

## **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 49th Session (29 October to 23 November 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).

#### **Mexico**

Mexico ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 17 December 2007.

#### **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.<sup>1</sup>
- 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.<sup>2</sup>

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<sup>1</sup> "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."

<sup>2</sup> 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.<sup>3</sup>
- 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 violence, abuse, exploitation and harmful practices in the home, community and institutions, and to adopt measures to ensure the accessibility of services and information for victims with disabilities, including training of police and other

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<sup>3</sup> "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.

interlocutors. 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.

## State report

### **Selected references to persons with disabilities:**

#### **B. Article 2 of the Convention**

##### **10. Response to paragraph 12 of the list of issues**

(12. Please provide detailed, up-to-date information on the efforts made and steps taken to implement the Istanbul Protocol in the various states. Include current information on the number of cases in which the Protocol has been applied, the number of preliminary investigations into allegations of torture and/or ill-treatment that have been undertaken and presented to the courts, and the number of sentences handed down in such cases. Please include information on efforts to standardize the application of the Protocol throughout the country.)

192. The main training courses provided by the Attorney General's Office included:

(g) Seminar on non-discrimination and **the rights of the disabled**;

#### **H. Article 15 of the Convention**

##### **Response to paragraph 34 of the list of issues**

(34. Please provide detailed information on legal and institutional changes, including any relevant case law, affecting the promotion and protection of human rights in Mexico since the submission of the preceding periodic report.)

304. While it is true that the procedural codes have not been established in all the federal entities and that it is therefore necessary to be alert to definitions by each sovereign legislator that may admit pretrial evidence, we can make a projection on the basis of the entities that have already established their code as to what they will understand by pretrial evidence: Chihuahua, for example, has specified in its legal rules that if the witness declares himself unable to attend the oral trial hearing because he is far removed from the place, is living abroad, has reason to fear for his life, **is prevented from testifying because of physical or mental disability**, or because the participant or witness concerned are at risk and it would otherwise be impossible to protect them, or for any similar reason, the parties can request the judge or, where appropriate, courts conducting oral criminal proceedings to receive their statements in advance.

## **CHAPTER I DISCRIMINACIÓN**

### *Article 197*

Anyone who, on grounds of age, sex, civil status, pregnancy, race, ethnic origin, language, religion, ideology, sexual orientation, colour of skin, nationality, social origin or situation, work or profession, economic situation, physical characteristics, **disability** or state of health or any other pretext that offends human dignity and seeks to nullify or detract from individual rights and freedoms shall be punishable by six months' to 3 years' imprisonment or 25 to 100 days of community work and a fine of 50 to 200 days' pay:

I. Provokes or incites to hatred or violence;

II. Refuses someone a service or facility to which he or she is entitled. For the purposes of this provision, everyone is held to be entitled to services or facilities that are offered to the public in general;

III. Humiliates or excludes a person or group of persons;

IV. Denies or restricts employment rights or access to such rights without due cause.

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

Concluding observations of the CMW Committee, [CMW/C/MEX/CO/2](#), 2011

8. The Committee also welcomes the ratification by the State party of:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2007;

Concluding Observations of CRC Committee, [CRC/C/MEX/CO/3](#), 2006

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

23. The Committee is deeply concerned about the significant disparities in the State party in the implementation of the rights enshrined in the Convention, reflected in a range of social indicators such as enrolment in and completion of education, infant mortality rates and access to health care, indicating persistent discrimination against indigenous children, girls, **children with disabilities**, children living in rural and remote areas and children from economically disadvantaged families.

24. In light of article 2 of the Convention, the Committee recommends that the State party intensify its efforts including through awareness-raising campaigns to prevent and eliminate all forms of de facto discrimination against indigenous children, **children with disabilities**, girls, children living in rural and remote areas and children from economically disadvantaged families.

#### **Children with disabilities**

46. While noting the existence of the Programa de Atención a Personas con Discapacidades and the creation of the Office of Representation for the Promotion and Social Integration for People with Disabilities, the Committee regrets the lack of official data on the number of children with disabilities in the State party and that children with disabilities continue to face various forms of discrimination. The Committee also notes with concern the large number of children with disabilities who do not receive any form of school education, especially in rural areas, and the general lack of an integration policy for these children.

47. The Committee recommends that the State party take all necessary measures:

(a) To gather data and information on the situation of children with disabilities in the State party and assess the impact of the action undertaken;

(b) To address all issues of discrimination, including societal discrimination and discrimination against children with disabilities in rural areas, taking into consideration the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96, annex);

(c) To provide equal educational opportunities for children with disabilities, including by providing the necessary support and ensuring that teachers are trained to educate children with disabilities within regular schools.