

## **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

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### **Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee against Torture 48th Session (7 May -1 June 2012)**

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 48th Session, and related treaty body recommendations (see annex).

#### **CUBA**

Cuba ratified the Convention on the Rights of Persons with Disabilities on 6 September 2007.

#### **State report**

138. Every accused person has the right to defence. No violence or coercion of any kind may be used against people to force them to testify. Any statement obtained in violation of this provision is null and void, and those responsible for the violation shall be punished in accordance with the law.

139. No person accused of a crime is obliged to defend him or herself. However, that individual has the right to make a statement when he or she considers it appropriate for the purposes of his or her defence and to explain the facts. If he or she does not speak Spanish or is illiterate and deaf-mute, then the court shall observe the regulation stipulating that he or she may present testimony through an interpreter.

166. Both the Office of the Attorney-General of the Republic and the People's Supreme Court provide annual degree and postgraduate training courses for judges and prosecutors. These courses provide officials of the justice system with much more comprehensive professional training.

167. In their training courses, these officials are also taught the standards and rules set forth in the main international human rights conventions and covenants, such as:

- (a) The Universal Declaration of Human Rights;
- (b) The Standard Minimum Rules for the Treatment of Prisoners;
- (c) The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);
- (d) The Code of Conduct (setting out a number of ethical principles which directly contribute to the process whereby judges form judgements, analyse and interpret cases and make decisions);
- (e) The Code of Conduct for Law-Enforcement Officials;
- (f) The International Covenant on Civil and Political Rights;
- (g) The International Covenant on Economic, Social and Cultural Rights;

- (h)The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (i)The Convention on the Prevention and Punishment of the Crime of Genocide;
- (j)The United Nations Declaration on the Elimination of All Forms of Racial Discrimination.

#### List of Issues

24. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and in other institutions for persons with mental or physical disabilities. What is the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes? Please provide information on any investigations and any disciplinary or criminal proceedings related to the deaths of 26 patients in the Havana Psychiatric Hospital in January 2010.

34. Please provide information as to whether the use of restrictions on persons with disabilities in specialized institutions is registered and recorded. If so, please provide information on the number of persons who have been subjected to restraining measures, disaggregated by location, age, gender, and reason for the restriction being imposed. Please also clarify whether there is any mechanism in place to monitor the restraining measures on persons with disabilities housed in this type of institution.

#### **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](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).

- 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).
- Adopt measures requiring 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 address the heightened risk for girls and women with disabilities of becoming victims of domestic violence and abuse. Ensure that the law guarantees their access to redress and protection, and that victim support services and information to lodge complaints are accessible for persons with disabilities.
- Take steps to accede to the Optional Protocol to the CRPD.

#### **ANNEX – Disability references by other treaty bodies with respect to Cuba:**

Concluding Observations of the CRC Committee, [CRC/C/CUB/CO/2](#), 2011

10. While noting the existence of a national plan of action for children (2004 – 2010), which was mentioned by the delegation during the dialogue, the Committee is concerned at the lack of concrete information on the steps taken by the State party to either extend this plan of action beyond 2010, or to elaborate a new comprehensive national plan of action for childhood and adolescence. Furthermore, the Committee takes note of the various sectoral plans and programmes in place in the State party, in particular on health care, **disabilities**

and education. However, it is concerned at the lack of information on the interconnectedness between these plans of action and programmes and their relationship to the national plan of action, if any.

29. The Committee requests the State party to provide information in its next periodic report on the measures taken to ensure the full respect for the views of the child and to consider ways of ensuring that children's views are given due consideration in judicial and administrative proceedings as well as within families, schools, social institutions and in child care facilities, in accordance with the provisions of article 12 of the Convention. In this regard, the Committee would like to draw the State party's attention to its general comment No. 12 (2009) on the right of the child to be heard.

#### Family environment

39. The Committee takes note of the data provided by the State party with respect to children living in different types of alternative care. However, the Committee is concerned about the lack of detailed information on issues such as numbers of children living in institutions, coordination within the care system, whether the periodic review of the alternative care placement is a regular practice, and whether foster care opportunities, as an alternative type of placement of children without parental care, are provided and preferred over institutional care.

40. The Committee encourages the State party to adopt a well defined national policy on the alternative care system, including on the allocation of appropriate human, technical and financial resources to ensure the provision of adequate care and protection of children deprived of their family environment, as well as measures to prevent separation of children from their families and to develop foster care opportunities as opposed to institutional care.

#### Children with disabilities

43. The Committee acknowledges the efforts undertaken by the State party to guarantee the rights of **children with disabilities**, in particular with regard to their access to education. Nonetheless, the Committee is concerned at the lack of information explaining the reasons for the **disproportionate number of children under the special education regime (40,176) vis-à-vis the number of children under the inclusive education regime (23,161)** in the State party. The Committee regrets the lack of specific information on other measures seeking to guarantee the **rights of children with disabilities** in other spheres, such as the adoption of specific legislation prohibiting discrimination against **people with disabilities**.

44. The Committee recommends that the State party take all necessary measures to promote **inclusive education of children with all forms of disabilities** and invites the State party to adopt **a law which prohibits discrimination against persons with disabilities, in particular children, taking into consideration** the Committee's General Comment No. 9 (2006) on the rights of children with disabilities and the Convention on the Rights of Persons with Disabilities. The Committee further recommends the review of existing policies and practices in relation to **children with disabilities**, taking due regard of the Standard Rules on Equalization of Opportunities for Persons with Disabilities and of the Committee's recommendations adopted at its day of general discussion on **children with disabilities** and to provide detailed information on the measures taken in its next periodic report.