.asp>

**Table 1** Spanish normogram on protection of people with disabilities

#	Normative	Basis
1	Royal Legislative Decree 1/2013	Approves consolidated text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion.
2	Organic Law 1/2015	Reform of the Penal Code.
3	Law 4/2017	Right of people with disabilities to marry under equal conditions.
4	Organic Law 1/2017	It guarantees the participation of people with disabilities without exclusions.
5	Organic Law 2/2018	It guarantees the right to vote for all people with disabilities.
6	Law 26/2011	Regulatory adaptation to the CRPD.
7	Law 8/2021	Support for people with disabilities in the exercise of their legal capacity.

As can be seen, in Spain there is abundant legislation in defense of the interests of people with disabilities. This shows that formal advances have been increasing. For this reason, it is worth saying that in that country human rights and human dignity are a priority and that the CRPD has been complied with from the different principles that have inspired it.

In Peru, Law 29973 of 2012 in its art. 3rd establishes for the person with disabilities “the same rights as the rest of the Peruvian population.” There is also a reference to “de facto equality”, which seeks to accentuate equality in the material and legal spheres, through the guarantee of “a conducive, accessible and equitable environment for its full enjoyment without discrimination.” The Peruvian figure of de facto equality should be understood as that practical treatment, that of everyday life and that of permanence in the protection of people with disabilities, that the social environment must provide them. We refer to the treatment that the disabled person must receive from the people with whom he must interact in the performance of his daily activities referring, for example, to his health, clothing, food, recreation, economic interests, and especially to the acts that They have legal connotation, whose decision must be made supported by someone. The interpretation of these prerogatives is based on the “principles and rights contained in the Universal Declaration of Human Rights,

the CRPD and in the other international instruments ratified by Peru” (num. 3.2, art. 3, idem.). The power to contract freely by the person with disabilities, in accordance with Peruvian legislation in its art. 9.2, Law 29973, is relevant in that that person “has legal capacity in all aspects of life, on equal terms with others.”

In Colombia, legislation and jurisprudence for the defense and protection of the disabled population is abundant. In the “Disability Normogram for the Republic of Colombia – August 2019” the extensive normative and doctrinal information on such a sensitive human event is displayed in its 45 pages. These regulations are structured in laws, decrees, resolutions, agreements, circulars, directives, and rulings on protection and constitutionality. The wide range of protective regulations for people with disabilities covers the following topics: National Disability System (SND), National Disability Council (CND), regulations on education, health, work, recreation and sports, culture, communications, tourism, housing, accessibility to the physical environment, coexistence, standards for the military and police forces, pensions, subsidies and economic benefits, and main pronouncements of the Constitutional Court on disability. The regulations that directly guide this essay are Law 1996/2019 and its Regulatory Decree 1429/2020. Law 1996/2019. An outline of its content is presented in Table 2.

**Table 2** Law 1996 2019 (August 26). Establishes the regime for the exercise of legal capacity of persons with disabilities of legal age

Chapter	Articles	Chapter name
I	7-Jan	General disposition
II	14-Aug	Mechanisms for the exercise of legal capacity and for the execution of legal acts
III	15-20	Support agreements for the celebration of legal acts
IV	21-31	Advance Directives
V	32-43	Judicial award of support
VI	44-50	Support people
VII	51	Legal acts subject to registration
VIII	52-56	Transition regime
IX	57-61	Repeals, modifications and final provisions

**For the purposes of this essay, art. 6th of the 1996 Law:**

Presumption of capacity. All people with disabilities are subjects of rights and obligations, and have legal capacity under equal conditions, without any distinction and regardless of whether or not they use support to carry out legal acts. In no case may the existence of a disability be a reason for restricting a person’s ability to exercise. The presumption will also apply to the exercise of the labor rights of people with disabilities, protecting their employment connection and inclusion. And when scrutinizing the art. 9 of the 1996 Law, it can be assured that it is not mandatory for a person with a disability to have support to carry out legal acts. It is up to the interested party to resort to one of the mechanisms to establish support. What’s more, it is stated there that you have the right to carry out these acts “independently”, which reaffirms the dictates of art. 6th idem., Insofar as with or

without support the person Holder of the Legal Act (hereinafter TAJ) can exercise his rights without restrictions. These norms of special significance are in line with the CRPD, in terms of the full legal capacity that is recognized for PwD. The execution of a legal act, for example, the contract and management of a banking product, such as opening or closing a savings or checking account, or the ownership and management of a credit or debit card, does not require the use of supports. However, as will be demonstrated, banking entities require the formalization of a support agreement, before a notary or before a conciliation center, or an award of support decreed by a judge.

Regulatory Decree 1429/2020. Establishes “measures to guarantee the right to full legal capacity of people with disabilities” and access to formal support for the exercise of their rights. Let’s look at Table 3.

**Table 3** Decree 1429/2020 (November 5). Regulates arts.16,17and22of Law 1996/2019

Section	Articles	Section Name
1	2.2.4.5.1.1 to 2.2.4.5.1.2	General disposition
2	2.2.4.5.2.1 to 2.2.4.5.2.8	From the formalization of support agreements and advance directives before conciliation centers and notaries
3	2.2.4.5.3.1	Final provisions

Although it is true that this norm was created based on the CRPD and other pacts and conventions on human rights, it is also true that in practice its compliance could be seen as a barrier to the full exercise of the legal capacity of people with disabilities. A formal support agreement to execute a legal act constituted by public deed or conciliation document, depending on whether it is carried out in a notary office or in a conciliation center, is a cumbersome and onerous activity, especially for a person with a disability. Managing a formal support agreement represents a barrier. It is an embarrassing activity for a PwD and his companion. They must execute a series of not very expeditious steps, enshrined in that regulation. For example: go to request the service, then prepare the application, present it, wait for a prompt and positive response, undergo the required interview, after setting a date and time, and finally, go to the respective office to sign the deed or the minutes, then wait for their copy to be delivered, which will be the support to continue with the procedure for which the support was conceived, in other official or private agencies, suffering a *via crucis* that the Convention condemns. And another barrier is economic, due to the onerous nature of this procedure. The same law considered that in notaries the fee corresponds to an act without a sum, which for 2021 was equivalent to \$62,700<sup>3</sup>(around US\$16.00), plus the cost for copies of the deed and VAT. And if it is a conciliation center, the rate is higher, as it amounts to 14 *smdlv*, which for 2021 was \$423,976 (a little more than US\$ 100.00), as deduced from art. 3rd of Decree 4089 of 2007.

Circular 670/2021 (October 14) Supernotariat: It is a mandatory guide that notaries must apply for the proper care of PwD and their supports. Although the government has offered training in Law 1996/2019 to operators of this system, it must be taken into account that notaries and conciliators do not have the professional training in mental health to adequately care for said population, presenting a practical deficit, because some notaries have shown a certain rejection of attention to cases of formalization of support agreements. Taking into account the theoretical framework within which this essay is inscribed, allow me to give the entity of “theory” to the “social model of disability.” This is because the construct<sup>4</sup> “Disability” in the context discussed in this essay, involves the concept of “theory”, understood as the “organized set of ideas that explain a phenomenon [disability], deduced from observation, experience or logical reasoning.”<sup>5</sup>

So through this study, it will be demonstrated that the here called “social theory of disability”, known by the authors as a social model,

<sup>3</sup>Law 1996/2019 (art. 16) and its Regulatory Decree 1429/2020 (art. 2.2.4.5.2.8), determined the fee as an act without amount, which for 2021 was regulated at \$62,700, by Supernotariado Resolution 536/2021 (art. 2).

<sup>4</sup>The word “construct” is used here under the same conceptual framework contemplated by the translator of the “International Classification of Functioning, Disability and Health (ICF) World Health Organization”: it has “the meaning of “theoretical concept”. ” or “idea” ... The reason has been the special relevance that the term has in this classification, since it is used to designate theoretical entities that occupy a specific place within its hierarchical structure, and that therefore, they need to be differentiated from terms that such as “concept” or “idea” are also used in it with a general meaning” (p. 21).

<sup>5</sup>Dictionary. Theory: [https://www.google.com/search?q=que+es+teor%C3%ADa&rlz=1C1SQJL\\_esCO843CO843&oq=que+es+teor%C3%ADa&aqs=chrome.69i57j0i51219.4136jlj7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=que+es+teor%C3%ADa&rlz=1C1SQJL_esCO843CO843&oq=que+es+teor%C3%ADa&aqs=chrome.69i57j0i51219.4136jlj7&sourceid=chrome&ie=UTF-8)

calls for the dismantling of barriers and attitudinal changes for the benefit of people with disabilities. And these changes have not yet occurred in the desired dimension, because although the birth of this approach is located in the United States and England towards “the end of the sixties of the 20th century”, as stated by Palacios<sup>3</sup> international legislation began around 1999 with the CIADDIS and was strengthened in 2006 with the CRPD. This transformation must be considered relatively novel, which demands greater dissemination and compliance among “all members of the human family.” This theory, or social model of disability, is what influenced the generation of international and regional legislation. This is why in the World Report on Disability (2011, p. 301), the World Health Organization (WHO) recommends:

“Gathering information on disability-related beliefs, attitudes and knowledge can help identify gaps in public perception that can be addressed through education and public information. Governments, voluntary organizations and professional associations should consider conducting mass communication campaigns to change attitudes on stigmatized issues such as HIV, mental health conditions and leprosy. Media participation is essential to ensure the success of these campaigns and to spread positive stories about people with disabilities and their families.”

On the other hand, as stated by Professor Anna Lawson, cited by researcher Israel Biel<sup>4</sup> “increasing<sup>6</sup> the collection of documentation and data related to disability, which is currently insufficient, an important tool would be obtained to improve the situation of people with disabilities in different societies.” So the doctrine on the human rights of people with disabilities considers it necessary to obtain broader and more precise information about said population and thereby move towards the completeness of human dignity, in its three dimensions: “live as you want, live well and live without humiliation.”

## Conceptual framework

Legal interdiction. For the purposes of this essay, interdiction must be understood as the prohibition on the exercise of legal capacity by people with disabilities. Prohibition that was coercively imposed by law and that kept human beings in the dark with the approval of an indolent society that decided to give its first signs of change for a little over fifty years. The Royal Spanish Academy (RAE) defines the word “interdiction” as the action and effect of “interdicting”, which at the same time means “to prohibit” or “to prohibit.”<sup>7</sup> And “civil interdiction” means “deprivation of civil rights defined by law.” Hence, with the CRPD we have gone from interdiction or prohibition to permitting the exercise of rights.

## Disability

The CRPD (Preamble e) recognizes that “disability is an evolving concept that results from the interaction between people with disabilities and the barriers due to attitude and environment that prevent their full and effective participation in society, on an equal basis.” of conditions with the others.” These barriers are what must be removed to consolidate the purpose of the Convention, and to do

<sup>6</sup><https://www.corteidh.or.cr/tablas/r31004.pdf>

<sup>7</sup>Interdiction, “to interdict”, “to prohibit”: <https://dle.rae.es/>

so it is necessary to detect them and begin to change the mentality of people in an attempt to eliminate or, at least, minimize disability. Since 1999, the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities<sup>8</sup> (CIEFDPD), defined the term “disability” as “a physical, mental or sensory impairment, whether permanent or temporary in nature, that limits the ability to perform one or more essential activities of daily living, which may be caused or aggravated by the economic and social environment.

This study focuses on functional disabilities of an intellectual and psychosocial nature, especially, in accordance with the “International Classification of Functioning, Disability and Health (ICF)”, of the World Health Organization (WHO) and the Pan American Organization of Health. Health (PAHO) [p. 49]. This does not mean that other disabilities, such as sensory and physical, do not deserve the necessary priority in terms of legal and material protection for people who have it. The aim is to limit the research topic to that disabled population, to meet the precise proposed objective. And this is especially relevant because, as Palacios<sup>3</sup> says, “the social model was more easily accepted with respect to physical or sensory functional diversity, it seems that there is still a long way to go and many barriers and prejudices that demolish when it comes to psychosocial or intellectual diversities.” This “path to be taken” is what we want to make visible in this study, for the good of people with psychosocial and cognitive disabilities, especially. All under the understanding that States must deepen and expand formal and practical advances in order to make equality a reality in all its forms and contents between people with or without disabilities.

Juridical capacity. In the preparatory document of the UN High Commissioner for Human Rights (p. 13), this concept is treated as follows:

“... can be defined as the capacity and power to exercise rights and contract obligations through one’s own conduct, that is, without the assistance of the representation of a third party. This concept logically presupposes the ability to be a potential holder of rights and obligations (static element), and implies the ability to exercise these rights and assume these duties to create, modify or extinguish legal relationships (dynamic element).”<sup>9</sup> On the other hand, legal personality refers exclusively to the static element.

## Human dignity

The Colombian Constitutional Court has developed in its jurisprudence the concept of human dignity as a normative entity under three guidelines:

(i) Human dignity understood: as autonomy or as the possibility of designing a life plan and determining oneself according to one’s characteristics (living as one wants). (ii) as certain concrete material conditions of existence (living well). (iii) as intangibility of non-property assets, physical integrity and moral integrity (living without humiliation).

“Live well, as you want and without humiliation”, constitutes the essential axis of protection for people with disabilities, without limits and without obstacles of any kind. Human dignity understood in this way makes sense for real and concrete equality in its broad dimension for the full exercise of rights for all people, with or without disabilities. And in accordance with the specific reference

<sup>8</sup>Multilateral Treaties. <https://www.oas.org/juridico/spanish/tratados/a-65.html>

<sup>9</sup>United Nations. <https://www.un.org/esa/socdev/enable/rights/documents/ahc6ohchrlegalcap.doc>

of human dignity, said court advocates three exclusive areas: Individual autonomy (materialized in the possibility of choosing a life project and determining oneself according to that choice), qualified living conditions (referring to the material circumstances necessary to develop the life project) and the intangibility of the body and spirit (understood as physical and spiritual integrity, budget for the realization of the life project). This conceptual framework of human dignity, embodied a little over twenty years ago, in Sentence T-881/2002, protects in a special way all natural persons, including, of course, those who suffer from a disability.

## Brief historical review

Disability throughout the history of humanity has had various treatments, starting with the dispensation model. In prehistory and antiquity, PwD were “abandoned or dead”, despite the fact that “trepanations (wounds in the skull so that “evil would flee”) were attempted as curative measures.”<sup>5</sup> Following Valencia<sup>5</sup> disability was considered a “mark of sin” within Hebrew society. In China, the method of “cynotherapy [therapy with dogs or other animals] and massages was used to treat” these people. In Sparta, as in Athens, children who were considered “weak” were abandoned or left to die (pp. 11-13).

In the Middle Ages the church had an ambivalent position. Infanticide was “condemned” while “deformed”, “abnormal” or “defective” people were rejected and persecuted by civil and religious authorities.<sup>5</sup> In the Protestant Reformation, disabled people were called “inhabited by the devil.” And a mentally disabled child was even executed. With the Valencian humanist Juan Luis Vives y Jofré, what would be called the rehabilitation model began, after achieving the admission of the “imbalanced” to hospitals so that “diagnoses, prognoses and treatments could be carried out.”<sup>5</sup> In industrial society (1780-1790), as Valencia<sup>5</sup> says, capitalism left a large number of crippled and mutilated people, who were separated from providing their labor services. It was in that context “that the concept of “Disability” began to be used, understood as the inability to be exploited in order to generate profit...” (pp. 31-32).

## Legislative evolution on disability

The Colombian Political Constitution of 1886, art. 17, due to his egocentrism, was so severe that the “notorious mental insanity and judicial interdiction” were reasons for the suspension of the exercise of citizenship. This meant for these people the departure from the orbit of the law of the time, since the State was above the human being. It was the aforementioned model of dispensation. The person with a disability was separated from the rest of society, and his or her citizenship rights were suspended. Worse still, it is not known what the parameter was to establish the “notorious mental derangement.” This meant that a certain behavior, even normal, of a person, which did not fit with the average behavior of others, would be enough to apply such a severe measure. Well, “dementia” would not be diagnosed by health professionals, but by public notoriety, a measure that is repugnant to human rights, especially human dignity.

The original art. 140 of the Civil Code (Law 84/1873), considered void the marriage of “furious madmen, as long as they remained insanity and fools” who had been judicially declared interdicted from the management of their assets. The art. 545 *idem.*, Established that: “The adult who is in a habitual state of dementia must be deprived of the administration of his property, even if he has lucid intervals.” “Habituality” would be the parameter to decide that a person with abnormal behavior in relation to others was “insane.” Later came art.

8 of Law 95/1890 and modified the previous text to read as follows: “An adult who is in a habitual state of imbecility or idiocy, dementia or furious madness, will be deprived of the administration of his property, even if he has lucid intervals.” This norm was stronger than the previous one, as it categorized certain behaviors with a much more pejorative and hateful nomenclature, such as calling people imbeciles, idiots or raging madmen, who denoted a behavior that today is called intellectual or cognitive disability. Those names that the nineteenth century legislator categorized to refer to people with cognitive and psychosocial deficiencies, were declared unenforceable by the Constitutional Court,<sup>6</sup> after considering them contrary to the principle of human dignity.

As you can see, today the expressions furious madman, stupid, imbecile, idiot, and others like moron, cretin, are ominous. However, we must not lose sight of the fact that in the CRPD (literal Preamble e), “disability is a concept that evolves”, an issue that must be addressed when interpreting these concepts, given that nosology also does the same. This is how it appears in Sentence<sup>6</sup> when the National Institute of Legal Medicine intervenes: “The Civil Code [of 1873], for its part, continues to use terms “that at the time constituted or were part of the nosology medical and psychiatric of that time”, and mentions that in art. 53 of Decree 2820/1974, the legislator replaced “the expression “insane child” with “when the child suffers from severe permanent mental incapacity””. Continuing with the normative analysis, note that art. 545 of the Civil Code was finally repealed by art. 119 of Law 1306/2009. However, it is curious that in art. 48 of this Law 1306, the invalidity of the “acts carried out by the person with absolute mental disability, interdicted”, was maintained, even if they had been executed in a “lucid interval”, this aspect which, as has been analyzed, has been since the validity of the Civil Code. 1873, almost 150 years ago. And finally Law 1996/2019 ended this regulation, repealing the aforementioned art. 48 of Law 1306/2009, with which that discussion was overcome.

It should be noted that the Committee on the Rights of Persons with Disabilities in 2016 recommended that Colombia as a State Party to the CRPD adopt a plan for the “immediate repeal of provisions that restrict the full recognition of the legal capacity of persons with disabilities,” including Law 1306 (2009)...”. However, Law 1996/2019 in its repeal chapter left art. 54 of that Law 1306, which in its 5th section establishes: When the adult minor has absolute mental disability, the curator will act in the same way as the curator of a person in said condition and will be obliged to request the interdiction of the ward from puberty and in any case before the ward reaches of age, under penalty of being liable for any damages caused to the ward or his or her heirs. It is therefore incomprehensible that the possibility of advancing an interdiction process, in itself prohibited by the CRPD and Law 1996/2019, persists. This reflects that formally, the legislature forgot to repeal that rule. I forget that it allows us to affirm that Colombia has that specific deficit in compliance with the Convention. What has been stated so far reflects the difficulty in eradicating the concept and phenomenon of “interdiction”, its effects and other meanings in the field of the exercise of legal capacity. That is why in this study, we seek to make visible this conceptual transition from the prohibition to the full legal capacity of PwD, noting the legislative change that has been undergone and its particularities.

In terms of normative analysis, it is worth presenting a curiosity about the legislator in that, perhaps without realizing it, he twice repealed several legal provisions. Note that the General Process Code (Law 1564/2012) had already repealed arts. 40 to 45 of Law

1306/2009, while Law 1996/2019 repealed arts. 1 to 48 of that law, which once again repealed those arts. 40 to 45. That is, the figure of “rederogation” arose<sup>10</sup> of legal norms. Surely this does not connote harmful or transcendental controversial practical effects, but it could be understood as a lack of care when legislating. Regarding the linguistic treatment of disability, Table 4 summarizes its legislative evolution:

Despite the anthropocentrism that inspired it, the 1991 Constitution gave disabled and mentally retarded treatment to PwD. Fortunately, the Constitutional Court in Sentences,<sup>7,8</sup> established an expression consistent with the CRPD and said that the following should be used: “people in a situation of disability.” This marks a fundamental semantic change in favor of treatment with respect for human dignity: “without humiliation.”

## Methodology

The theoretical framework set out above includes or is based on the assumptions of protection and support for people with intellectual and mental disabilities, especially, taking as a reference the social model or “theory” of disability, concentrating research on formal advances and practical for compliance with art. 4th literal e) of the CRPD, regarding the full exercise of legal capacity. The inductive method allows us to lead us towards that purpose, based on the information provided by the First Notary of Guadalajara de Buga on the public deeds of formalization of support agreements, which are constituted in what they call Mendenhall, et al.,<sup>9</sup> the experimental unit<sup>11</sup> or analysis for that purpose. There is also statistical data offered by the two Buga Family Courts on the judicial processes for assigning support. This indicates that the theoretical framework is connected to the method and objectives proposed in this essay, seeking congruence in the research. All of this becomes one of the factors that guide its validity and reliability.

The validity of this study is based on the objectivity of the data and information that have been collected. The statistical data are extracted from public documents that rest in the notary’s office and in the indicated courts, and from there the variables that allow the users of the support agreements to be characterized were established in relation to the aspects that are deduced from there. The interviews carried out with users of the notarial procedure for formalizing support agreements and with notaries, constitute another source to answer the research question. These interviews are based on the legal regulations analyzed: Law 1996/2019 and its DR 1429/2020, which is why they are in themselves valid to support this question that converges in the hypothesis posed. Reliability is based on the relevance and usefulness of the research instruments in relation to the objectives. The results will be presented without bias of any kind. In the same way, in the production of the information there has been absolute immediacy of the researcher, an issue that offers greater security in the analyzes presented. In this study, quantitative and qualitative research instruments have been used. The first was achieved due to the quantification of variables that served as support to carry out the analyzes that support the established objectives. Within the qualitative there are interviews with people with disabilities, notaries, and analysis of documents containing national and international legislation and official information. Such instruments are shown in Table 5.

<sup>10</sup>“Repeal”: neologism suggested by the author of this essay, to mean that a provision is repealed two or more times.

<sup>11</sup>“An experimental unit is the individual or object on which a variable is measured. A measurement or data is obtained when a variable is actually measured on an experimental unit”: Mendenhall, Beaver et al. (p. 8).

**Table 4** Normative evolution of the concept of intellectual and psychosocial disability

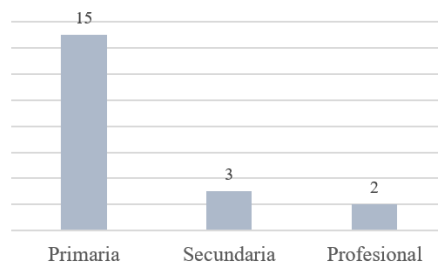
Year	Normative	Descriptor
1886	Political Constitution, art. 17	Notorious mental alienation.
1873	Law 84, art. 140 (Civil Code)	Furious madmen and fools.
1890	Law 95, art. 8th	Idiot, idiot, madman, raging madness.
1971	Declaration of the rights of the mentally retarded	Mentally retarded.
1974	Decree 2820, art. 53	Severe mental incapacity.
1975	Declaration of the rights of the disabled	Impaired, incapacitated (disorders – deficiencies of any origin).
1983	Convention 159 on Vocational Rehabilitation and Employment (ILO)	Disabled person: physical or mental.
1991	Protection of the mentally ill	Mental illness
1991	Political constitution	Art. 13: Manifest weakness due to mental condition. Art. 47: Physical, sensory and mental disabilities. Art. 54: disabled people.
1993	Situation of people with disabilities in the American continent (Resolution AG/RES. 1249)	People with disabilities.
1999	Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities	Deficiencies: physical, mental or sensory.
2006	CRPD, art. 1st	Deficiencies: physical, mental, intellectual or sensory.
2019	Law 1996	People with disabilities
2020	Minsalud Resolution 113	Disabilities: physical, auditory, visual, deafblindness, intellectual, psychosocial (mental) and multiple.
2021	International Classification of Functioning (WHO)	Disabilities: physical or motor, sensory, intellectual, mental

**Table 5** Research instruments

Quantitative	Qualitative
Statistical data	Interviews Documents
Quantification of variables by age, sex, socioeconomic status, medical diagnosis, education, reason for support, relationship with the support person.	Interview users of the notarial service to formalize support agreements.  Structured interview with notaries.
	International Treaties and Agreements on Disability.  National regulations. Jurisprudence. Official documents.

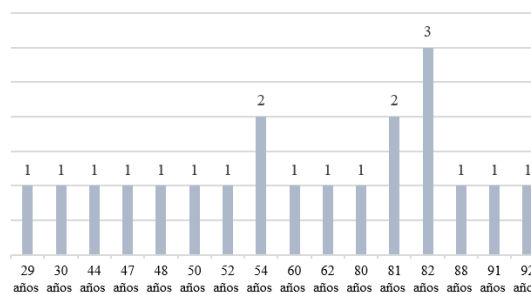
The results of this research are developed in accordance with the objective stated above: the study of formal and practical advances in Colombia in compliance with the CRPD, aimed at the full recognition of the legal capacity of intellectual or mental PwD, especially, established as a result of the novel paradigm that arises as a response against the dispensation model, one of whose forms has been the interdiction or prohibition of the full exercise of rights for the disabled population. All cases of support agreements advanced in the First Notary of the Guadalajara Circle of Buga, Valle del Cauca, Republic of Colombia, in force of Law 1996/2019, from August 2020, until December 2021, were analyzed for a total of twenty (20) cases, which constitute the population<sup>12</sup> object of analysis.<sup>9</sup>

The selected variables consisted of determining the education, age, social stratum, medical diagnosis of the Holder of the Legal Act (TAJ), reason for the support agreement, and kinship relationship or affinity with the Support Person (PA). These variables are related to each other in terms of the protection needs of the intellectually and psychosocially disabled population. For example, Figure 1 indicates that 3/4 of the cases of formalization of support agreements advanced in that notary office correspond to PwD who have reached primary school at most. Only two people are high school graduates and the same number are professionals. This indicates that the need to carry out legal acts for PwD is found in a population with little education.



**Figure 1** TAJ education.

Figure 2 refers to a quantitative variable, relative to the ages of the TAJs. There it is noted that the youngest notarial user is 29 years old and 90 years is the maximum age.



**Figure 2** TAJ ages.

<sup>12</sup>“A population is the set of all specific data of interest to the researcher.” Mendenhall, W., J. Beaver and M. Beaver, in “Introduction to Probability and Statistics”, p. 8.

The average age of the people within that item is 64. But there is a particularity, that a little more than 50% of these people are over 60 years old, so it can be stated that within this range Most of the people with disabilities find that they need to carry out some legal act. It is striking that among the users of the notarial service for the formalization of a support agreement there is no population between the ages of 18 and 28. And on the contrary, the majority of users are concentrated in ages over 50 years. Of the twenty cases analyzed, 50% correspond to ladies whose ages range between 50 to 92, and the other 50% to men between 29 to 91 years old. This means, on the one hand, equality in the number of people of both sexes, and on the other, that the male population is likely to require support at a much younger age in relation to women.

In the stratum variable<sup>13</sup> socioeconomic level in Figure 3, it can be seen that the PwD who go to the support agreement mechanism are concentrated in strata 2 and 3, and correspond to 16 people, that is, a little more than 2/3 of them. There is another connotation: this variable has a certain correspondence with the low educational level of the majority of users. It is concluded that people with little schooling correspond to a medium socioeconomic stratum.

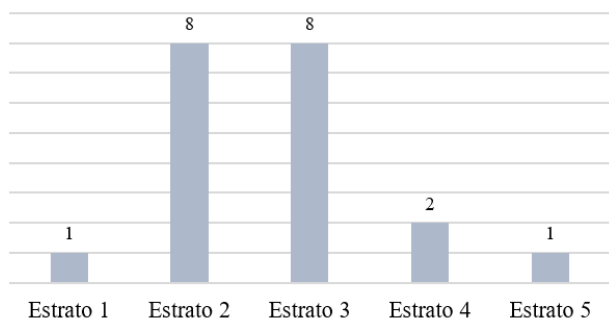


Figure 3 TAJ socioeconomic stratum.

Figure 4 shows the variable called medical diagnosis. It is observed that schizophrenia, Down syndrome, Alzheimer's and mental retardation account for approximately 89% of the total number of people who came to request and obtained the notarial service. This indicator is useful in order to pay greater attention to this population, since it groups the majority of cases. This also explains that the low educational level of this population is in line with such diagnoses.

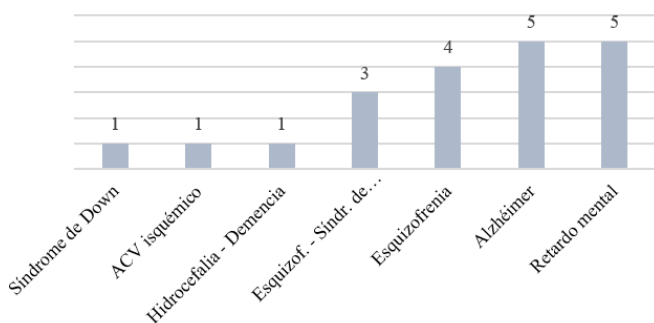


Figure 4 Medical diagnostic.

Statistical information provided by the Buga Health Secretariat,<sup>14</sup> indicates that there are a total of 2,649 people with disabilities registered, of which 509 have a diagnosis of intellectual disability and

<sup>13</sup>Law 142/1994 (art. 102): Stratum 1) means Low-low, 2) Low, 3) Medium-low, 4) Medium, 5) Medium-High and 6) High.

<sup>14</sup>Buga oblation, census/2018: 127,545 people. The 2,649 PwD represent around 2.08% of the 2018 census population. 2018

216 with mental disabilities, for a total of 725. This figure represents 27% of PwD, meaning that 73% It corresponds to people with sensory and physical disabilities.

The Buga Family Courts reported a total of 30 support award processes until 2021. The Second Notary Office reported that it has not processed support agreements. There is also no knowledge of these matters brought forward in conciliation centers. If it is taken into account that the First Notary Office has taken on 20 cases, plus the 30 advanced in courts, there is a total of 50 people with mental and intellectual disabilities who have required a support procedure in force under the 1996 Law, since August. 29/2020 until December 2021. These 50 people, with respect to the total of 725 with mental and cognitive disabilities in Buga, correspond to approximately 6.8% of the interested people who came to request one of the methods for the full exercise of their legal capacity. These data constitute a sample of what could be happening in other municipalities in Colombia and many countries, which would merit continuing this work in other regions.

The 2018 population census for Colombia estimates that there were 48, 258,494 people.<sup>15</sup> Now, if for a population of 127,545 like that of Buga/2018, there were around 725 people with mental and psychosocial disabilities, this indicates that in Colombia in that year, there would be more than 274 thousand people with these forms of disability. This quantitative analysis, as simple as that, is pointing out that it is urgent to apply ourselves to facilitate the way of life of this immense number of people, create mechanisms for total coverage, simplifying procedures, and with the support of appropriate public policies until these purposes are achieved.

Figure 5 shows the variable related to the relationship or affinity of the support person with the TAJ. It highlights that parental closeness between parents/children/siblings is the call to support PwD. However, it cannot be ignored that in four cases, representing 25%, it was the friends of the TAJ who came out to support them. This means that there is family and social solidarity in this environment.

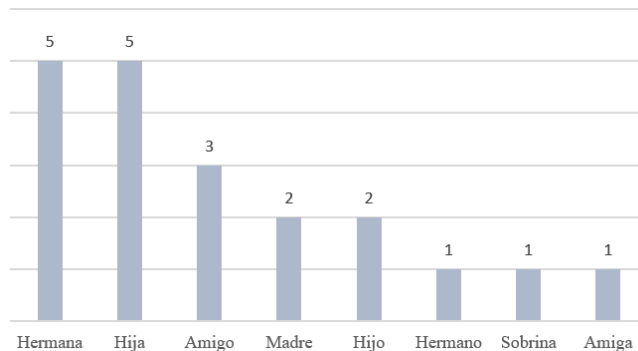
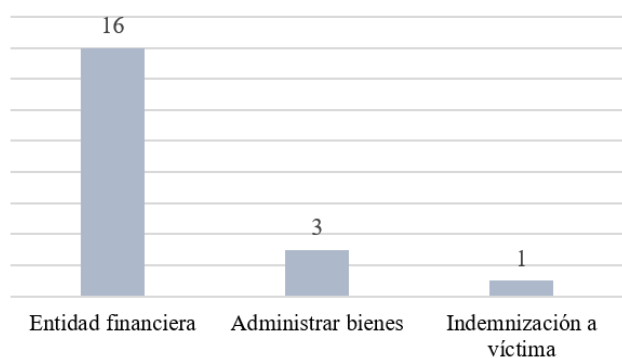


Figure 5 Relationship or affinity of the PA with the TAJ.

Figure 6 shows one of the most relevant variables of this study, in that the reason why people with disabilities went to the Notary Office to immerse themselves in a support agreement process was that officials from the financial sector They denied the banking service to which they were obliged to provide. If such servants had complied with the Convention discussed in this essay, it would not have been necessary for men and women, with functional diversity, of various ages, with low education and limited economic resources, to have wandered until they reached a notarial office to beg what they could have attended to promptly and efficiently there.

<sup>15</sup>National Administrative Department of Statistics (DANE). 2018.



**Figure 6** Reason for Support Agreement.

And in accordance with the merited art. 6 of Law 1996/2019, every person and entity must satisfy a PwD, with or without support, the autonomous and independent exercise of legal acts, even with the possibility of making mistakes, taking risks and making mistakes, in response to those principles of autonomy and independence (art. 4 no. 2 idem). Those legal acts that were denied consisted of obtaining payment of the money resulting from a pension, which is deposited in a monetary entity. There they are offered a banking product such as a debit card, which involves validation and personal handling to withdraw the money, rights that were denied to them after mistakenly considering that they should go to a notary to formalize a support agreement in accordance with the regulations that have been analyzed previously. As announced, the qualitative information consisted of interviews carried out, on the one hand, with all the people who formalized a support agreement, and on the other, with notaries. For the main objective of this study, the structured questions focused on knowing from the interviewees the aspects that lead to establishing whether the formal and practical advances of Colombia's commitments with the CRPD have been fulfilled, or if, on the contrary, they have been fulfilled. It requires adjustments and future developments to eliminate barriers and improve attitudes towards people with disabilities.

Interview with Legal Act Holders and Support Persons. Regarding practical advances, both the holders of the legal act and the people they support were asked what the objective was of appearing at a notary's office for this procedure. Some responded that they needed to manage or transfer some property, another said that they were going to carry out a compensation procedure as a victim in a particular situation that arose; Others expressed that their interest was to go to a banking entity to pay their retirement pension payments and manage their debit card, and still others said that they needed to process their pension with their respective entity. The latter correspond to the 16 people in Figure 6, relative to the variable "Financial entity". The people who expressed their need to go to a banking or pension entity for the processing of their interest were asked the reason why they were not assisted, to which they said that there they were required to present a deed or a document record of formalization of support agreement in a notary or conciliation center, or a support award before a judge. This is then the reason why their request was processed at the notary.

Interview with Notaries. Now, in relation to the interview with notaries, a conversation was held with at least ten of them. They were asked about Law 1996/2019, especially about their perception of the figure of "support": all were skeptical that it could lead to mismanagement by support people of the assets of people in situations of need disability. They also said that some people whose

intellectual deficiency is profound, or who are in a coma or have a severe psychosocial disorder, would not be in a position to issue their will, and therefore there would be no place for this procedure to be carried out by a notary. They were asked about their perception of the financial sector's requirement for support agreements for people with certain intellectual or psychosocial disabilities for pension and payment procedures, and they responded that there is a duality in the legislation, because while in art. 6 of Law 1996/2019 it is said that no support agreement is required, since legal capacity is presumed, and that however, in art. 19 idem., it is suggested that it is necessary to formalize a support agreement and be assisted by the support person, because otherwise the legal act carried out would be vitiated by relative nullity. Notaries were perceived to be afraid to advance support agreements because they suggested that it could be done to harm PwD. These perceptions are based on the lack of credibility of the figure of the support person and the difficulty in accepting the social model of disability enshrined in the CRPD.<sup>10-28</sup>

## Conclusion

The path taken in this essay, based on national and international regulations, the bibliography consulted, and the quantitative and qualitative data generated, allows for the necessary triangulation to determine whether it is necessary to adjust the formal and practical advances to pay due attention to the population with intellectual and psychosocial disabilities especially. This is because the philosophy that inspires the CRPD is full inclusion and without setbacks for PwD, always with inherent respect for human dignity. The challenge facing humanity is of cathedral dimensions. The standard of protection required by the CRPD in favor of the disabled population is of great proportions, so much so that its postulates are still being developed by the Country Parties that have adhered to that Convention. In the case of Colombia, it is considered that it is necessary to make efforts to improve both the legislation and the practical aspects that efficiently and effectively boost the protection of PwD.

Regarding formal advances, it goes without saying that an interpretation of Law 1996/2019 indicates that for the execution of a legal act, it is not required that a person intervene to support the owner of a certain act. For this reason, it is considered a great regulatory advance in accordance with the CRPD, because the principle of human dignity advocated in that international instrument is supported by that golden rule in favor of the population with mental and intellectual deficiencies. And canon 6 must be interpreted with art. 19, because this rule is clear in stipulating that in cases where the TAJ person "has a support agreement" they must use it, otherwise that act would be vitiated by relative nullity. The question then arises: if there is no support agreement, is the legal act carried out by its owner valid?:

Under the normative assumption interpreted systematically, the answer is affirmative. Well, nowhere is a person "forced" to go to a support mechanism to carry out a legal act. Note that the legislator made the intervention of a support person "mandatory", as long as the owner of the act "has" a support agreement. Therefore, it must be understood that if this agreement does not exist, support should not be required.

The Ministry of Justice and Law in its publication "Consult the expert" (2020, p. 14), formulates the following question: "Is it necessary for a person with a disability to have a support agreement or a judicial support assignment to access a legal benefit?"

No. Law 1996 of 2019 recognizes the full legal capacity of people with disabilities, consequently, as is the case with interdiction, no



entity can make the exercise of the rights of a person with disabilities subject to the existence of support. Let's see what the Delegate Superintendency for Notaries of Colombia indicates: "Notaries cannot require a person with a disability to have a support agreement to provide notarial services."<sup>16</sup> This reaffirms the thesis that for the exercise of a right by a PwD, the existence of a formal support agreement is not mandatory. This recognition of the fullness of legal capacity should be echoed by people, organizations or private companies, in order to not discriminate against people with disabilities (CRPD, art. 4, literal e). For this reason, the central government was asked about measures adopted to comply with this standard, but the response was evasive. The Presidential Counselor for the Participation of PwD offered a response<sup>17</sup> unsatisfactory, since he responded regarding the support evaluations, a very different topic about which he was asked. In conclusion, it must be considered that Colombia has not complied with this specific international standard. Hence, if, for example, in a banking or pension entity, public or private, a person is required to provide a public deed or a conciliation document formalizing a support agreement, it must be considered that such a requirement does not consult the legal mandate which has just been analyzed. These attitudes of the financial and pension sector originate from a lack of knowledge or incorrect appreciation of the rules that regulate the new figure. This indicates that the government must face this practical deficit with massive and permanent campaigns, and through suitable media, so that this state of affairs changes. That is to say, we must resort to what I have come to call "Towards a citizen culture for and by disability" where civil society is duly informed of the new paradigm on the full legal capacity of people with cognitive and mental disabilities, especially.

## Recommendations

Towards a civic culture for and by disability. Within the social theory of disability, the general rights of people with disabilities must be socialized, until a civic culture is created for and by the population in such a situation. The case study presented here shows that there is insufficient knowledge not only among the state operators of the system, but also among certain sectors of the economy that should contribute to the proper care of PwD. Hence, the research question in this essay is whether the Convention is formally and practically complied with, in accordance with the principles that have inspired it, among them "respect for inherent dignity, individual autonomy, including freedom to make one's own decisions, and the independence of people" (CRPD, art. 3). And that question arises from what was raised by the CRPD in its art. 4th literal e), because "ensuring and promoting the full exercise" of their rights without any discrimination, implies, among many other things, that the States Parties are obliged to "Take all pertinent measures so that no person, organization or private company discriminates on the basis of disability." These measures, so that no one "discriminates on the basis of disability," are none other than those of socializing all those rights of the discriminated population until the end of the last millennium. This socialization of rights will allow the generation of collective consciousness so that legal procedures are carried out expeditiously, without legal or practical obstacles, free of charge, especially since the majority of the population with disabilities belongs to social strata<sup>18</sup> of low economic resources, with insufficient schooling and with a certain degree of social marginalization.

<sup>16</sup>Supernotariat Circular 670, 10-14-2021.

<sup>17</sup>Presidency Response: Official Letter OFI22-00004825/IDM13100000 of 01-20-2022.

<sup>18</sup>ANDSocioeconomic stratification "is the classification of residential properties in a municipality..." which is done according to certain factors and legal procedures. (Law 142/1994, art. 14.8).

Citizens in general are unaware of the rights of the disabled population. This explains why there are those who make a person with a disability wander from one place to another, in the company of the support person. The members of that society who consider themselves without disabilities are often insensitive to human beings who suffer from some form of disability. It is therefore necessary for the States Parties to promote, in all possible ways, permanent educational campaigns for social inclusion, not only for those who must operate the legal system, but for all citizens of each country. Nor is it about offering PwD treatment of pity or charity. These forms could also constitute inadequate treatment, which is repugnant to the postulates of the CRPD. Well, there are people who dislike pious treatment, and who could understand it as a handicap, which would go against their dignity and would create undue inequality. Although there is legal "training", unfortunately the servers in this field do not have "training" in mental health to provide adequate treatment. Here is another practical deficiency. Reform to current legislation. Modifying the law regarding support agreements is a necessity to make the lives of PwD easier. If, as established by Law 1996/2019 (art. 6), with or without support, PwD should be allowed to carry out legal acts, an issue that is reiterated in the Ministry of Justice publication "Consult the expert" (p. 14) and in Circular 670/2021 of the Supernotariat (p. 6), it is then valid that whoever wishes to resort to that mechanism does so, but under conditions different from the standards invoked.

The regulatory modification recommended here consists of not requiring, separately, a support agreement in a notary or in a conciliation center, when a specific person with a disability wishes to carry out a legal act that must be recorded in a public deed. That is, within the same instrument a special chapter is opened stating your willingness to be assisted by a support person. This proposal allows people with disabilities the full exercise of their human dignity as one of the human rights par excellence. In this way, practical or real application would be made to the dimensions of human dignity developed by constitutional doctrine, as analyzed in the previous section: "live as you want, live well and live without humiliation."

As an example, in cases of purchase or sale of real estate, exchange, constitution and cancellation of a mortgage, trust, will, and many more, it could be considered to formalize the support agreement within the same deed that contains these businesses. And for financial and banking procedures, forms should be allowed to be designed so that the support person and the TAJ can record the minimum information required by DR 1429/2020 and give it the respective legal validity. This would provide enormous benefits to the disabled population, without resorting to additional mechanisms such as those designed by the legislator. The possibility that such a support agreement, in the manner considered above, be free, will improve the quality of life of people with disabilities. Let us remember the statistics that have been presented in this essay, where it is realized that the population from low socioeconomic strata and the elderly are the most in need of these procedures.

## Limitations of the study

It must be recognized that the findings obtained correspond to support agreements advanced only in Buga. This is because the research was designed as a case study in the First Notary, which implied limiting it as presented in previous lines. Nor has there been any baseline information, as a state of the art, that would have allowed us to compare it with that produced here. As stated previously, and remembering what was expressed by Israel Biel Portero, who quotes human rights scholar Anna Lawson,<sup>19</sup> it is necessary to collect more

<sup>19</sup>In "The human rights of people with disabilities" (p. 32):<https://www.corteidh.or.cr/tablas/r31004.pdf>

documents and data related to disability to improve the situation of this population in different societies. Therefore, this study could be the basis for future analyzes aimed at improving formal and practical advances for and by people with disabilities, so that the fortunate paradigmatic change “From Interdiction to Full Legal Capacity” becomes a reality.

## Acknowledgments

None.

## Conflicts of interest

The author declares there is no conflict of interest.

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