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The Problem of Institutionalization of People with Psychosocial and Intellectual Disabilities within the Context of the 2020 Nagorno-Karabakh War

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ABSTRACT

Persons with psychosocial and intellectual disabilities are particularly vulnerable during emergencies, such as armed conflicts, primarily when confined in large institutions, making them entirely dependent on them. Adequate protection measures and treatment are necessary to ensure their safety during such situations. This article examines how the absence of community-based services for people with psychosocial and intellectual disabilities and their institutionalization affects their protection during armed conflicts. The conclusion drawn is that protection mechanisms for people with psychosocial and intellectual disabilities before, during, and after military conflict, as well as the implementation of International Humanitarian Law norms, should be based on the principles of autonomy, equality, and the rights of people with disabilities in accordance with the United Nations Convention on the Rights of Persons with Disabilities. Furthermore, the lack of community-based policies may lead to the forced institutionalization of individuals with psychosocial and intellectual disabilities who are displaced.

Introduction

"Of course, it was much better in 'freedom', but as they say, it is not a life that adapts to you. It is you that adapts to life." Lyudmila is a forcibly displaced woman from Nagorno-Karabakh who lives in an institution in Armenia.

State policies that rely on medical and charitable models of disability result in a loss of autonomy and unlawful restrictions

on the rights and freedoms of persons with psychosocial and intellectual disabilities. Institutionalization is a policy that deprives individuals of the right to live independently and be included in their community. The Convention on the Rights of Persons with Disabilities (CRPD) manifests a social and human-rights-based model of disability. It guarantees the right of individuals to live independently and be included in society.[1] Furthermore, the CRPD requires the protection of persons with disabilities during armed conflicts based on their autonomy and equality and comprehensive protection of their rights[2].

International Humanitarian Law (IHL) safeguards individuals who do not participate or no longer participate in hostilities during armed conflicts and restricts the means and methods of warfare. However, civilians with physical, psychosocial, or intellectual disabilities who require special protection and treatment become more vulnerable, particularly when confined in large institutions and entirely dependent on them. As a result, they face difficulties accessing essential support, a secure environment, and humanitarian aid. Also, hospitals, special care institutions providing medical and social care services, and other facilities are frequently targeted or damaged during indiscriminate attacks. Consequently, institutions where persons with psychosocial and intellectual disabilities live, must have strengthened protection and means of protection and humanitarian response mechanisms during conflicts, adopt rights-based approaches, and be inclusive and accessible.

Furthermore, armed conflicts can significantly impact the right to live independently and in a community due to the destruction of livelihoods, damage to infrastructure, forced displacement, and changes in social relations (such as the separation of families), which can lead to institutionalization, especially for persons with disabilities.

This article examines the impact of the lack of community-based services for individuals with psychosocial and intellectual disabilities and their institutionalization on their protection during armed conflict. To achieve this, the authors analyze national legislation on the protection of the rights of individuals with psychosocial and intellectual disabilities during conflicts in the context of the norms and principles of the CRPD and IHL. They also evaluate the safety and protection of persons living in institutions during conflicts, challenges faced in fulfilling the right to live in the community, and the status of buildings of institutions for individuals with psychosocial and intellectual disabilities in International Humanitarian Law. The study focuses on the perspectives of conflict-affected service users.

1.1. Methodology

The authors conducted in-depth interviews with adult and child residents with psychosocial and intellectual disabilities at four mental health and social care institutions in Nagorno-Karabakh[3], as well as forcibly displaced persons with such disabilities who now reside in two special care institutions in Armenia. The authors visited the Psychonarcological Dispensary

[1] United Nations Convention on the Rights of Persons with Disabilities. (2006). Article 19.

[2] United Nations Convention on the Rights of Persons with Disabilities. (2006). Article 11.

[3] In this paper we refer to Nagorno-Karabakh as the territory currently controlled by de-facto authorities of Nagorno-Karabakh.

and Boarding School in Stepanakert, the Dzorak Care Centre for People with Mental Disabilities, and the Vardenis Psychoneurological Boarding House in Armenia. Several residents who were evacuated from Nagorno-Karabakh continue to receive residential services in these institutions.

The interviews were conducted using a semi-structured questionnaire that focused on people's experiences during and after the war. This included their experiences during the evacuation process, the availability and accessibility of independent living services, and living in a family environment for adults and children with psychosocial and intellectual disabilities in Nagorno-Karabakh and Armenia. The authors interviewed six adult residents of the Psychonarcological Dispensary of Nagorno-Karabakh, four adult residents of Dzorak Care Centre, three adult residents of Vardenis Psychoneurological Boarding House, and three child residents of the Boarding school of Stepanakert and Berdzor.

The authors conducted key informant and expert interviews with the administration members of the institutions and decision-makers, including the Ombudsman of Nagorno-Karabakh, the directors of the Psychonarcological Dispensary and the Boarding school of Stepanakert, and the directors of the Dzorak Care Centre and Vardenis Boarding House.

The authors obtained informed consent from all interviewees and other contributors to the research. If the interviewees' willingness to participate was not clear enough, the authors did not proceed with the interview.

To aid in the interpretation and analysis of primary data, the authors studied available data and research on the right to live in the community for people with psychosocial and intellectual disabilities in Armenia and Nagorno-Karabakh, including Armenian and Nagorno-Karabakh legal regulations.

The authors also examined relevant open-source statistical data and requested information from the Armenian authorities and the de-facto authorities of Nagorno-Karabakh. Specifically, the authors requested information from the Ministry of Health, Ministry of Labour and Social Affairs, and Investigative Committee of Armenia, as well as the Ministry of Health and the Ministry of Social Development and Migration of Nagorno-Karabakh.

Given the ongoing tense situation in and around Nagorno-Karabakh, quantitative information about the number of residents of the institutions has not been included in this paper. Additionally, the names of the interviewees referred to and cited in the paper have been changed, except for the representatives of the state authorities. Age brackets have been provided instead of exact ages to give a general idea of the interviewee's age.

The Article refers to the norms of codified customary international humanitarian law, which are applicable to the case of the 2020 war in Nagorno-Karabakh and binding to all parties to the armed conflict. Therefore, the issue of the classification of the 2020 Nagorno-Karabakh war will not be discussed in this Article.

1. Overview of Disability Rights Laws and Services in Armenia and Nagorno-Karabakh

1.1. Disability rights laws and services in Armenia

Armenia's Constitution recognizes human dignity, equality before the law, and prohibits discrimination[4]. It also protects the right to mental integrity, which can only be restricted by law for specific reasons[5]. In 2010, Armenia ratified the UN CRPD, and in 2021, adopted a new law on the Rights of Persons with Disabilities that reflects the CRPD standards[6]. However, the law does not include a dedicated accessibility body to oversee implementation.

Meanwhile, Armenia's mental health services mainly focus on hospital treatment[7] and lack adequate integration into primary care services[8]. Only 2.7% of healthcare spending is allocated to mental health, with the majority going towards institutionalized psychiatric treatment[9]. The government adopted two mental health strategies and action plans after ratifying the CRPD, which aimed to reform mental health and promote deinstitutionalization[10]. The quick adoption of these plans in 2013 and 2014 created an opportunity for the country to introduce community-based service models.

Nevertheless, community-based services for individuals with psychosocial and intellectual disabilities remain scarce in Armenia[11]. Instead, care is mainly provided in mental health hospitals and large residential institutions[12], and individuals are often forced to remain in those facilities[13]. Moreover, there is no comprehensive plan for deinstitutionalization, and discriminatory attitudes[14] and societal stigmatization, along with the unavailability of community services, are prevalent issues. Additionally, the Armenian legislation permits involuntary hospitalization, treatment, and care of persons with psychosocial and intellectual disabilities.

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[4] Constitution of the Republic of Armenia (2005). Article 3, 28, 29.

[5] Ibid. Article 25.

[6] Republic of Armenia. (2021). Law on the Rights of Persons with Disabilities (HO-194-N).

[7] Soghoyan, A., Hakobyan, A., Davtyan, H., Khurshudyan, M., & Gasparyan, K. (2009). Mental health in Armenia. International Psychiatry, 6, 61-62. https://doi.org/10.1192/S174936760000059X

[8] Ministry of Health of the Republic of Armenia. (2009). A report of the assessment of the mental health system in Armenia using the World Health Organisation - Assessment Instrument for Mental Health Systems (WHO-AIMS).

RA Human Rights Defender. (2018). Ad hoc Report of RA Human Rights Defender on Ensuring Rights of Persons with Mental Health Problems in Psychiatric Organisations.

[9] Armenia-EU: The Comprehensive and Enhanced Partnership Agreement (CEPA) Civil Society Roadmap. (2018, June). Yerevan, Armenia.

[10] Government of Armenia. (2013). Concept on Providing alternative care and social services to persons with mental disabilities.

Government of Armenia. (2014). Strategy and Action plan on Preservation and Improvement of Mental health for 2014-2019.

[11] ICRC. (2021). Armenia: Building mental health resilience in conflict-affected communities.

[12] Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. (2018). Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health on his visit to Armenia.

[13] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2021). Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 2 to 12 December 2019.

[14] van Baelen L, Theocharopoulos Y, Hargreaves S. (2005). Mental health problems in Armenia: low demand, high needs. Br J Gen Pract, 55(510), 64-65. PMID: 15667785; PMCID: PMC1266262.

1.2. Overview of Disability Rights Laws and Services of Nagorno-Karabakh

Nagorno-Karabakh is a region with a majority-ethnic Armenian population that was an autonomous region within Soviet Azerbaijan. In 1988, demands for independence from the Azerbaijan Republic and union with Armenia reached their peak. The independence referendum and further developments in 1991[15], as the Soviet Union fell, led to a military escalation and war, which is known as the longest-running conflict in post-Soviet Eurasia[16]. The war ended with a ceasefire agreement known as the Bishkek Protocol in 1994, with ethnic Armenian forces gaining control over the territory of Nagorno-Karabakh and seven adjunct regions. However, the self-proclaimed independence of the Nagorno-Karabakh Republic has not been recognized by any State or international organization[17]. Failure to reach a peaceful solution maintained ongoing tension in the region, with a severe escalation in 2016, known as the Four-day war.

In September 2020, Azerbaijan launched a 44-day war in Nagorno-Karabakh that ended with a Russian-brokered ceasefire in November 2020[18]. Human rights groups reported forced displacement[19], extrajudicial killings[20], and torture of displaced people[21]. Ethnic Armenians still live in most parts of the region where the Russian peacekeeping mission is deployed, but occasional skirmishes continue at the contact line between Armenia, Azerbaijan, and Nagorno-Karabakh. The International Committee of the Red Cross is the only humanitarian organization operating in the area[22]. International human rights treaty monitoring mechanisms do not cover Nagorno-Karabakh.

Due to its unrecognized status, Nagorno-Karabakh is unable to ratify, or be a party to the CRPD or other UN or regional human rights treaties, which places it outside the international and regional disability rights protection framework[23]. This means it lacks

[15] ANI Armenian Research Centre. (2022). The declaration of independence of Artsakh on September 2, 1991: How it happened.

Declaration on declaring the Republic of Nagorno-Karabakh. http://www.parliament.am/library/LGH/Laws/ankaxutyan%20hrchakagir.pdf

The Referendum on Independence of the Nagorno Karabakh Republic. http://www.nkr.am/en/independence-referendum-in-karabakh

ECHR. (2015). Sargsyan v Azerbaijan, 40167/06, Para. 19.

[16] International Crisis Group. (2022). The Nagorno-Karabakh Conflict: A Visual Explainer.

[17] ECHR. (2015). Sargsyan v Azerbaijan, 40167/06, para. 25.

[18] "Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation", November 9/10, 2020. http://en.kremlin.ru/events/president/news/64384

[19] Amnesty International. (2022). Armenia: Last to flee: Older people's experience of war crimes and displacement in the Nagorno-Karabakh conflict.

[20] Human Rights Watch. (2021). Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes.

[21] Ibid.

[22] International Crisis Group. (2021). Post-war Prospects for Nagorno-Karabakh. Europe Report N°264.

[23] This issue was addressed by the Parliamentary Assembly of the Council of Europe in its Resolution 1647 (2009) on the Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia considering it unacceptable that

monitoring and reporting systems by various mechanisms such as the Committee on the Rights of Persons with Disabilities[24], Special Rapporteur on the Rights of Persons with Disabilities, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The absence of such protection has negative consequences for the dignity, lives, rights, and well-being of adults and children with disabilities in Nagorno-Karabakh.

The Nagorno-Karabakh Constitution prohibits disability discrimination[25], but an outdated law from 1997[26], based on the medical model of disability, regulates disability rights. Nagorno-Karabakh's mental health services system is concentrated in institutions, with limited community services. Unlike Armenia, Nagorno-Karabakh lacks state strategies for developing community services and does not protect the right to live independently in the community.

Education in Nagorno-Karabakh is inclusive by law[27], with mainstream schools serving as inclusive schools. According to the law, children with disabilities are supposed to attend mainstream schools. However, we met a child with a psychosocial disability who lives in a boarding school and receives home education. There is no research on the education quality for children with disabilities.

Nagorno-Karabakh's civil protection legislation mandates evacuating, sheltering, and providing personal protection equipment during emergencies, including wars[28]. State authorities must develop and implement civil protection plans[29], and local self-governance bodies must ensure their implementation[30]. However, the Nagorno-Karabakh Law on Social Protection of People with Disabilities does not guarantee special protection for people with

persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state. In its Report the Secretary General of the Council of Europe T. Jagland addressing the issue of applying European human rights standards towards conflict affected populations in "grey zones" noted that the Commissioner for Human Rights must have full, free and unrestricted access to all unresolved conflict zones, at any time, and by use of any possible and secure means of access, and that no meetings with any representative of the de facto authorities shall be considered as addressing a territorial status issue or as part of a recognition procedure.

COE Secretary General. (2019). Ready for Future Challenges: Reinforcing the Council of Europe. Report for the 129th Session of the Committee of Ministers.

[24] Azerbaijan ratified the CRPD and the Optional Protocol in 2009. However, Azerbaijan stated that it did not have effective control over the Nagorno-Karabakh territory and, therefore, was not responsible for disability rights violations committed in Nagorno-Karabakh. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15-a&chapter=4&clang=_en#EndDec

[25] Constitution of the Republic of Artsakh. (2017). Article 21

[26] Law on Social Protection of People with Disabilities in Nagorno-Karabakh Republic. HO-2. (1997, October 14)

[27] "Law on General Education" of Nagorno-Karabakh Republic, HO-2-N, 2.1, (2009, December 23), Article 4

[28] "Law on Civil Protection" of Nagorno-Karabakh, HO-101, (2004, March 10), Article 5.

[29] Ibid. Article 11.

[30] Ibid. Article 14.

disabilities in emergencies[31], unlike the Armenian law[32].

Nagorno-Karabakh's legislation, including the Law on Social Protection of People with Disabilities and the Law on Protection of Population in Emergency Situations[33], the Regulation on the Evacuation of Population; Material and Cultural Values from Dangerous territories[34]; and the Procedures for Sheltering the Population[35] do not provide special protective measures for persons with disabilities. However, the Law on Urban Planning requires buildings to be accessible for individuals with disabilities[36].

2. Findings

There are three institutions in Nagorno-Karabakh that provide residential services for adults and children with psychosocial and intellectual disabilities under the jurisdiction of the de-facto Nagorno-Karabakh authorities after the 2020 war. These are:

- the Psychonarcological Dispensary of Stepanakert, a psychiatric hospital, which operates under the jurisdiction of the Ministry of Healthcare of the Republic of Artsakh (dispensary, hospital),
- the Children's Care and Protection Boarding School of Stepanakert for children with and without disabilities under the jurisdiction of the Ministry of Social Development and Migration of Artsakh (boarding school),
- the Stepanakert Boarding House for adults with and without disabilities under the jurisdiction of the Ministry of Social Development and Migration of Artsakh (boarding house).

Before the war, a boarding school in Berdzor (Lachin) town also operated, but its residents found refuge in the Stepanakert boarding school after the war[37]. During the war, all residents of these institutions were evacuated to Armenia, according to representatives of the institutions, Nagorno-Karabakh state officials, and residents interviewed by the authors. After the war, the residents of the Psychonarcological Dispensary and the two boarding schools returned to Stepanakert, but the residents of the Stepanakert boarding house have not returned as of writing[38]. Nagorno-Karabakh authorities claim that the building of the boarding house is currently occupied by forcibly displaced people who need alternative housing before the residents can return[39]. Currently, the residents of the Stepanakert boarding house remain in institutions for older people and special care

[31] "Law on Civil Protection" of Nagorno-Karabakh, HO-101, (2004, March 10). Article 5.

[32] "Law on the Rights of People with Disabilities" Republic of Armenia, HO-194-N, (2021, May 5). Article 15, part 14.

[33] "Law on the Protection of Population in Emergency Situations" of Nagorno-Karabakh. HO-100, (2004, March 10).

[34] "Regulation on the Evacuation of Population, Material and Cultural Values from Dangerous territories" of Nagorno-Karabakh. N 577-N, (2019, July 16).

[35] "Procedures for Sheltering the Population" of Nagorno-Karabakh. N 1143-N, (2021, October 25).

[36] "Law on Urban Planning of Nagorno-Karabakh". HO-18, (1998, July 17). Article 10, Part "z".

[37] Interview with the director of Stepanakert Children's Care and Protection Boarding No 1. 19 May 2022.

[38] Information provided by the Ministry of Social Affairs and Migration of Nagorno-Karabakh. 19 May 2022.

[39] Ibid.

institutions for people with psychosocial and intellectual disabilities in Armenia[40].

The Nagorno-Karabakh Ombudsperson reported that Azerbaijani armed forces killed eighty civilians, and thirty-eight of them were killed in captivity or at least under Azerbaijan's control through physical violence, stabbing, beheading, close-range shooting, and other direct means[41]. The majority of civilians killed were people with disabilities and older people (aged over 63)[42].

The ombudsperson also noted that many lives could have been saved if adequate social services had been in place. "If we had at least one social worker in each community, perhaps, the lives of forty people could have been saved," he said[43].

According to personnel of the institutions, none of them had emergency action plans.

2.1. *Residents of the Psychonarcological Dispensary of Nagorno-Karabakh*

The Psychonarcological Dispensary is the only mental health hospital in Nagorno-Karabakh that provides both inpatient and outpatient mental health services. The nondescript one-story building is surrounded by a tall fence and located 200-300 meters east of the Republican Medical Center in Stepanakert. The dispensary provides medical and care services to individuals with psychosocial and intellectual disabilities who are voluntarily or involuntarily hospitalized, as well as those who have been accused of non-violent criminal offenses and placed in the institution under court verdict.

None of the residents of the hospital were formally stripped of their legal capacity[44]. However, the legislation of Nagorno-Karabakh does not provide any supported decision-making mechanisms. As a result, even though the residents have full legal capacity, they have limited means to enact and fulfil it. For instance, their family members manage their social benefits.

On October 28, 2020, an alleged indiscriminate attack by Azerbaijani forces struck the Stepanakert Republican Medical Center with one artillery rocket, damaging the new maternity ward[45]. Apparently, the walls and windows of the dispensary building were also damaged during the same attack. During our visit on May 18, 2022, we found the tail section of a rocket stuck in the Dispensary yard's soil. At the time of our visit, the living conditions and building's state of repair were deplorable[46]. The hospital lacked a bomb shelter and did not have a distinctive emblem of a medical establishment, which is required under International Humanitarian Law to indicate that it is protected.

On September 27, when the war started early in the morning, the hospital was operating as usual. Dozens of residents were inside when they heard the sounds of the

[40] Information provided by the Ministry of Labour and Social Affairs of Armenia. 12 April 2022.

[41] Human Rights Defender of Artsakh. (2021). An Updated Version of the Report on the Cases of the Killing of Civilians Published with Brief Description on the Circumstances of the Killing.

[42] Interview with Gegham Stepanyan. Human Rights Defender of Artsakh. 17 May 2022.

[43] Ibid.

[44] Interview with the director of the Psychonarcological Dispensary. 18 May 2022.

[45] Human Rights Watch. (2020). Azerbaijan: Unlawful Strikes in Nagorno-Karabakh.

[46] Based on the observation during the author's visit to the Dispensary on 18 May 2022.

first strikes and saw smoke in the distance, originating from the heavily attacked electricity control center buildings in Stepanakert and Shushi city during the war[47]. Before the evacuation, the residents had to take cover in the hospital's basement during the attacks. However, its size did not exceed 30 sq. m. and was not suitable to be used as a shelter for dozens of people. One of the patients recalled their experience in the basement: "During the first days, we were standing in the basement, and then they brought benches. It was cold and humid." [48] The administration representative informed us that one resident was using a wheelchair, and the stairs leading to the basement made it impossible for them to access it. Therefore, that person remained upstairs in the main building while the others were sheltering in the basement[49].

Some residents and administration officials told the authors that a few days after the start of the war, there were frequent power cuts, and the warning siren sounded constantly[50].

The hospital residents were evacuated to Armenia on October 4, 2020, when the war was ongoing. They found refuge at Sevan Mental Health Centre and lived there for approximately six months before returning to the dispensary on April 6, 2021[51].

Most of the residents who spoke to the authors reported significantly better living conditions at the Sevan Mental Health Centre compared to the dispensary. The residents emphasized the diversity of food, the frequency of bathing, the availability of a personal wardrobe, access to classes, TV sets, and internet while they lived in Sevan Mental Health Centre. However, they also mentioned that the walks were brief compared to Stepanakert. Despite the better living conditions, the residents expressed a desire to return to Nagorno-Karabakh, where their relatives lived and could visit them frequently or occasionally.

When asked how many years she has lived in the institution, Maria, who has spent the last 20 years in the dispensary, answers, "for centuries." While noting that they received better food and new clothes at Sevan hospital, Maria says she feels much better in Stepanakert with the people she is "used to" live.

Mkhitar told the authors that he was evacuated from the Dispensary to the Mental Health Centre of Sevan along with other residents by bus. Now around 30 years old, he had been placed in the dispensary under a court verdict after being accused of committing a minor crime and had been living there for about ten years. Before that, he had lived in a special boarding school for children with intellectual disabilities in Yerevan.

Mkhitar's family lives in a village in Nagorno-Karabakh, and they visit him occasionally, or he travels home to spend time with them. He hopes that he will eventually leave the hospital and move back home.

Together with others, Mkhitar lived in the Sevan Mental Health Centre for about six months. He misses the time spent in Sevan and notes that they were able to bathe once a

[47] Interviews with the residents of the Psychonarcological Dispensary. 18 May 2022.

[48] Interview with the resident of the Psychonarcological Dispensary. 18 May 2022.

[49] Interview with the staff of the Psychonarcological Dispensary. 18 May 2022.

[50] Interviews with the residents and staff of the Psychonarcological Dispensary. 18 May 2022.

[51] Interview with the director of the Psychonarcological Dispensary. 18 May 2022.

week. He also had a closet where he could store his belongings and could find things to keep himself occupied. “There’s nothing to do here,” he says. A little later, he asks: “Do you have a watch?” After receiving the answer, he grins and says, “Neither do I... I never know what time it is.”[52]

When they returned to the Dispensary, Mkhitar found out that the shockwave from the artillery or missile strikes had smashed the windows of his room. Now, instead of glass, the window is covered with plastic. Mkhitar says that plastic, however, does not protect the room from the cold: “I have to put on extra clothes at night.”

Some hospital residents returned home when the war broke out[53]. When the hospital resumed operations after the war, they returned to the institution. Albert, who is in his 50s and diagnosed with schizophrenia, has been living in the dispensary for the last 20 years. His family lives in the city of Stepanakert. At the outbreak of the war on September 28, he moved home with his family’s initiative. In early October, he had to evacuate to Yerevan with his family, and after the war ended in November, he and his family returned to Stepanakert. He lived with his family for about two months before returning to the hospital. While living with his family, Albert took mental health medications that he or his mother received from his doctor, who continued to work at the Republican Medical Centre in Stepanakert[54]. According to Albert, he cannot live with his family because his condition deteriorates from time to time. However, he also notes that he feels much better at home[55].

2.2. *Residents of Stepanakert Boarding House and people who were placed in institutions during the evacuation*

Before the war, the Stepanakert Boarding House provided services to older people and adults with psychosocial and intellectual disabilities. The residents were in the building when the war started. They were evacuated in October and resided in seven boarding institutions in Armenia, including two special institutions that provide services to people with psychosocial and intellectual disabilities: Dzorak Care Centre for People with Mental Disabilities (Dzorak) and Vardenis Psychoneurological Boarding House (Vardenis)[56]. Several residents and administration members told us that many people who had to find shelter in institutions in Armenia did not have passports or other identity documents with them. That made it extremely difficult for their families to find their relatives after the evacuation. For example, the family of one of the residents searched for him for several weeks until they could find him in the special care institution in Armenia[57].

Institutions in Armenia also provided refuge to people with psychosocial and intellectual disabilities who lived in the community with

[52] Interview with the residents of the Psychonarcological Dispensary. 18 May 2022.

[53] Interview with the director, the staff and a resident of the Psychonarcological Dispensary. 18 May 2022.

[54] Ibid.

[55] Interview with the resident of the Psychonarcological Dispensary. 18 May 2022.

[56] Information provided by the Ministry of Labour and Social Affairs of the Republic of Armenia. 12 April 2022.

[57] Interview with a staff of an institution in Armenia. 31 May 2022.

their families before the war[58]. Armenuhi was one of them. She lived with her mother in Stepanakert and evacuated to Armenia together with the residents of the Stepanakert boarding house. After the evacuation to Armenia, she lived in two different social care institutions and eventually was placed in the Dzorak Care Center due to her mental health condition. It took a while before her family could find her in Dzorak and bring her back home after searching in different institutions[59].

Karen lived with his family in Nagorno Karabakh and was evacuated to Armenia, where he ended up in a special care institution. After the war ended, his family found and took him home[60].

Mane, in her 40s, left a special care institution in Armenia in 2014 to live with her father in Shushi. But due to the war, she ended up in an institution again in 2021 after her father lost his house. Now she lives in a social care home in Armenia with dozens of other women.[61] Lyudmila is one of those women. She used to live with her family and spent a brief period of time in a social care home in Stepanakert. Now, she is indefinitely stuck in a special care institution in Armenia, far away from her family. Her family wants to bring her home, but they lost their house in Hadrut and are struggling to find a permanent place to live. “I hope, next time when you come, you won’t find me here,” she says while saying goodbye to us[62].

In another case, a family was separated as a result of evacuation. Marina and her daughter used to live in their home in Stepanakert. They evacuated together to Armenia but were placed in different institutions - Marina in an institution for older people and her daughter in a special institution for people with psychosocial disabilities. They were reunited seven months later when they returned to Nagorno-Karabakh.[63]

Mekhak, who is in his 40s, still resides in an institution in Armenia. In Nagorno-Karabakh, he lived with his brother’s family in their village house, but they could not return as his native village is now under Azerbaijani control. While he refrains from complaining about the quality of life in the institution, he notes that life back at home was different. He misses his work in the village and daydreams near the “cold spring water” in the forest. He used to engage in agricultural activities in his village, and now he helps the institution’s staff with laundry[64].

Similarly, Srbuhi, who is in her 50s, lived in a boarding house in Stepanakert before the war. Although she doesn’t complain about her life in the Armenian institution, she misses her relatives who used to visit her in Stepanakert. No one visits her here[65].

[58] Interview with a staff and residents of an institution in Armenia. 31 May 2022.

[59] Interview with a staff of an institution in Armenia. 31 May 2022.

[60] Interview with a staff of an institution in Armenia. 31 May 2022.

[61] Interview with a resident of an institution in Armenia. 13 July 2022.

[62] Interview with a resident of an institution in Armenia. 13 July 2022.

[63] Interview with a staff of an institution in Armenia. 31 May 2022.

[64] Interview with a resident of an institution in Armenia. 31 May 2022.

[65] Interview with a resident of an institution in Armenia. 31 May 2022.

2.3. *Residents of Stepanakert and Berdzor boarding schools of Nagorno-Karabakh*

Before the war, Nagorno-Karabakh had two boarding schools: Stepanakert Institution for the Care and Protection of Children No. 1 (Stepanakert boarding school) and Berdzor Institution for the Care and Protection of Children No. 2 (Berdzor boarding school). However, due to the town of Berdzor being under Azerbaijani control, only Stepanakert boarding school is currently operational.

The Stepanakert boarding school, which is a two-story building with a yard, did not suffer any damage during the war, according to the school's director. However, the government renovated it before reopening it after the war. The building does not have a bomb shelter.

The boarding school provides round-the-clock care for children, including those with psychosocial and intellectual disabilities. Although most children attend school, some receive home education.

The boarding school operated as usual when the war started. However, during the evacuation, children were sheltered in the nearest mainstream school building for about a week. On October 3, the residents of both Stepanakert and Berdzor boarding schools were evacuated to Armenia's SOS children's villages social care home, which operates in the Kotayk region.

Some parents took care of their children either during or after their stay in the SOS Children's Villages. As a result, several children were evacuated with their families or reunited with them after the evacuation. The children returned to Stepanakert on October 21, 2021[66], after living in the SOS Children's Villages for about ten months. While they were there, not all of the children attended school. For instance, Samvel, who has a psychosocial disability, had lived in the Berdzor boarding school and attended mainstream school before the war. He did not attend school while in the SOS Children's Villages and now receives home education at the Stepanakert boarding school [67] . Samvel, who is lively and thoughtful, wants to become a chef and is only interested in mathematics and technology.

Like the other children, he said that his stay there was a memorable experience because of the diverse classes he attended, which made his everyday life interesting. He shared how much he missed Berdzor, and, most of all, his father, who used to visit him there. His father hasn't visited him at the new location yet, but they talk on the phone every day.

Narek, who has an intellectual disability, has recently graduated from a local mainstream school. Although he did not attend school during his stay at SOS Children's Villages, he is pleased that the Villages provided several classes he could participate in, and he has fond memories of his speech therapist. Narek, who was soon to turn 18, was looking forward to returning home with his father.

Lusine was evacuated with her family, and they took her home when the war started. Like some other children, she did not attend school in Armenia. Before the war, she had lived in a boarding school in Stepanakert and attended her nearest mainstream school.

[66] Interview with the director of the boarding school. 19 May 2022.

[67] Ibid.

After the boarding school reopened, Lusine returned to the institution[68].

3. Discussion

3.1. *Overview of CRPD and IHL standards*

The urbanisation trend[69] and the use of explosive weapons with wide destructive effects during armed conflicts pose new challenges for persons with disabilities[70]. These weapons cause disruption, degradation, and destruction of essential services, leading to a loss of life-sustaining services and the creation of new barriers that disproportionately affect persons with disabilities.

Furthermore, the institutionalisation and segregation of people with psychosocial and intellectual disabilities make them more vulnerable during armed conflicts, as attacks on such civilian objects can have devastating effects[71]. Despite their vulnerability, persons with disabilities often remain invisible in response mechanisms[72], including humanitarian response systems, due to the lack of meaningful participation in the design process.

Article 11 of the CRPD requires state parties to ensure that persons with disabilities are protected and kept safe during armed conflicts, in accordance with their obligations under international law, including international humanitarian law and international human rights law.

The applicability of international human rights law, particularly disability rights laws, during armed conflicts has been a subject of much discussion among scholars and practitioners. Various aspects of the application of the fundamental principles of disability rights have been studied, such as medical treatment that permits the detention of persons with disabilities in mental health facilities[73], and solitary confinement for prisoners of war with psychosocial disabilities[74].

Incorporating modern interpretations of disability rights into humanitarian response laws and policies during armed conflict is self-evidently necessary. However, in practice, significant obstacles exist due to the failure of states to establish human rights-based systems during times of peace and their reliance on outdated policies and legal regulations."

Throughout history, people, societies, and states have held various perspectives on disability, which have shaped attitudes, policies, and laws. These perspectives are

[68] Interview with the resident of the boarding school. 19 May 2022.

[69] ICRC. (2020). International Humanitarian Law and the Challenges of Contemporary Armed Conflicts – Recommitting to Protection in Armed Conflict on the 70th Anniversary of The Geneva Conventions.

[70] Special Rapporteur on the rights of persons with disabilities. (2021). Report on the rights of persons with disabilities in the context of armed conflict, A/76/146.

[71] Special Rapporteur on the rights of persons with disabilities. (2022). Report on the protection of the rights of persons with disabilities in the context of military operations. A/77/203. para 16.

[72] ICRC. (2019). International Humanitarian Law and the Challenges of Contemporary Armed Conflicts – Recommitting to Protection in Armed Conflict on the 70th Anniversary of The Geneva Conventions (ref. 4427).

[73] Gill, M., & Schlund-Vials, C.J. (2014). Disability, Human Rights and the Limits of Humanitarianism (1st ed.). https://doi.org/10.4324/9781315577401

[74] Denisse P., & Palomino C. (2022). A new understanding of disability in international humanitarian law: Reinterpretation of Article 30 of Geneva Convention III. Published by Cambridge University Press on behalf of the ICRC.

categorized into models of disability, such as the medical and charity models and social and human-rights-based models. The medical and charity models focus on personal medical conditions [75] and treats people with disabilities as objects to be protected and taken care of, placing the "problem" of disability within the person rather than in the environment that creates barriers to the full inclusion of people with disabilities[76]. On the other hand, the social and human-rights-based approaches shift the focus towards societal barriers and human dignity.

The bulk of International Humanitarian Law was developed between the 1940s and 1970s, during the dominance of the medical approach to disability. This shaped IHL's understanding and treatment of persons with disabilities [77], which is reflected in the terminology and early legal approaches.

Historically, the over-reliance on medical and charity models resulted in the exclusion, institutionalization and segregation [78] of people with psychosocial and intellectual disabilities, which remains a pervasive and insidious problem that violates several rights guaranteed under the CRPD[79].

The Convention on the Rights of Persons with Disabilities adopts a more comprehensive approach based on social and human rights models of disability[80]. One of the fundamental shifts that the CRPD has helped to galvanize is the transition from institutional care [81] to community-based

[75] United Nations. (2014). The Convention on the Rights of Persons with Disabilities Training Guide Professional Training Series No. 19, page 8.

[76] Kanter, Arlene. (2014). The Development of Disability Rights Under International Law: From Charity to Human Rights. doi: 10.13140/2.1.3039.6484.

[77] Palomino, P. (2022). A new understanding of disability in international humanitarian law: Reinterpretation of Article 30 of Geneva Convention III. *International Review of the Red Cross, 104*(919), 1429-1454. doi:10.1017/S1816383122000169

[78] Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para. 1

[79] Committee on the Rights of Persons with Disabilities. (2014). General comment No. 1 on Article 12: Equal recognition before the law. para. 46

[80] Degener, T., & de Castro, M. G. C. (2022). Toward Inclusive Equality: Ten Years of the Human Rights Model of Disability in the Work of the UN Committee on the Rights of Persons with Disabilities. In F. Felder, L. Davy, & R. Kayess (Eds.), Disability Law and Human Rights (Palgrave Studies in Disability and International Development). Palgrave Macmillan. https://doi.org/10.1007/978-3-030-86545-0_2

[81] Residential institutions - is not "just" about living in a particular building or setting; it is, first and foremost, about not losing personal choice and autonomy as a result of the imposition of certain life and living arrangements. Institutionalised settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion in the number of persons with disabilities living in the same environment. Institutional settings may offer persons with disabilities a certain degree of choice and control; however, these choices are limited to specific areas of life and do not change the segregating character of institutions.

Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para. 16(c)

approaches with independent living arrangements [82] and inclusion in the community[83], as laid down in Article 19 of the Convention on the Rights of Persons with Disabilities. It guarantees the right to live independently and be included in the community with the freedom of choice and control over one's life[84]. This principle also cements the idea that disability laws and policies must take into account the diversity of persons with disabilities.

Unlike the charity and medical approaches, the social model perceives disability as a socially constructed injustice that can be challenged and eliminated through radical social change[85]. Complementing the social model, the human rights model centers on the inherent dignity of the human being and subsequently, if necessary, on the person's medical characteristics[86]. The human rights model emphasizes that individuals with disabilities are full rights holders. This provides people with disabilities the opportunity to access the full benefits of basic freedoms that most people take for granted, while also acknowledging and accommodating their needs[87]. As a result, it

[82] Independent living/living independently means that individuals with disabilities are provided with all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives. Personal autonomy and self-determination are fundamental to independent living, including access to transport, information, communication and personal assistance, place of residence, daily routine, habits, decent employment, personal relationships, clothing, nutrition, hygiene and health care, religious activities, cultural activities and sexual and reproductive rights. These activities are linked to the development of a person's identity and personality: where we live and with whom, what we eat, whether we like to sleep in or go to bed late at night, be inside or outdoors, have a tablecloth and candles on the table, have pets or listen to music. Such actions and decisions constitute who we are. Independent living is an essential part of the individual's autonomy and freedom and does not necessarily mean living alone. It should also not be interpreted solely as the ability to carry out daily activities by oneself. Rather, it should be regarded as the freedom to choose and control, in line with the respect for inherent dignity and individual autonomy as enshrined in article 3 (a) of the Convention. Independence as a form of personal autonomy means that the person with disability is not deprived of the opportunity of choice and control regarding personal lifestyle and daily activities.

Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para. 16(a)

[83] The right to be included in the community relates to the principle of full and effective inclusion and participation in society as enshrined in, among others, article 3 (c) of the Convention. It includes living a full social life and having access to all services offered to the public and to support services offered to persons with disabilities to enable them to be fully included and participate in all spheres of social life. These services can relate, among others, to housing, transport, shopping, education, employment, recreational activities and all other facilities and services offered to the public, including social media. The right also includes having access to all measures and events of political and cultural life in the community, among others, public meetings, sports events, cultural and religious festivals and any other activity in which the person with disability wishes to participate.

Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para. 16(b)

[84] Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para.2

[85] Lawson, A., & Beckett, A. E. (2021). The social and human rights models of disability: towards a complementarity thesis. The International Journal of Human Rights, 25(2), 348-379. doi: 10.1080/13642987.2020.1783533

[86] Bruce, A., Quinn, G., Degener, T., Burke, C., Quinlivan, S., Castellino, J., Kenna, P., & Kilkelly, U. (2002). Human rights and disability: the current use and future potential of United Nations human rights instruments in the Context of Disability. United Nations Press.

[87] Ibid.

upholds the principle that disability policies and laws should consider the diversity of people with disabilities[88].

Modern developments in disability rights, based on the social and human rights models of disability, aim to protect persons with disabilities, including providing special protection during military conflicts. These models also require the elimination of environmental, institutional, informational, and legal barriers to guarantee respect for the dignity and rights of persons with disabilities. By removing these barriers, persons with disabilities are empowered to make decisions and choices about their own lives.

The recognition and active promotion of individual autonomy, competence, and capacity, along with ensuring sufficient conditions to exercise rights on an equal basis with others, demand that persons with disabilities are perceived as subjects of the decision-making process and not just beneficiaries.

The human rights model of disability does not allow the exclusion of persons with disabilities for any reason, including the kind and amount of support services required[89], unlike the medical and charity models. From the perspective of the human rights model, institutionalization is considered discriminatory as it demonstrates a failure to create support and services in the community for persons with disabilities, who are forced to relinquish their participation in community life to receive treatment[90].

Based on the thematic study on the rights of persons with disabilities under Article 11 of the CRPD on situations of risk and humanitarian emergencies, the High Commissioner on Human Rights recommended that international humanitarian law and international human rights law should be seen as complementary and mutually reinforcing when it comes to protecting the rights of persons with disabilities in situations of risk and humanitarian emergency. The study also concluded that standards demanding a complete prohibition on the deprivation of liberty based on disability and non-consensual detention in mental health facilities and other institutions should inform the interpretation and implementation of international humanitarian law[91].

3.2. *Overview of the impact of armed conflicts on people with psychosocial and intellectual disabilities*

International humanitarian law ensures that displaced persons receive the same protection as civilians, including the guarantee of humane treatment. While the law does not explicitly define humane treatment, it mandates the provision of

[88] Committee on the Rights of Persons with Disabilities. (2018). General comment No. 6 (2018) on equality and non-discrimination. CRPD/C/GC/6, para. 9.

[89] Committee on the Rights of Persons with Disabilities. (2017). General comment No. 5 on living independently and being included in the community. CRPD/C/GC/5, para. 60

[90] Committee on the Rights of Persons with Disabilities. (2018). General comment No. 6 (2018) on equality and non-discrimination. CRPD/C/GC/6, para 58

[91] Office of the United Nations High Commissioner for Human Rights. (2015). Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies. A/HRC/31/30, para. 55.

satisfactory shelter, hygiene, health, safety, and nutrition for affected civilians, and requires that families are not separated[92]. Additionally, it obligates the consideration of the specific needs of persons with disabilities[93].

The interpretation of the right to live independently by the Committee on the Rights of Persons with Disabilities can inform the understanding of IHL requirements. The Committee has repeatedly denounced institutionalization as a discriminatory practice against persons with disabilities[94] that entails the denial of legal capacity[95], detention, and deprivation of liberty based on disability[96]. It also calls on state parties to recognize institutionalization as a form of violence against persons with disabilities.

The state parties should end institutionalization and prevent new placements in institutions, and this commitment cannot be suspended in emergency situations[97].

Institutionalizing displaced persons with disabilities or trans-institutionalization during emergencies contravenes the Convention on the Rights of People with Disabilities and the general protection requirements for civilians under IHL, including the need to address the specific needs of people with disabilities and to ensure that satisfactory conditions are met.

Armenia committed to deinstitutionalization of services for people with psychosocial and intellectual disabilities and the establishment of community-based services upon ratification of the CRPD. However, despite implementing various programs and pilot projects, Armenia's mental health, care and support services for people with such disabilities remain heavily concentrated in institutions. This institutional model has hindered the development of community-based mental health, social care, support, and independent living services.

During and after the 2020 war, Armenia provided shelter to forcibly displaced adults and children with psychosocial and intellectual disabilities who previously resided in Nagorno-Karabakh institutions. It also offered refuge for individuals who previously lived in their community with their families. Many adults with psychosocial and intellectual disabilities who previously lived in institutions or communities in Nagorno-Karabakh were placed in Armenian institutions, and many remain there in more restrictive conditions than before. Additionally, they are far from their families and social networks.

The lack of community support systems led to the separation of families and disrupted social ties, particularly when family members with psychosocial and intellectual disabilities were placed in different institutions. The authors did not identify any specific support mechanisms available during the evacuation of people with disabilities and their families. Furthermore, adults and children with psychosocial and intellectual disabilities who were not in institutions before and during the war lacked

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[92] ICRC Customary Law Study. (2005). Rule 131. Retrieved from , AP I. (1977). Article 17.

[93] Ibid. Rule 131.

[94] Convention on the Rights of People with Disabilities. (2006). Article 5.

[95] Ibid. Article 12. https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf

[96] Ibid. Article 14. https://treaties.un.org/doc/Publication/CTC/Ch_IV_15.pdf

[97] Committee on the Rights of Persons with Disabilities. (2022). Guidelines on deinstitutionalization, including in emergencies. CRPD/C/5.

adequate support mechanisms, with the exception of medication provision.

It is also unclear whether persons placed in institutions were given an opportunity to make informed choices about their living arrangements. The decision to institutionalize was often made based on mental health conditions and the need for shelter, reflecting a medical and charity approach rather than a human rights-based one.

These findings indicate that Armenia, as a host country, was unprepared to provide adequate community support services for forcibly displaced persons with disabilities. As a result, Armenia failed to ensure their right to live in the community, to live independently, to liberty, to freedom from ill-treatment, to non-discrimination, and to respect for family, among other rights. This failure particularly affected those with psychosocial and intellectual disabilities who were institutionalized and led to the institutionalization of those who had previously lived with their families in the community.

3.3. *The status of buildings of social care facilities under International Humanitarian Law*

The CRPD requires including persons with disabilities on an equal basis with others in national emergency protocols and fully recognizing them in evacuation scenarios[98].

The language and interpretation of the Geneva Conventions regarding the protection of the rights of persons with disabilities need to be modernized. The current language of IHL is outdated and discriminatory, using terminology like "the infirm" instead of "a person with a disability" and "mental disease" instead of "persons with psychosocial or intellectual disabilities"[99]. The term "disability" was only included in international humanitarian law in 1977 in Additional Protocol I, and people with disabilities were initially included in the lists of wounded and sick people because their "condition may at any moment necessitate immediate medical care"[100], reflecting a medical model of disability. This approach is rooted in the medical model of disability and predetermines IHL regulations for the protection of people with disabilities during armed conflicts, but fails to acknowledge those whose condition does not necessarily require medical care[101].

The prohibition of attacks on medical units and personnel is a rule of treaty[102] and

[98] Committee on the Rights of Persons with Disabilities. (2018). General comment No. 6 (2018) on equality and non-discrimination. CRPD/C/GC/6, para 46.

[99] The Geneva Academy of International Humanitarian Law and Human Rights. (2019). Disability and Armed Conflict. Alice Priddy. ISBN: 978-2-9701253-0-3.

[100] Sandoz, Y., Swinarski, C., & Zimmerman, B. (Eds.). (1987). Commentary on the Additional Protocols. International Committee of the Red Cross. para. 305.

[101] Sud S. (2019). Move towards Expansion of Special Protection under IHL to include other vulnerable groups.

[102] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Articles 19, 24; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 36; Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Articles 18,20; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Articles 12, 15;

customary law that binds all actors of armed conflict [103]. A "medical unit" includes any military or civilian establishment organized for medical purposes [104], including mental health hospitals, which receive special protection as medical units due to their primary function of providing mental health treatment.

The special protection allows them to use the Red Cross emblem for protection during war[105]. While the emblem does not provide protection itself, it signifies protection under the Geneva Conventions and Additional Protocols[106]. Innovative and effective use of the emblem can reduce harm to people with disabilities and prevent damage to institutions.

However, institutions that provide residential social care services, like the Vardenis Psychoneurological Boarding House, are not classified as hospitals under the IV Geneva Convention, as per the definition given by Jean Pictet's commentaries of 1958. These institutions offer inpatient care that is non-medical in nature, including residential facilities for infants and children, homes for the older persons, and care homes for people with disabilities, and are therefore considered civilian objects that receive general protection. Therefore, individuals with disabilities who do not require medical treatment or receive both medical and social care in non-medical institutions are not provided with adequate protection under international humanitarian law. The question that arises is whether institutions providing residential care services to people with disabilities should receive the same protection as hospitals under international humanitarian law and be allowed to use the Red Cross symbol.

Weakened social ties, scarce community services, and the absence of independent living and supported decision-making mechanisms place the people who have to live in institutions in a more vulnerable position and even more dependent on the institutions during armed conflicts.

The individuals who live in institutions are f vulnerable due to their weakened social ties, the scarce community services available to them, and the absence of independent living and supported decision-making mechanisms. This makes them even more dependent on institutions during armed conflicts. In the context of new wars, where explosive weapons are predominantly used, international humanitarian law should pay more attention to residential institutions, which can become vulnerable sites during conflicts. Providing special status to institutions where people with psychosocial and intellectual disabilities live would enhance the safety of those trapped within them. For instance, during the war, around 450 residents of Vardenis Psychoneurological Boarding House had to take shelter multiple times and stayed there

Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Articles 9, 11.

[103] Henckaerts, J. M., & Doswald-Beck, L. (Eds.). (2005). Customary International Humanitarian Law, Vol. 1: Rules. ICRC Customary Law Study.

[104] De Mulinen, F. (1987). Handbook on the Law of War for Armed Forces. International Committee of the Red Cross. p. 93.

[105] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 38.

[106] Hawasly, H. (2017). What are the provisions of IHL governing the use and protection of the emblem? [Blog post].

for extended periods[107]. Social care institutions, which are responsible for the protection of their residents, would benefit from special protection and the use of the protective symbol.

2. Conclusion

The practice of institutionalizing persons with psychosocial and intellectual disabilities, along with the lack of sustainable and adequate community-based services, violates their rights under the CRPD and increases their vulnerability during armed conflicts. The CRPD sets standards for the availability and accessibility of community-based structures that consider the wills and preferences of people with disabilities. It also requires emergency mechanisms to follow universal design standards and incorporate reasonable accommodation. Protection mechanisms under IHL should also be rebalanced towards human rights-based approaches, including standards that prevent emergency response systems from leading to institutionalization and the loss of autonomy for people with disabilities.

Therefore, states should implement deinstitutionalization plans and provide services to ensure that people with disabilities can live in the community and benefit from all services and protection mechanisms available during armed conflict, with access to additional services that meet their needs. Additionally, as long as institutions exist and people with psychosocial and intellectual disabilities remain highly dependent on them, there must be a discussion of the special protection for the buildings of all facilities where people with psychosocial and intellectual disabilities have to live.

To ensure protection mechanisms address the needs of persons with psychosocial and intellectual disabilities, they must be meaningfully involved in the policymaking process for emergency situations.

In addition, international disability rights protection and monitoring mechanisms must be available and accessible to all people with disabilities, regardless of the status of territory they live in.

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[107] Interview with the staff of Vardenis Psychoneurological Boarding House, located in Armenia, 13 July 2022

"The representatives of the Human Rights Defender of Armenia visited today the child who was injured as a result of the Azerbaijan strikes. 15 October 2020, available at https://www.ombuds.am/en_us/site/ViewNews/1334

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10. Concept of Civil Defence of Nagorno-Karabakh. NK-3-N, 27.03.2012 http://arlexis.am/DocumentView.aspx?DocID=3187
11. Constitution of the Republic of Armenia (2015).

https://www.arlis.am/DocumentView.aspx?DocID=143723

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