

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 found in the CAT Committee's 45th Session state report.

TURKEY

Turkey ratified the Convention on the Rights of Persons with Disabilities on 28 September 2009.

State report

References to persons with disabilities in the state report:

19. Article 150 of the Criminal Procedure Code and Article 19 of the Regulation on Apprehension, Detention and Statement-Taking provide that if the accused is not in a position to appoint a lawyer, he/she may receive legal counsel free of charge from a lawyer appointed by the bar association. Instruction of a lawyer is mandatory if the suspect is a minor, **deaf, mute, person with a disability** to an extent that prevents that person from defending himself/herself, or the suspect is accused of an offence carrying a sentence that requires a minimum of five years' imprisonment. In the aforementioned cases, request by the suspect for instruction from a lawyer is not necessary. If the suspect does not privately hire a lawyer, the local bar association will provide a lawyer.

40. Furthermore, in accordance with Article 9 of the Statute entitled "Institutions where convicts with a **Psychiatric Disorder** but no **Mental Disorder** are Kept", the sentences of those who have a **psychiatric disorder** but no **mental disorder** stemming from being detained and other reasons, and who are sent back to prisons because their stay at mental hospitals is not deemed necessary, are executed in specially designated sections of prisons. Experts and other medical staff required for prisons for the execution of sentences of those indicated above shall be procured by the Ministry of Health.

41. Article 24 entitled "Psycho-Social Assistance Service" provides that "The Psycho-Social Assistance Service explores and implements protective and improvement programs regarding the **psychological and physical health and integrity of the personnel and convicts**, and intervenes when necessary with psychological support in the treatment process; assists the convicts' individual development by identifying their individual characteristics, conditions and reasons for committing crime; ensures their adaptation to life in prison as well as the social environment; takes measures to prevent re-commitment of the offense by the individual, and, to this end, establishes contact with the families and social

milieu with the knowledge of the highest ranking superior of the prison. A psychologist and a social worker are employed at the Service.”

42. Article 60 entitled “Security Measures Regarding **Patients with Mental Disorders**” provides that “decisions concerning security measures regarding **patients with mental disorders** shall be submitted to the Office of the Chief Public Prosecutor. This decision shall be recorded in a separate execution book by the Office of the Chief Public Prosecutor. This measure shall be executed in accordance with the rules and procedures stated in Article 57 of Law no. 5237.

43. In the framework of the ongoing reforms, under Article 18 of the Law on the Execution of Sentences and Security Measures (Mo. 5275) private units have been established in Samsun, Elazığ, Manisa and Adana Closed Prisons for the treatment of convicts and **detainees who have a psychiatric disorder but no mental disorder**, and for the execution of their sentences. These units function with the support of the specialists and psychologists of the Ministry of Health.

44. A rehabilitation center to serve the above-described convicts started functioning at Metris Closed Prison in Istanbul.

166. A defense lawyer shall be directly commissioned in cases, without the request of the suspect or the accused, where there are no lawyers present and the suspect or accused has not yet passed the age of 18, or s/he is **deaf or mute, or disabled** to such an extent as to hinder self-defense. In investigations and prosecutions concerning offences calling for imprisonment for no less than five years, a defense lawyer shall be commissioned without the request of the suspect or the accused.

28. According to information before the Committee (A/HRC/4/40/Add.5 (2007), paras. 91–96) conditions in psychiatric facilities, orphanages and rehabilitation centers in the State party can often constitute cruel, inhuman or degrading treatment or punishment. Please provide detailed information on the measures taken to improve such situation, including ending the use of unmodified electroconvulsive treatment (ECT), segregation of children from adults, provision of adequate food and health services, protecting the security of persons detained in those institutions, and adopting international mental health standards.

304. Regarding the **Electro-Convulsive Treatment (ECT) practices carried out in mental hospitals/clinics**, as well as other approaches, which were also brought up during the CPT visits in Turkey in the past years, a study has been initiated by the Ministry of Health in 2006.

305. “**Electro-Convulsive Treatment Application Directive**”, prepared on **28 November 2006, concerning where and in what circumstances to administer ECT** in Turkey was amended on 13 June 2007 and the ECT application guidebook was distributed to 81 governorships and Dean’s Offices of Medical Faculties with a letter from the Ministry of Health dated 25 July 2007, No. 15762. Since the issuance of the **ECT Application Directive, ECT practices have been carried out in the framework of the rules stated in the Directive.**

306. A total of 28,436 **ECTs** were administered in 2007, only **26 of which were unanaesthetized (unmodified) ECTs.**

308. As everywhere in the world, the patient’s **consent is the basis for hospitalization of the patient as well as application of the treatment. However, patients who have psychiatric disorders and can harm themselves and their environment can be**

transferred to mental hospitals that qualify as regional hospitals in the area of their residence, provided that there is a court order to do so, or that the patients' custodians so request. If it is decided that these persons, whose situation is reassessed by the doctors at the hospital, are to be hospitalized, procedures for hospitalization are carried out. As there is no possibility of hospitalizing patients without a court order or request by the person him/herself or by his/her custodian, it is not possible to arbitrarily hospitalize patients at psychiatric institutions, which already have a limited bed capacity. **An entry document is prepared for every hospitalized patient and the patient or his/her guardian (or custodian) signs the document confirming that s/he accepts all treatment services provided to him/her at the hospital, in accordance with Form No. 60 in the annex to the Regulation on the Management of In-Patient Treatment Institutions** (Cabinet Decision, 10 September 1982, No. 8/5819, Official Gazette of 13 January 1983, No. 17927). Upon request, a copy of the document is given to the patient or custodian, while another copy is kept in the patient's file.

309. Furthermore, the supervision of financial and administrative matters as well as medical services of the hospitals run by the Ministry of Health is carried out by the Inspection Board Presidency of the Ministry of Health.

310. Finally, on the basis of the findings of the inspection carried out at the Adana Dr. Ekrem Tok Mental Hospital, an official letter was sent to all Provincial Health Directorates requesting them to undertake the work necessary to **improve the physical conditions of the mental health clinics/hospitals, to give priority to rehabilitation services, and to place video cameras for surveillance which would help determine whether or not any ill-treatment takes place.**

311. Implementation of the regulations introduced by Ministry of Health has thus far produced effective results in practice and the **ECT practices are alleviated and anaesthetized thus do not constitute a problem.**

Recommendations from IDA :

- To ensure that no person with a disability is compelled to live in an institution or to receive medical treatment related to their disability (including psychiatric interventions such as electroconvulsive therapy or drugs such as neuroleptics) without the free and informed consent of the person concerned, i.e. to cease accepting the consent of substitute decision-makers (such as guardians) in such matters, and to ensure that no coercion or incentives are applied that reduce the person's effective freedom to decide according to his/her own values and wishes.

- To recognize 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 [on the Right of Persons with Disabilities], 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).

- To reduce or eliminate the use of ECT even in the modified form, since many of the risks associated with unmodified ECT, such as severe loss of memory and cognitive impairment are also associated with the modified form.

- To ensure that persons with disabilities, including those with psychosocial disabilities (who may be deemed to have a psychiatric disorder), when accused or convicted of crimes, have the same guarantees as others in those circumstances, and the right to be treated in accordance with the objectives and principles of the CRPD, including provision of reasonable accommodation, in accordance with CRPD Article 14, taking into account that the CRPD adopts a social model of disability and prohibits involuntary treatment and confinement linked to the disability.

- 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 prohibited 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.”)

- To 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 based on disability, the use of restraint and the enforced administration of intrusive treatments such as neuroleptic drugs and electroshock, as recognized forms of torture and ill-treatment, in conformity with recommendations of the Special Rapporteur on the Right to Health and the Special Rapporteur on Torture.

(“Policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including sterilizations, abortions, electroconvulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment.” Report of Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, 10 August 2009, para 73; “The Special Rapporteur is concerned that in many cases such practices, when perpetrated against persons with disabilities, remain invisible or are being justified, and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment.” Report of Special Rapporteur on Torture, 28 July 2008, A/63/175, para 41; see also paras 38, 40, 47, 49, 61-63).

- To ensure the effective access to justice for persons with disabilities by eliminating legal, physical and communications barriers and the lack of flexibility by the judiciary to provide the relevant reasonable accommodations to enable persons with disabilities to full and equal participation in the justice system whether as complainants, defendants or witnesses.

- To take steps to establish an independent body to monitor hospitals and places of detention and to ensure that the monitoring body has no ties with the Ministry of Health (see para 309 of the State Report). The independent monitoring body should also include in its team users and survivors of psychiatric services.

- To ensure that measures to prevent ill-treatment in institutions do not infringe individuals' right to privacy such as the use of video surveillance (see para 310).