



PERHIMPUNAN
JIWA SEHAT
INDONESIA



International Seminar Commemorating the Day of Support for Victims of Torture "Hidden Torture: Institutionalization of Persons with Disabilities in Indonesia"

Organizers: Indonesian Mental Health Association (IMHA), Transforming Communities for Inclusion (TCI) and Disability Rights Fund/Disability Rights Advocacy Fund (DRF/DRAF)

Concept note

Forced institutionalization of persons with disabilities:

Institutionalization, or any detention based on disability or in conjunction with other grounds such as “care” or “treatment”¹ is in direct contravention to the Convention on the Rights of Persons with Disabilities. The guidelines on deinstitutionalization, including in emergencies gives a clear list of types of institutions² and modes of institutionalization. There is an over representation of persons with psychosocial disabilities in institutional settings as often institutionalization is considered as a form of treatment or worse, care. Persons with psychosocial disabilities are also shackled legally, by incapacity laws, mental health laws and a wide variety of civil laws enabling forced admissions into institutions³. Lack of community support services and community support systems and no access to mainstream services further exacerbate the situation. Forced institutionalization, against the will and preferences of persons with psychosocial disabilities is often practiced under the guise of ‘best interest’ or ‘medical necessity’. It should also be noted that institutionalization is not just restricted to physical structures, but is also a mentality of curtailing will and preferences, placing high restriction of participation on persons with disabilities .⁴

¹ CRPD/C/5 (Para 15)

² CRPD/C/5 (Para 15) : Institutions such as ‘social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, rehabilitation centres other than community-based centres, half-way homes, group homes, family-type homes for children, sheltered or protected living homes, forensic psychiatric settings, transit homes, albinism hostels, leprosy colonies and other congregated settings.’

³ Davar, B. (2012). *Legal Frameworks for and against People with Psychosocial Disabilities*. 47(52). Available at: <https://www.epw.in/journal/2012/52/special-articles/legal-frameworks-and-against-people-psychosocial-disabilities.html>

⁴ TCI Asia Pacific (2020). ‘Reframing the momentum: From “mental health” to “inclusion” of persons with psychosocial disabilities’. Report of the Classic Edition Plenary of Transforming Communities for Inclusion (TCI) Asia Pacific, Pune. [Plenary report]. Available at: <https://tci-global.org/wp-content/uploads/2022/05/TCI-Asia-pacific-classic-edition-plenary-report.pdf>

Torture, cruel, inhuman, degrading treatment and punishment within institutions

Within institutions, persons with psychosocial disabilities are subjected to numerous violations, exposed to neglect, abuse, torture including chemical, mechanical, and physical restraints^{5,6}. Movement of persons with psychosocial disabilities have been voicing out and documenting the horrendous situation within institutions and within similar settings, including homes^{7,8}.

Even after 15 years of CRPD and relentless advocacy from movements of persons with psychosocial disabilities, the Concluding Observations (of CRPD Committee) paint a dreadful picture from across the world regarding forced institutionalization. Countries continue to practice detention based on disability or impairment⁹; involuntary commitment in psychiatric facilities¹⁰; use of harmful and forced practices such as shackling, seclusion, restraints in institutions is still widely prevalent^{11,12}; use of legislative provisions that permit deprivation of liberty on the basis of disability¹³; persons with psychosocial disabilities are subjected to forced treatments,¹⁴; gender based and sexual violence^{15,16}; forced sterilizations¹⁷ or abortions¹⁸ to name a few.

Making a case for forced institutionalization of persons with disabilities to be recognized as torture:

Article 1 of the Convention Against Torture defines the term "torture" *as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

⁵ Bali Declaration, 2018. Available at: <https://tci-global.org/wp-content/uploads/2022/12/Bali-Declaration-English.pdf>

⁶ Kathmandu Declaration, 2019. Available at: <https://tci-global.org/wp-content/uploads/2022/09/KTM-Declaration.pdf>

⁷ TCI. (2022). House of Horrors, Tale of terror: Sadly, nothing new here. #WhatWENeed. Available at: <https://whatweneed.tci-global.org/house-of-horrors-tale-of-terror-sadly-nothing-new-here/>

⁸ IMHA. (2018). *The condition of people with psychosocial disability who lived in confinement or shackling, during and post-disaster in Central Sulawesi*. Available at: <https://tci-global.org/wp-content/uploads/2022/05/Indonesian-Mental-Health-Association-Investigation-in-Palu-Central-Sulawesi.pdf>

⁹CRPD/C/IND/CO/1

¹⁰ CRPD/C/JPN/CO/1

¹¹ CRPD/C/IDN/CO/1

¹² CRPD/C/THA/CO/1

¹³ [CRPD/C/KOR/CO/1](#)

¹⁴ CRPD/C/HRV/CO/1

¹⁵ CRPD/C/EU/CO/1

¹⁶ CRPD/C/DEU/CO/1

¹⁷ CRPD/C/CAN/CO/1

¹⁸ CRPD/C/FRA/CO/1

Activists and senior leaders of the movement have demonstrated and explained in nuanced details as to how forced institutionalization (and forced psychiatry) amounts to torture. The four main elements (severe pain or suffering, intent, purpose and State involvement) defining torture fits the description of forced institutionalization.^{19,20}

Through the recognition and reframing of violence and abuse in institutions against persons with disabilities and forced detention as torture or other forms of cruel, inhuman, or degrading treatment, stronger legal protection and redress for human rights violations can be provided to survivors and activists.²¹ Utilizing a torture protection framework also helps to understand these violations and help State Parties to highlight the obligations they have to prevent, prosecute and redress them.²² The DI Guidelines gives a ‘reparations’ framework wherein persons with psychosocial disabilities are recognized as a historically oppressed group of victims of health care systems and offered redress.²³

It is also imperative that persons with psychosocial disabilities and their representative organizations (OPDs) should be fully and effectively involved in the National Preventive Mechanisms (NPM), set up by Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), especially during monitoring of places of detention and deprivation of liberty.²⁴ This can also be a way to prevent harms and human rights violations perpetuated in these places of detention, in addition to preventing the deprivation of liberty itself.

Rich legacy of International Human Rights and UN instruments as a reference guide:

The history of human rights mechanisms and instruments is fraught with Articles declaring that nobody should ever be subjected to torture [Article 5 of the Universal Declaration of Human Rights; Article 7 of the International Covenant on Civil and Political Right states (ICCPR); Article 3 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Article 37 of Convention on the Rights of the Child (CRC) and Article 15 of the Convention on the Rights of Persons with Disabilities (CRPD)].

Forced institutionalization, based on a perceived disability or impairment, and the resulting human rights violations goes against Article 5 of the CRPD; strips off the legal capacity of persons with disabilities (Article 12). In direct contradiction to Article 14, it leads to

¹⁹ Minkowitz, T. (2015, April). Forced Psychiatry is Torture. *Mad In America*. Available at: <https://www.madinamerica.com/2015/04/forced-psychiatry-torture/>

²⁰ Halmi, A. (2004, September). COERCIVE PSYCHIATRY A TORTURE SYSTEM. *Magazine of the INTERNATIONAL ASSOCIATION AGAINST PSYCHIATRIC ASSAULT*. Available at: https://www.iaapa.de/zwang2/halmi_english.htm

²¹ A/63/175 (para 45)

²² A/HRC/22/53 (para 82)

²³ CRPD/C/5 (section IX)

²⁴ IDA. (2023). *Submission for Draft General Comment on Article 4 of the Optional Protocol to the Convention Against Torture*.

deprivation of liberty based on impairment. It exposes institutionalized persons to forced treatments and forced medicalizations such as psycholeptics, electro shock therapy, conversion therapy etc. thus contravening Article 15, 16, 17. As forced institutionalization and resulting therapies take place against will and preferences of persons with psychosocial disabilities, it infringes upon Article 3 and Article 25. Institutionalization also takes away the right to live independently and be included in the community (Article 19).

Drawing from the evolving CRPD jurisprudence and a high level of participation by the cross disability movement, the United Nations bodies through their various offices have called disability based detention as deprivation of liberty, unlawful and arbitrary²⁵; stated that forced institutionalization is a form of violence²⁶; that institutionalization is a de facto denial of capacity; and called for facilitating an immediate move towards ending all forced psychiatric treatments and confinements²⁷. Human Rights Council resolutions have also expressed deep concerns regarding institutionalization, overmedicalization and treatment practices suffered by persons with psychosocial disabilities that fail to respect their autonomy, will and preferences.^{28,29} The CRPD Committee also recommends that states should recognize institutionalization as a form of violence against persons with disabilities.³⁰

The Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment through their mandates have also called attention to this issue. The reports have expressed concern that forceful confinement in institutions and exposure to unspeakable dignities and violence remain invisible, are justified or are not considered as torture.³¹ They have called out involuntary treatments and psychiatric interventions in institutions as a form of torture and ill-treatment.³² The most recent mandate talks about 'psychological torture' in the context of medical, psychiatric and social care³³. It also mentions that powerlessness, that is an element of torture, is seen in the case of institutionalization or psychiatric hospitalization.³⁴ However the CAT committee is yet to address frontally, the issue of institutionalization of persons with disabilities within the torture framework, to make way for a reparations discourse to be established.

²⁵ A/HRC/40/54 (para 61)

²⁶ A/HRC/47/L.18/Rev.1

²⁷ A/HRC/35/21 (para 65)

²⁸ A/HRC/RES/43/13

²⁹ A/HRC/RES/36/13

³⁰ IDA. (2023). *Submission for Draft General Comment on Article 4 of the Optional Protocol to the Convention Against Torture*.

³¹ A/63/175 (para 41)

³² A/HRC/22/53 (para 64)

³³ A/HRC/43/49 (para 78)

³⁴ A/HRC/43/49 (para 40)

Clarion call for stakeholders:

The pandemic was a blaring call to decades old and unfortunate lived reality of persons with psychosocial disabilities locked inside institutions and brought to fore the gross human rights violations met out to them.³⁵ Movements of persons with psychosocial disabilities have been trying to bring attention to this issue and make the world realize the '*torture of institutionalization*' on their lives and their rights. The ills of this practice are either unknown to many stakeholders or brushed under the carpet. Many human rights groups which work actively in the field of torture do not consider forced institutionalization as torture. As a result, institutions are considered as places of care and support. Efforts to deinstitutionalize and transform communities for inclusion take a backseat as it is only spearheaded by organization of persons with disabilities, without any support from other stakeholders or leadership from the State Parties.

Institutionalization, in any form, on any basis, directly contradicts the right of persons with disabilities to live independently and be included in the community. Hence, deinstitutionalization should be considered as a step towards enabling and supporting community inclusion of persons with psychosocial disabilities.

We call upon State Parties, UN bodies, policy makers, human rights organizations, movements of persons with psychosocial disabilities and cross disability organizations to come together and discuss the way forward.

The main objectives of the webinar are:

- a. To analyze the situation of institutions for persons with psychosocial disabilities from the perspective of the Convention Against Torture.
- b. Mainstreaming the issue of torture of persons with psychosocial disabilities in institutions among national and international human rights activists and organizations, to gain more support from human rights activities communities both in nationally and internationally to advocate against institutionalization.
- c. Dissecting the obligations of the State under the Convention Against Torture in relation to the situation of persons with psychosocial disabilities in institutions.

³⁵ *Disability rights during the pandemic A global report on findings of the COVID-19 Disability Rights Monitor.* (2020).

Available at:

https://www.internationaldisabilityalliance.org/sites/default/files/disability_rights_during_the_pandemic_report_web_pdf_1.pdf