

## **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).

#### **TAJIKISTAN**

Tajikistan has not signed nor ratified the Convention on the Rights of Persons with Disabilities (CRPD).

#### **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. (see Concluding Observations of the CRC Committee, 2010, [CRC/C/TJK/CO/2](#), paras 37, 38, in Annex below)
- 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. (see Concluding Observations of the CRC Committee, 2010, [CRC/C/TJK/CO/2](#), paras 37, 38, in Annex below)
- 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. (see Concluding Observations of the CRC Committee, 2010, [CRC/C/TJK/CO/2](#), paras 50, 51, in Annex below)
- 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.

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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.

- 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 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.
- Take steps to ratify the CRPD and its Optional Protocol.

### State report

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

##### **Juvenile justice system**

**86. A teacher and a psychologist must participate in the interrogation of an underage suspect or indictee who is under 16 or mentally retarded.** Where the under-age suspect or indictee is over 16, a teacher or psychologist participates in the interrogation at the investigator's or procurator's initiative or at the legal counsel's request. The teacher or psychologist are entitled to ask the suspect or indictee questions with the investigator's permission and, at the end of the interrogation, to be informed of the content of the interrogation report and formulate written observations as to the exactitude and completeness of the statements in the report. At the time of interrogation, the investigator explains these rights to the teacher or psychologist and that fact is recorded in the interrogation report. A teacher or psychologist participates in the examination of an under-age defendant in court according to the same rules. From the moment of the minor's first interrogation as a suspect or indictee, the minor's legal representative may participate in the proceedings by decision of the investigator. Upon admission to the proceedings, the legal representative is informed of his or her rights, and in particular the right to:

- Know of what the minor is suspected or with what the minor is charged;
- Be present when charges are brought, and participate in the interrogation of the minor and, with the investigator's permission, in any other investigative activities in which the under-age suspect or indictee and his or her counsel take part;
- Have knowledge of reports on investigative activities, in which he or she participates, and formulate written observations as to the exactitude and completeness of the statements in the reports;
- File petitions and formulate objections;
- Challenge the acts and decisions of the investigator and the procurator;
- Present evidence;
- At the end of the investigation, have knowledge of any material in the file and retrieve from it any information of any scope.

**94. A minor who, as a result of retarded mental development unrelated to any mental disorder and while committing an act dangerous to others, fails to control or fully realize the actual nature of his or her action (or omission) as a public hazard bears no criminal responsibility.**

### **Definition of torture**

59. As a measure of restraint, remand in custody during preliminary investigation in a criminal case may not exceed two months. It lasts from the moment of placement of the suspect or indictee under custody until the criminal case is brought to court by the procurator. This period includes any period spent in deprivation of liberty facilities (temporary detention facilities and other confinement units within internal affairs and other bodies engaged in pre-trial proceedings) and any forced stay in a hospital or psychiatric clinic; and may be extended by a judge up to 6 months or, in the case of persons accused of serious or grievous crimes, longer; and, exceptionally, beyond 12 months, subject to an 18-month limit. Further prolongation of the remand in custody period is prohibited and the suspect is subject to immediate release. In the Conclusions and recommendations of the Committee (CAT/C/TJK/CO/1), recommendation 7 (d) refers to the need to “take steps to shorten the current pre-trial detention period”. The new Code of Criminal Procedure also provides for an 18-month maximum duration of remand in custody. However, such extended periods apply only to exceptional cases on the basis of a judge’s decision, and protection from unlawful deprivation of liberty is thereby guaranteed.

### **Systematic review of all places of detention**

149. Under chapter 6 of the Constitutional Act on procuratorial bodies and article 26 of the Penal Enforcement Code, the Procurator General and his or her subordinate procurators monitor the enforcement and serving of sentences to ensure strict and uniform compliance with the law. Such monitoring is intended to ensure, inter alia:

- The legality of the confinement of persons in detention facilities, custodial reception centres, pre-trial detention units, sentence enforcement agencies and establishments and other bodies implementing court-ordered coercive measures;
- The fulfilment of the legal rights and obligations of the persons detained, remanded in custody, sentenced or subject to other coercive measures; and compliance with detention procedures and conditions.
- The procurator conducting such monitoring may:
  - Visit, without inspecting, the places of confinement of persons detained, remanded in custody, sentenced or subject to other coercive measures;
  - Interrogate any persons detained, remanded in custody, sentenced or subject to other coercive measures;
  - Have knowledge of the documents and police material, on the basis of which these persons are detained, remanded in custody, sentenced or subject to other coercive measures;
  - Require strict and uniform compliance with domestic law and ratified international legal instruments related to human rights and the humane treatment of detainees and sentenced offenders;
  - Demand of the administration of the above facilities and bodies to create conditions ensuring the rights of the persons detained, remanded in custody, sentenced or subject to other coercive measures; verify the compatibility of orders, regulations and decisions of the administration with the law; require explanations from officials; file challenges and protests; and bring criminal charges or initiate proceedings for administrative, disciplinary or property-related offences;

- Cancel disciplinary penalties imposed illegally for regulation violations on persons remanded in custody or sentenced; and decide their immediate release from any isolation ward or cell, dungeon, solitary confinement room or disciplinary unit;
- Decide the immediate release, according to procedures specified by the law, of persons unlawfully held in deprivation of liberty or coercive measure enforcement establishments or unlawfully detained, forcibly secluded or placed in a forensic psychiatric establishment.

The administration has an obligation to comply with the procurator's decisions and demands concerning the observance of detention procedures and conditions in relation to the persons arrested, detained, sentenced to deprivation of liberty or other types of punishment, subject to other coercive measures or placed in forensic psychiatric establishments.

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

#### Concluding Observations of the CRC Committee, 2010, [CRC/C/TJK/CO/2](#)

17. The Committee recommends the full implementation of article 4 of the Convention by:
- (a) Increasing substantially the budget allocations for education, health and social protection of children and strengthening the effectiveness of existing systems;
  - (b) Elaborating strategic budgetary programmes to reduce the disparities and to target the rights of disadvantaged groups, including children with disabilities, children living in poverty, children living in remote areas, children infected with HIV/AIDS, orphans, girls and others;

#### **Non-discrimination**

26. While acknowledging the legislative amendments and actions taken to address discrimination against women and girls, the Committee remains concerned about the limited implementation of these laws and the persisting de facto discrimination against girls. The Committee is particularly concerned about the high dropout rates of girls in rural areas from schools due to negative traditional and religious attitudes on the roles of girls and women in the society. The Committee is also concerned at discriminatory attitudes and discrimination against children with disabilities, children in care institutions and children living in rural areas.

27. The Committee recommends that the State party take all necessary measures to implement existing legislation and ensure that all children within its jurisdiction, particularly girls, children with disabilities, children in care institutions, children living in rural areas and other vulnerable groups of children, enjoy all the rights set out in the Convention without discrimination, in accordance with article 2. The Committee also recommends that the State party prioritize and target social services for children belonging to the most vulnerable groups. The Committee encourages the State party to launch comprehensive public education campaigns to prevent and combat the negative traditional and religious attitudes, including gender discrimination.

37. While noting that the law enforcement officers have undergone trainings by non-governmental organizations, the Committee regrets that there is no mandatory training programme for law enforcement officials on children's rights. The Committee is especially concerned about reports of ill-treatment of children in residential institutions for children with disabilities and lack of investigation of such cases.

38. The Committee recommends that the State party adopt appropriate measures to combat torture and cruel, inhuman or degrading treatment, including systematic training programmes at the national and local level, addressed to all professionals working with and for children on prevention of and protection against torture and other forms of ill-treatment. The Committee further recommends that the State party investigate the allegations of torture and ill-treatment of children, particularly of children in residential institutions, ensure the systematic and routine investigation and prosecution of reported cases and take all necessary measures to bring the alleged perpetrators to justice.

### **Children with disabilities**

50. The Committee regrets that the institutionalisation of children with disabilities remains a common practice in Tajikistan. It welcomes the establishment of the experts group that has analysed the situation of children with disabilities, but it regrets that the state institutions for children with disabilities do not provide quality education, rehabilitation services and development of necessary skills. It also notes poor conditions in such institutions and malnutrition as well as limited inclusion policies for children with disabilities.

51. The Committee recommends that the State party:

- (a) Take measures to decrease the level of institutionalisation of children with disabilities and to assist families with children with disabilities with appropriate care, inter alia, by strengthening their parenting skills and providing adequate financial resources and necessary support in order to decrease institutionalization of children with disabilities;
- (b) Increase its effort to carry out awareness raising campaigns to sensitize the public about the rights and special needs of children with disabilities and promote their inclusion in the system of education and in society;
- (c) Support development of community based early intervention services;
- (d) Improve the physical access of children with disabilities to public service buildings, including recreational infrastructures and schools;
- (e) Improve conditions in residential institutions for children with disabilities and establish mechanisms of independent monitoring of standards of care and children's rights in these institutions, as well as establish a system of training special education professionals;
- (f) Consider ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol;
- (g) Take into account article 23 and the Committee's general comment No. 9 (2006) on the rights of children with disabilities as well as the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly res. 48/96).

### Concluding Observations of the CEDAW Committee, [CEDAW/C/TJK/CO/3, 2007](#)

39. The Committee notes that the report was lacking in information and statistics about particularly vulnerable groups of women, including elderly women and disabled women who often suffer from forms of multiple discrimination.

40. The Committee requests the State party to provide, in its next report, a comprehensive picture of the de facto situation of vulnerable groups of women, including elderly women and disabled women, in all areas covered by the Convention.