

International Disability Alliance (IDA)

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
Rehabilitation International, World Blind Union,
World Federation of the Deaf, World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry, Arab Organization of Disabled People,
European Disability Forum, Pacific Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS)

Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee against Torture 45th Session (1-19 November 2010)

The International Disability Alliance (IDA) has prepared the following suggestions for the Concluding Observations, based on references to persons with disabilities to be found in the CAT Committee's 45th Session state report.

CAMBODIA

Cambodia has signed but not ratified the Convention on the Rights of Persons with Disabilities.

State Report

References to persons with disabilities in the state report and list of issues:

67.

Legal action

The Constitution of the Kingdom of Cambodia determines as follows:

- Article 38-1 the Law prevents authorities from using any form of physical abuse against anyone.
- Article 38-4 states that all kinds of force, physical torture or any treatment which imposes additional punishment on the detainees or prisoners are prohibited. Although the criminal code specifying the crime of torture has not yet been promulgated, the criminal law in force contains provisions which specify the crimes that physically affect the individual. Pursuant to these provisions, convictions have been made on the basis of the actual offences which have caused injury, **disability**, or death.
- ²An individual who has suffered any kind of torture has the right to lodge a complaint with the competent court as set in article 39 of the Constitution.

Question 23. Please provide information on the treatment of people suffering from mental illness leading to diminished responsibility. Is the mental state of someone accused of a crime a mitigating factor during sentencing?

64. In cases where offences are committed by **persons with a mental illness** causing reduction of their capacity to control their actions, such persons are subject to extenuation during the trial as specified in article 68 of UNTAC Criminal Provisions which is still in force.

65. Article 31 of the draft Penal Code specifies that "If anyone commits an offence while he/she is having **abnormal feeling which make him/her lose conscience**, that individual

shall not be charged under the felony case.”

“If anyone commits an offence at the time he/she has abnormal feeling leading to the reduction of conscience, that individual shall be charged under the felony case. However, the court shall consider the case during the trial.”

Recommendations from IDA :

- To adopt measures to ensure that all health care and services, provided to persons with disabilities, including all mental health care and services, is based on the free and informed consent of the person concerned, and that involuntary treatment and confinement are not permitted by law in accordance with the CRPD.
 (“Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished. This must include the repeal of provisions authorizing institutionalization of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorizing the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness.” OHCHR Thematic Study on enhancing awareness and understanding of the CRPD, A/HRC/10/48, 26 January 2009, para 49; OHCHR Thematic Study on enhancing awareness and understanding of the CRPD, A/HRC/10/48, 26 January 2009, para 49; see also OHCHR Information note no 4, “The existence of a disability can in no case justify a deprivation of liberty.”).
- To ensure that persons who are not prosecuted due to “abnormal feeling that makes him/her lose conscience” and those charged with felonies who have “abnormal feeling leading to the reduction of conscience” are also not subjected to deprivation of liberty on grounds of their disability or compulsory mental health treatment, in accordance with the CRPD.
- To take measures to eliminate the use of coercion and restraint, including chemical restraint, in psychiatric facilities and other institutions and to put into place a **trauma-informed approach*** to care.

* **Trauma-informed approach:** A trauma-informed approach is based on the recognition that many behaviors and responses (often seen as symptoms) expressed by people with psychosocial disabilities are directly related to traumatic experiences that often cause mental health, substance abuse, and physical concerns. For many people with psychosocial disabilities, systems of care perpetuate traumatic experiences through invasive, coercive, or forced treatment that causes or exacerbates feelings of threat, a lack of safety, violation, shame, and powerlessness. Unlike traditional mental health services, trauma-informed care recognizes trauma as a central issue. Incorporating trauma-informed values and services is key to improving program efficacy and supporting the healing process.