

International Disability Alliance (IDA)

Member Organisations:

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
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,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS), Pacific Disability Forum

Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee against Torture 47th Session (31 October - 25 November 2011)

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 state report submitted for the CAT Committee's 47th Session.

BELARUS

Belarus has not signed or ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

State report

No references to persons with disabilities.

List of Issues

Article 16

33. During the interactive dialogue at the working group of the universal periodic review, the State party has indicated the allocation of considerable resources to the improvement of correctional institutions (A/HRC/15/16, para.57). Please provide detailed information on the material, human and budgetary resources that are made available by the State party to bring the conditions of detention facilities, including places of detention for asylum-seekers and **psychiatric institutions**, in line with international minimum standards, *inter alia* the Standard Minimum Rules for the Treatment of Prisoners, in particular to address overcrowding and health care.

34. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, *inter alia*, children, women, and **persons suffering from mental illness**. In particular, please indicate:

- (a) If juveniles and adults, and women and men are separated at all stages of detention;
- (b) If minors are kept in the same pre-trial detention centres (SIZOs) as adults and their detention is submitted to the same regime;
- (c) Any concrete measure aimed at ensuring that deprivation of liberty for children is always a measure of last resort used for the shortest appropriate period of time; and
- (d) If women are kept in the same pre-trial detention centres as male detainees, albeit in different cells, but under the supervision of male guards, as has been reported to be the case at the KGB pretrial detention facility in Minsk.

37. In light of the concerns raised and the recommendation made by the Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.3, para.88), please indicate if the judicial decision of **forced placement in a psychiatric hospital** is taken in the presence of the person concerned, or of his or her family and lawyer, and that an adversarial judicial review should be provided on a periodic basis.

38. Please provide information on any independent inspections of **psychiatric institutions** and their follow-up, and elaborate on the bodies undertaking these activities. Please also elaborate on their findings and describe the situation of patients, including the use and extent of any coercive measures.

Recommendations from IDA :

- 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; see also OHCHR Information note no 4, "The existence of a disability can in no case justify a deprivation of liberty."
http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf).
- Recognise and respect the legal capacity of persons with disabilities to make their own decisions in all aspects of life, including health and mental health services. (The Special Rapporteur on Torture has recommended that "in keeping with the Convention, States must adopt legislation that recognizes the legal capacity of persons with disabilities and must ensure that, where required, they are provided with the support needed to make informed decisions"; and in particular, "article 12 recognizes their equal right to enjoy legal capacity in all areas of life, such as deciding where to live and whether to accept medical treatment" Report of Special Rapporteur on Torture, 28 July 2008, A/63/175, paras 73 and 44 respectively)
- Incorporate into the law the abolition of violent and discriminatory practices against children and adults with disabilities in the medical setting, including deprivation of liberty, the use of restraint and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroshock, recognized as forms of torture and ill-treatment, in conformity with recommendations of the Special Rapporteur on Torture (A/63/175, para 63).
- Ensure that all cases of ill-treatment and death occurring in institutions are duly investigated and where necessary criminal convictions are pursued. Ensure remedies for victims or their families, including compensation and rehabilitation.
- Take steps to establish an independent body to monitor hospitals and places of detention which would monitor the status of patients/residents, the training of personnel, and the protocols in place (including their observance) for recording of all incidents of violence, use of restraints (both physical and chemical methods), and complaints in psychiatric hospitals and social welfare institutions.

- Make a plan with target dates and monitoring to close down institutions for children and adults with disabilities and realize the right of persons with disabilities to live in the community by ensuring that housing is affordable and accessible for persons with disabilities, that they have the legal right to choose where and with whom to live on an equal basis with others, and by making available support services to realize the will and preference of individuals as to how they wish to live.
- Realize the right of persons with disabilities to live in the community by ensuring the development of community based services, including for children and adults with intellectual disabilities or psychosocial disabilities, and that housing is affordable and accessible for persons with disabilities, that they have the legal right to choose where and with whom to live on an equal basis with others, and by making available support services to realize the will and preference of individuals as to how they wish to live. (“Many States, with or without a legal basis, allow for the detention of persons with mental disabilities in institutions without their free and informed consent, on the basis of the existence of a diagnosed mental disability often together with additional criteria such as being a “danger to oneself and others” or in “need of treatment”. The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty.” Report of Special Rapporteur on Torture, 28 July 2008, A/63/175, para 64).
- Require law enforcement, judicial and health professionals (Prosecutor’s office, police, investigating officials, judges, legal aid lawyers, hospital and institution staff) to be trained on the human rights, dignity, and autonomy of persons with disabilities.
- Take steps to accede to the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

ANNEX – relevant recommendations made by other treaty bodies on Belarus:

Concluding Observations of the CRC Committee, CRC/C/BLR/CO/3-4, 2011

Children with disabilities

51. The Committee notes as positive the implementation of rehabilitation and vocational training programmes to promote the integration into society of children with disabilities. It is however concerned that:

- a) There is no comprehensive national policy on **children with disabilities** in the State party;
- b) A modern data collection system on **children with disabilities** is lacking;
- c) Many **children with intellectual disabilities** are still living in residential institutions and do not receive access to education and other community based services;
- d) There is an insufficient number of child care specialists, and access to quality services is difficult, especially in rural areas; and
- e) Nearly half of all **children with disabilities** remain outside the regular education system.

52. The Committee recommends that the State party

- a) Develop a national policy on **children with disabilities**, with clear goals;
- b) Develop a modern data collection system in the field of **children with disabilities**;
- c) Develop a policy for **children with intellectual disabilities** in line with the WHO European Declaration on the health of children and young people with intellectual disabilities (endorsed by all Ministers of Health of WHO European region, including Belarus, November 2010, in Bucharest, Romania);
- d) Provide adequate support to parents of **children with severe disabilities**, to enable them to live with their families;
- e) Systematically train professionals and ensure access to quality services for **children with disabilities**; and
- f) Ensure access to education for all **children with disabilities, and as far as possible, integrate them in mainstream education.**