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.

GERMANY


State report

Selected references to persons with disabilities in the State report, List of Issues & replies:

19. Under Part IV of the OP-CAT, Germany is obligated to establish an independent national prevention mechanism. On account of Germany's federal structure, this national prevention mechanism will comprise two institutions: a Federal Office for the Prevention of Torture established by organisational order of 20 November 2008 for the Federation's jurisdiction (detention facilities operated by the Bundeswehr and Federal Police) and a Joint Länder Committee to be established on the basis of a treaty between the federal Länder for the jurisdiction of the Länder (prison system, police custody, detention facilities in psychiatric clinics). As the procedure to establish an interstate treaty requires the involvement of the legislative bodies in the Länder and it cannot be predicted with any certainty when that process will be completed, Germany made use of the possibility when ratifying the OP-CAT of postponing the application of Part IV for three years initially. However, since the interstate treaty was signed on 24 June 2009, it is becoming apparent that the interstate treaty procedure could be concluded by late 2009, so that the national prevention mechanism would be completely established within the period provided for under Article 17 of the OP-CAT.

20. The independence of the national prevention mechanism is guaranteed. Both the order establishing the Federal Office and the interstate treaty of the Länder explicitly state that the respective institutions are not bound by instructions and are independent. The Secretariat which will assist the national prevention mechanism in its work will have its-6- offices in the German Institute of Criminology, a joint academic facility of the Federation and the Länder, and will be able to use its resources.

21. The Federal Government is aware that the prevention mechanism has been criticised by
IDA suggested recommendations on Germany

various parties as too small and too poorly equipped. Once the Joint Länder Committee has submitted its first reports it will thus be necessary to review whether the mechanism is adequately equipped. The evaluations of the Federal Office and the Länder Committee themselves will thereby be of decisive importance.

22. The Federal Office's Secretariat, which has one research assistant and one member of office staff, took up its work on 1 May 2009. The Federal Government would like to point out that the Federal Office's jurisdiction is restricted to the institutions assigned to the Federation within Germany's federal structure (Bundeswehr and Federal Police). The overwhelming majority of detention facilities (police, judicial, psychiatric establishments) fall within the jurisdiction of the Länder and the Joint Committee to be established (§ 19). The Federal Office has already announced that it will carry out its initial visits in the near future.

2. Cooperation at European level
a. Cooperation with the European Committee on the Prevention of Torture

24. The European Committee on the Prevention of Torture (CPT) carried out its fourth regular visit to Germany from 20 November to 2 December 2005. In its report, the Committee welcomed the very good degree of cooperation with the German federal and Länder authorities during its visit.

25. In its conclusions the report explicitly welcomed some improvements which had been made in the various detention facilities in the light of the previous CPT report of 2000. Among other things, the Committee criticised the following:

• The use of physical restraint (Fixierung) on those in detention, especially long-term physical restraint without continuous, direct personal supervision by a member of staff (known as Sitzwache) and the use of inadequate fettering devices;
• Material conditions in various detention facilities (in particular detention pending deportation);
• Access to medical staff;
• Inadequate staffing levels and overcrowding in various facilities.

List of Issues

12. In the light of the recommendation by the Committee on the Elimination of All forms of Discrimination against Women (CEDAW/C/DEU/CO/6, para. 42), please report on steps taken by the State party to ensure that comprehensive measures are taken to address all forms of violence against women. Has the State party adopted targeted measures to address sexual violence perpetrated against women and girls with disabilities, pursuant to the concerns of the Council of Europe Commissioner for Human Rights? Please provide data on the number of investigations into cases of domestic violence and the number and outcome of prosecutions and convictions of perpetrators as well as information on redress and compensation measures. Please further provide statistics on cases of female genital mutilation in the territory of the State party.

14. Have violent and discriminatory practices against persons with disabilities in the medical setting, including deprivation of liberty and enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroshocks, been recognized as forms of torture and ill-treatment, in conformity with recommendations of the United Nations Special Rapporteur on Torture (A/63/175, para. 41; see also paras. 38, 40, 47, 49, 61-63)? What measures have been taken to prohibit and prevent such acts? Is the State party aware of the existence of alternatives to these measures, particularly those based on a trauma-informed approach to care, and has it considered adopting such practices?

Article 11
IDA suggested recommendations on Germany

34. Please provide information on measures taken by authorities at federal and Länder levels to reduce the practice of physical restraint – *Fixierung* – in prisons, psychiatric hospitals, juvenile prisons, and detention centres for foreigners, including steps taken to ensure the effective implementation of the CPT recommendations as contained in Section D 9 of the report on its visit to Germany in 2005. Please also indicate whether, in the long-term, the State party intends to abandon the practice of *Fixierung*.

38. Please provide information to the Committee on steps taken improve detention conditions, including: (i) measures to address overcrowding, especially in Halle prison and in Neustadt Psychiatric Centre; (ii) an increase in staffing levels, in particular to ensure continuous supervision of detainees under restraint; and (iii) installing video surveillance cameras throughout police stations where detainees are present and making video recording of interrogations of all persons questioned a standard procedure.

**Article 16**

51. Please provide information on measures adopted by the State party to enhance the rights and protection of juvenile offenders in places of detention and prisons, in particular on steps taken to:
   (c) Ensure the separation of juvenile offenders from (young) adults in prisons and places of detention and, in light of the recommendation by the Committee on the Rights of the Child (CRC/C/15/Add.226, para. 45), also in psychiatric institutions;

52. Please provide information on complaints of ill-treatment by staff members of psychiatric establishments at Länder level in the context of "enhanced security measures" (seclusion, restraint and coercive medication) and "direct coercion" (as per Sections 7 and 8 of the Coercive Treatment Act, respectively), and the investigation, prosecution and penalties in relation to such complaints. Please also provide information on legal provisions and prison rules regulating the use of seclusion and measures to restrict the use of seclusion to only very exceptional circumstances set forth in law with a view to reducing the resort to seclusion, as recommended by the Committee on Prevention of Torture of the Council of Europe.

**Replies**

Response to the issues raised in paragraph 14 of the list of issues

33. In general, medical treatment is possible only with the informed consent of the person concerned. Informed consent means that possible alternative treatments must be explained. This also holds true for persons with psychological disorders.

34. Treatment without consent is possible only under very strict conditions. The Basic Law allows treatment without consent only in cases of imminent danger for life or health or public safety, and only if such danger can not be averted by less intrusive means. This presupposes a judicial order on a statutory basis in each case. The same applies for detention in a psychiatric institution.

35. In addition to these prerequisites, neuroleptic drugs may be administered only in the context of an overarching therapeutic concept which includes psychotherapy and psychosocial treatment. Electroshocks, which are used very rarely and only in cases of severe depression with suicidal tendencies which have resisted all alternative treatments, are given only under narcotics and muscle relaxation.

67. Regarding the Länder law enforcement personnel in police, prisons and psychiatric institutions, the respective training programmes abide to the standards of the named United Nations and Council of Europe conventions, declarations and documents although some of them provide their trainings on the basis of national law into which the named guarantees have been implemented. The Länder provide regular and continued in-service education which includes human rights and conflict management training, enhancement of intercultural competence and use of force, notably the use of firearms. The Istanbul Protocol is part of the
trainings in most Länder. 68. As an example, Baden-Württemberg has reported that its trainings are based on United Nations curricula and inter alia include the guarantees of the Convention against Torture, the Covenant on Civil and Political Rights as well as the Universal Declaration of Human Rights and the United Nations Code of Conduct for Law Enforcement Officials, as well as the topic of human rights and detention. Baden-Württemberg additionally provides handbooks of international human rights standards, including documentation standards to ensure effective investigations, to all staff members of psychiatric institutions. Measures are documented, evaluated and discussed with patients and personnel. Moreover, training courses on conflict prevention and anti-aggression, regular staff meetings and briefings are conducted to ensure continuous information. In addition, the reports of the CPT regarding psychiatric institutions are analysed and implemented.

Response to the issues raised in paragraph 38 (b) of the list of issues
132. The Länder continuously undertake needs-based assessments in order to guarantee that sufficient staff is available in detention facilities. Following this assessment, Länder hire or reassign qualified personnel. For instance, Baden-Wurttemberg has continuously increased staffing levels, proving a relation of 1:2.06 between full-time staff and detainees. Between 2007 and 2010, in order to improve the situation in Neustadt Psychiatric Centre, Schleswig-Holstein hired 32 additional full-time staff members.

133. As regards detainees under restraint, continuous supervision compatible with the standards required by the Committee and the CPT is provided. As set out above in the context of the response to the issues raised in paragraph 34 of the list of issues, Germany wishes to stress that the practice of restraint is exceptional and rare. It is a temporary measure which may be taken only if strict conditions are fulfilled. In such cases, permanent individual supervision of any detainee under restraint in prisons and psychiatric centres is provided for.

134. As a matter of example, Berlin has indicated that permanent personal and individual supervision by staff members is provided. Access to medical services being provided at all times, medical practitioners will immediately make an individual assessment of the strict necessity of the measure and its medical necessity which will exist only in extreme cases. Parallel regulations exist, for instance, in Hessen, Bavaria, Brandenburg, Mecklenbourg-Western Pomerania, Thuringia, Rhineland-Palatinate, Lower Saxony, Schleswig-Holstein, Saxony and Saarland as well as in Hamburg where psychiatric control is undertaken and detainees are kept within visibility range.

Response to the issues raised in paragraph 50 of the list of issues
180. German police collects data regarding “Hate Crime” in the context of the police reporting scheme “Politically Motivated Crime” (PMC). However, according to the definition of “Hate Crime” as internationally agreed upon, a hate crime offence is counted as PMC although in the individual case the specific act might not be committed by political motivation (e.g. an offence committed because of the victim’s sexual orientation or against disabled people). Data are disaggregated by type of motivation (for instance, xenophobia, anti-Semitism, religion) detected in the individual case. Therefore, while an offence will only be counted once for the overall statistics, the same offence might appear in several sub-statistics if there were multiple motives. Moreover, the number of victims may not be deduced from these statistics. Likewise, notwithstanding the victim’s affiliation, offences will not be categorised as “racist” if there was no political motivation. On the other hand, an offence might be considered politically motivated if the perpetrator wrongly assumed that the victim belonged to the targeted group or if he/she used respective insults being conscious that the victim was not a member of the targeted group.
213. All allegations of ill-treatment are examined comprehensively and without delay. Any staff member found responsible for ill-treatment of patients will be dismissed immediately. In addition, in the sector of psychiatric establishments many remedies against ill-treatment exist, including complaints mechanisms and patients’ representatives within the clinics, external visiting commissions, legal and technical supervision by the authorities as well as ombudspersons. Complaints against “enhanced security measures” may be made in Local Courts in accordance with sections 109 et seq. of the Federal Prison Act (StVollzG) or the respective provisions of the Länder prison acts. In addition, applications for criminal prosecution may be filed against staff members.

214. Only very few Länder have recorded cases of complaints of grave ill-treatment by staff members of psychiatric establishments.
215. Bavaria and North Rhine-Westphalia have reported that allegations of ill-treatment or applications for criminal prosecution are extremely rare and, to date, have always been refuted as the measures taken were necessary for reasons of health and safety or as an element of therapy. In several cases, allegations had been raised as a part of the patient's disease pattern. In Bremen, where on average three investigations per year have been initiated regarding staff of the forensic clinic, all of them were refuted and terminated without indictment. Only Saarland has indicated that one patient successfully complained against an enhanced security measure (handcuffing).

**Recommendations from IDA:**

- Closely consult with and actively involve persons with disabilities and their representative organisations in national and regional strategies to prevent torture, cruel, inhuman or degrading punishment and treatment in accordance with Articles 4(3) and 15 of the CRPD.

- Ensure cooperation and cooperation between the National Preventive Mechanism, in particular the Joint Länder Committee, and the German Institute for Human Rights, which is the designated national monitoring body of the CRPD (in accordance with Article 33(2), CRPD), to prevent ill-treatment and torture of children and adults with disabilities.

- 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”
• 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), and take steps to implement a trauma-informed approach* to care.

• 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.

* Trauma-informed approach: A trauma-informed approach is based on the recognition that many behaviors and responses (often seen as symptoms) expressed by people with psychosocial disabilities are directly related to traumatic experiences that often cause mental health, substance abuse, and physical concerns. For many people with psychosocial disabilities, systems of care perpetuate traumatic experiences through invasive, coercive, or forced treatment that causes or exacerbates feelings of threat, a lack of safety, violation, shame, and powerlessness. Unlike traditional mental health services, trauma-informed care recognizes trauma as a central issue. Incorporating trauma-informed values and services is key to improving program efficacy and supporting the healing process.

ANNEX – relevant recommendations made by other treaty bodies on Sri Lanka:
Concluding Observations of the CEDAW Committee, CEDAW/C/DEU/CO/6, 2009

43. The Committee is concerned at the lack of sustained funding of shelters for women and non-residential counselling centres and at the lack of free access to shelters regardless of income for all women and children in all Länder. It regrets that some Länder are unable to offer secured housing in shelters to all women victims of violence, or equipped shelters for women with special needs, such as women with disabilities.

44. The Committee urges the State party to take the necessary measures to ensure greater cooperation between the Federal Government, the Länder and the municipalities to monitor the provision of social services with a view to ensuring the availability of a sufficient number of shelters equipped to accommodate women with special needs, such as women with disabilities, throughout the territory of the State party and making sure that such shelters are adequately financed and open for all, regardless of the victim’s financial resources.