

**Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on the rights of persons with disabilities**

REFERENCE:  
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10 February 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention and Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolutions 33/30 and 26/20.

During the official visit that the Working Group undertook from 16 to 25 May 2016 in Azerbaijan, the delegation of the Working Group announced to your Excellency's Government that it would follow up on some cases which were brought to the attention of the Group during the visit.

In this context, we would like to bring to your Excellency's attention the situation of Ms. [REDACTED] and Ms. [REDACTED] whom the Working Group met at the Psycho-neurological Boarding Home No. 8 in Khanlar region (former Goygol Region) on 20 May 2016.

According to information received:

*Case of Ms. [REDACTED]*

Ms. [REDACTED] was reportedly born in Baku on [REDACTED]. She was placed in two different orphanages, the orphanage of [REDACTED] and the orphanage [REDACTED] town, both in the suburban area of Baku. However, Ms. [REDACTED] file contains no information about the exact admission dates, the reasons and the procedures leading to her placement, the duration of her stay in both places and the reasons for her transfer from one institution to another.

When Ms. [REDACTED] reached the age of 18 in [REDACTED], she was transferred - at the request of her mother - to the Psycho-neurological Boarding Home No. 8 for women located in Khanlar Region. In a letter addressed to the head of the Department on Social Protection of Population of Baku City, Ms. [REDACTED] mother justified the need for her daughter's institutionalization on the basis of the existence of a mental impairment.

On 22 December 2008, the head of the Department of Social Protection Policy of the Disabled within the Ministry of Labour and Social Protection of Population sent a letter to the director of the Psycho-neurological Boarding Home No. 8 requesting that medical and social care be provided to Ms. [REDACTED] through

placement in this institution. Ms. [REDACTED] file included a handwritten note, signed by her mother as well as several other persons acting as witnesses, confirming that she was admitted to this institution. However, the exact date of her arrival and the planned duration of her stay were not indicated in the file.

The personal file also contained a letter from the head doctor of Psychiatric Hospital No. 1, dated 24 December 2008, informing the administration of the Psycho-neurological Boarding Home No. 8 that Ms. [REDACTED] was being transferred to their facility. Ms. [REDACTED] medical files kept by the Psychiatric Hospital No.1 refer to several medical diagnoses, such as “[REDACTED]”, “[REDACTED]” and “[REDACTED]”.

During its interview with Ms. [REDACTED] on 20 May 2016, the Working Group understood that she had remained eight years in this institution against her will without any legal avenue to challenge her deprivation of liberty. No document in Ms. [REDACTED] file indicated that she could meaningfully exercise the right to bring proceedings before an administrative body or court to challenge the arbitrariness and lawfulness of her detention.

*Case of Ms. [REDACTED]*

Ms. [REDACTED] has been reportedly held against her will in the Psycho-neurological Boarding Home No. 8 in Khanlar Region since 21 July 2006.

She reported to the Working Group that she came to this institution voluntarily as she was feeling depressed. Ms. [REDACTED] was first prescribed a treatment but noticed that instead of improving, her health condition had deteriorated. She informed her doctors accordingly and discussed with them the possibility to “rest in a quiet place”. Subsequently, she was offered to go to a therapeutic facility (sanatorium) in Gizildja.

After a short period of time, Ms. [REDACTED] informed the director of the Psycho-neurological Boarding Home No. 8, that she was ready to leave the institution. According to Ms. [REDACTED], the director refused to let her leave the institution. Reportedly, Ms. [REDACTED] brother had addressed the director of the institution with a request for release which was declined.

Ms. [REDACTED] informed the Working Group that she was authorized to take home leave on two occasions, in 2014 and 2015, but could not take her leave since her relatives had rented out her apartment. Ms. [REDACTED] indicated that, in 2015, her relatives agreed to take her back to their home and that she has put forward a new request for her release signed by her brother. However, reportedly, she was not granted authorization to leave the institution.

The letters addressed by Ms. [REDACTED] the social services remained allegedly unanswered.

We are concerned about the impossibility of Ms. [REDACTED] and Ms. [REDACTED], as well as other women with disabilities placed in the Psycho-neurological Boarding Home No. 8 in Khanlar Region to enjoy their fundamental rights to liberty and security, freedom of movement, access education, vocational training and employment, among others. Furthermore, by being forced to relinquish their freedom and control over their own lives in order to receive disability related support, the women in this institution are denied enjoyment of the fundamental right to live independently and be included in the community.

In connection with the above information and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law, in particular of its obligations under article 9 of the International Covenant on Civil and Political Rights, acceded to by Azerbaijan on 13 August 1992, according to which no one, including persons with disabilities, shall be subjected to arbitrary arrest or detention.

In this respect, we are concerned that the situation of Ms. [REDACTED] and Ms. [REDACTED], as observed by the Working Group during its visit, might amount to arbitrary deprivation of liberty.

In its statement upon the conclusion of its visit to Azerbaijan, the Working Group observed that many patients in psychiatric institutions were held against their will and that even those who may have voluntarily entered the facilities could not leave them freely and easily.

We would like to draw the attention of your Excellency's Government to articles 14 and 19 of the Convention on the Rights of Persons with Disabilities, ratified by the Republic of Azerbaijan on 2 October 2008. In accordance with their obligations under article 14, States should immediately stop the deprivation of liberty of persons with disabilities on the basis of an actual or perceived disability, and take prompt action to revise the legal provisions that currently allow detention in social, medical and psychiatric institutions and ensure access to appropriate community-based support for persons with disabilities.

Article 19 recognizes the right of all persons with disabilities to live in the community, including by ensuring them the opportunity to choose their place of residence and not obliging them to live in a particular living arrangement, and by ensuring their access to a range of in-home, residential and other community support services. It imposes an obligation on States to eliminate institutional care and create alternatives in the form of support services that enable choice and interaction with and participation in the community.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international human rights instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information on the national legal framework related to the placement of persons with psychosocial and intellectual disabilities in institutions.
3. Please provide information on any legislative, administrative and judicial measures taken to prohibit, prevent and remedy the involuntary detention of persons with disabilities in social, medical and psychiatric institutions on the basis of disability.
4. Please provide information on the administrative procedure followed in respect of the placement of Ms. [REDACTED] and of Ms. [REDACTED] in the Psycho-neurological Boarding Home No. 8 and the planned duration of their stay in this institution.
5. Please clarify the legal avenues which were made available to Ms. [REDACTED] and Ms. [REDACTED] to challenge their placement in this institution and whether any legal or other appropriate support was provided for them to exercise their rights.
6. Please provide information on any investigation conducted into the alleged involuntary placement of women in Psycho-neurological Boarding Home No. [REDACTED] and its outcome. Please also indicate what measures are taken for victims of involuntary placement to obtain redress, including compensation, and what accountability measures are taken in this respect.
7. Please provide information on any measures taken to facilitate Ms. [REDACTED] and Ms. [REDACTED] de-institutionalization and transition to community-based support services, including housing arrangements, aimed at ensuring their full and equal participation and inclusion in society.

8. Please provide information on the national processes related to the design and implementation of deinstitutionalization strategies based on the human rights model of disability.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the Methods of Work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals, which are of a purely humanitarian nature, in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure."

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Antonio Guevara Bermúdez  
Vice Chair of the Working Group on Arbitrary Detention

Catalina Devandas-Aguilar  
Special Rapporteur on the rights of persons with disabilities

