

ENDING DEPRIVATION OF LIBERTY OF CHILDREN

# INSTITUTIONS

A REVIEW OF PROMISING PRACTICES



Global Study on Children  
Deprived of Liberty



Global Campus  
of Human Rights

2022



## Global Campus of Human Rights

June 2022

Author: Lazar Stefanovic

*The author is grateful to Elisa Klein Diaz, Milana Todorovic, Manfred Nowak, Manu Krishan and Helmut Sax for their contributions and editing support.*

Cover Page and Illustrations: Ewelina Ulita

Layout: Messagio

### Summary:

*This toolkit is a series of publications, all of which build on the findings and recommendations of the UN Global Study on Children Deprived of Liberty, an extensive study that analyses different areas in which children are deprived of their liberty. This tool provides illustrations of States' practices across the world correlating with the recommendations of the Global Study in the field of institutions. An interactive version containing promising practices on all the Global Study areas can be found under [www.nochildbehindbars.com](http://www.nochildbehindbars.com). If you want to share further examples of cases and/or other materials, please get in contact with us through our email address [globalstudy@gchumanrights.org](mailto:globalstudy@gchumanrights.org)*

*This publication has been produced with the financial assistance of the Global Campus of Human Rights. The contents of this document are the sole responsibility of the author and can under no circumstances be regarded as reflecting the position of the GC.*

# Table of Contents

LIST OF ABBREVIATIONS.....	2
1. INTRODUCTION.....	3
1.1. STATES FEATURED IN THE TOOLKIT .....	5
1.2. CONTEXT OF THE TOOLKIT .....	5
What we mean by “deprivation of liberty” .....	5
What we mean by “institutions” and “institutional care” .....	6
2. INTERNATIONAL LEGAL FRAMEWORK .....	8
2.1. RIGHT TO PERSONAL LIBERTY.....	8
Concept and the scope of the right .....	8
Deprivation of liberty in institutions.....	8
2.2. RIGHT TO FAMILY LIFE.....	10
Resolutions .....	13
Treaty bodies’ General Comments .....	14
2.3. BEST INTERESTS OF THE CHILD.....	15
3. RECOMMENDATIONS AND AREAS OF ACTION.....	17
ACTION AREA 1: PRIORITISE FAMILIES AND PREVENT SEPARATION BY PROVIDING SUPPORT AND SERVICES TO FAMILIES AND THROUGH AWARENESS-RAISING .....	18
Illustrations of practice .....	19
ACTION AREA 2: PROVIDE APPROPRIATE, QUALITY, FAMILY-BASED ALTERNATIVE CARE AND SUPPORT IN THE COMMUNITY, WHERE THE IMMEDIATE FAMILY IS UNABLE TO CARE FOR A CHILD.....	21
Illustrations of practice .....	22
ACTION AREA 3: STOP INSTITUTIONALISATION AND PROGRESSIVELY ELIMINATE INSTITUTIONAL CARE...23	
Illustrations of practice .....	24
4. MAIN FINDINGS OF THE UN GLOBAL STUDY .....	29
4.1. HOW AND WHY CHILDREN END UP IN INSTITUTIONAL CARE.....	30
Socio-economic conditions.....	30
Lack of support and services for children and families .....	31
Discrimination.....	32
Domestic violence .....	32
Funding institutional care.....	34
4.2. RESIDENTIAL CARE IN TIMES OF A GLOBAL HEALTH CRISIS .....	35
ANNEX 1: GLOSSARY OF KEY TERMS.....	37
ANNEX 2: RELEVANT SOURCES & TOOLS FOR ANALYSIS AND RESPONSE .....	38
ANNEX 3: KEY QUESTIONS AT A PREPARATORY STAGE .....	42
ANNEX 4: BACKGROUND INFORMATION ON THE GLOBAL STUDY .....	43
ANNEX 5: NGO PANEL FOR THE UN GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY .....	43

# List of Abbreviations

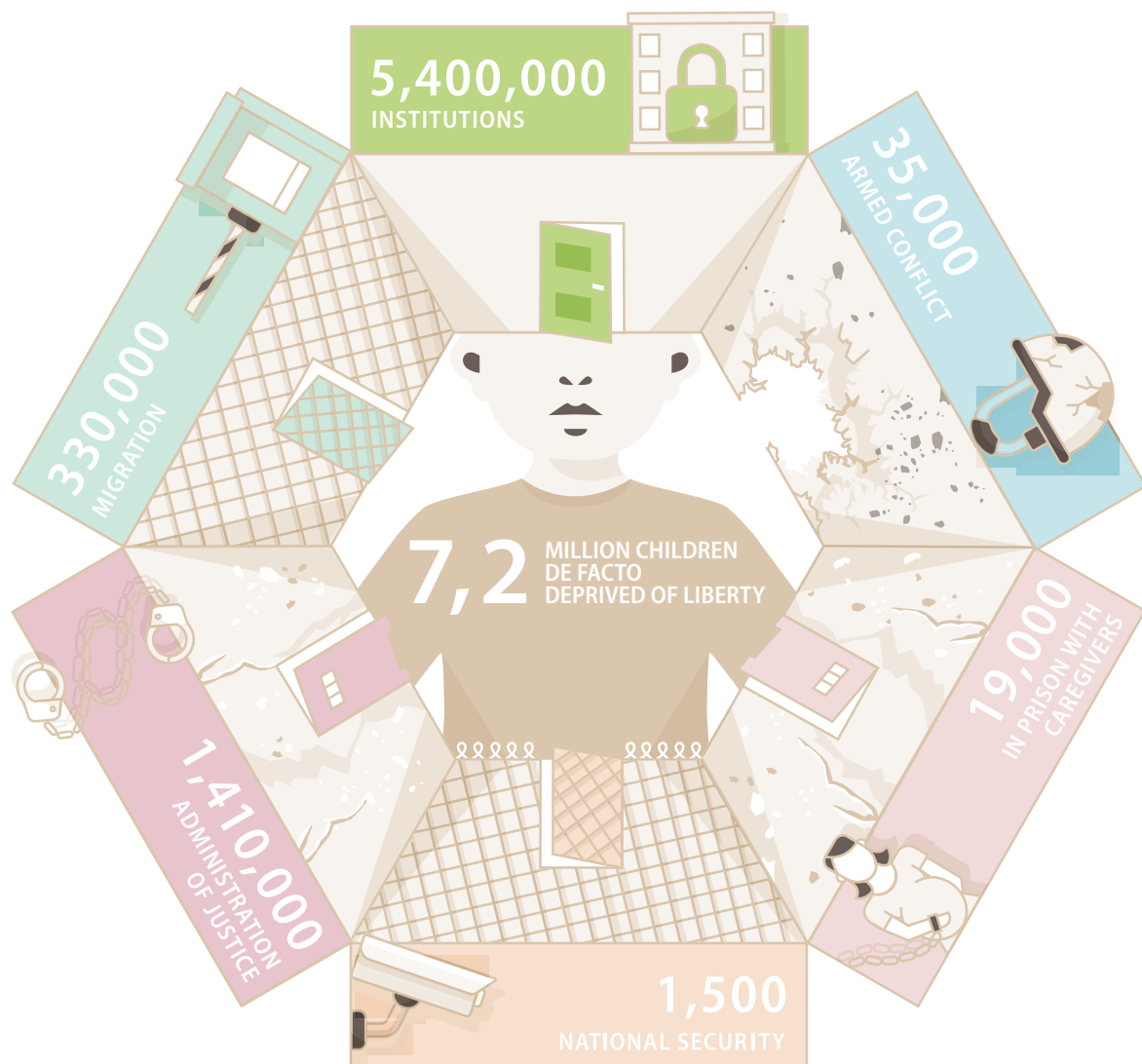
<b>AIDA</b>	Asylum Information Database
<b>CEE</b>	Central and Eastern Europe
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ECtHR</b>	European Court of Human Rights
<b>ERRC</b>	European Roma Rights Centre
<b>EDI Funds</b>	European Union Structural and Investment Funds
<b>FBCAF</b>	Federal Board of Childhood, Adolescence, and Family
<b>GC</b>	General Comments
<b>GCHR</b>	Global Campus on Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>MDAC</b>	Mental Disability Advocacy Centre
<b>NHRI</b>	National Human Rights Institution
<b>NPM</b>	National Mechanisms for the Prevention of Torture
<b>OPCAT</b>	Optional Protocol to the Convention Against Torture
<b>Unicef</b>	United Nations International Children's Emergency Fund
<b>UN GACC</b>	Guidelines for Alternative Care of Children
<b>WHO</b>	World Health Organisation

# 1. INTRODUCTION

This toolkit is a part of a series of publications that offer simple and practical guidelines to governments and other stakeholders, to implement recommendations of the United Nations Global Study on Children Deprived of Liberty (2019) (Global Study hereafter). Each of the toolkits focuses on contexts where children are commonly deprived of liberty across the world; these are the deprivation of liberty in the administration of justice, in migration, in mainstream institutions, and the deprivation of liberty in armed conflicts and for national security reasons.

All editions build on the findings and recommendations of the Global Study. Therefore, they should be regarded as complementary resources to the Global Study and best used together with the study. This document is grounded in the international human rights law, primarily the Convention on the Rights of the Child (CRC hereafter) and the Convention on the Rights of Persons with Disabilities (CRPD hereafter), meaning that the norms contained in these treaties are hereby analysed and taken as a basis for selecting recommendations, promising practices and tools. These examples are regarded as “promising”, as they support the advancement and implementation of the recommendations of the Global Study.

The objective of this toolkit is to provide guidance, first and foremost to the States but other stakeholders as well, **to effectively reduce reliance on forms of care for children that result in their deprivation of liberty** and **increase reliance on family-based care**.



## BOX 1 – Global Number of Children in All Situations of Deprivation of Liberty

Source: based on numbers provided in UN Global Study on Children Deprived of Liberty, p. 661

## Beneficiaries

The primary beneficiaries of this toolkit are **all children who live in institutional settings or who are at risk of being placed in institutional forms of care around the world**. According to the findings of the Global Study and other studies, children with disabilities are at the highest risk of being placed in different forms of institutional care. Thereby, this document pays a specific focus on the transition from institutional to family-based care for children with disabilities.

## Target audience

This toolkit is primarily aimed at States, governmental agencies, policy-makers and law-makers, welfare, health, and education authorities and seeks to provide them with useful information to conduct appropriate reforms.

Young people and children, especially self-advocates, may use this toolkit to inform themselves about their rights and spur reflections and discussions, as well as an advocacy tool for the betterment of their position and that of their peers.

International and local non-governmental organizations (NGOs hereafter) and national human rights institutions (NHRIs hereafter) may use the toolkit as an advocacy tool to help them promote, scrutinise and monitor the implementation of international human rights law on the national level.

International governmental organizations may find the toolkit informative for developing their programs and monitoring the implementation of human rights treaties in state parties.

Public and private donors can benefit from the toolkit in the process of detecting and supporting actions that support family-based care and the development of community-based services to enable deinstitutionalisation of all children.

## Structure

The toolkit contains information on the latest non-legal resources on the issue of children in non-family-based alternative care, the developments in the international human rights law related to alternative care for children, and examples of promising practices in ensuring non-custodial care across the world. Therefore, readers of this document will come across:

- Overview of the **international legal framework** related to the deprivation of liberty of children, alternative care and other complementary standards, pages 10 - 27;
- **Recommendations** for ending the institutionalisation divided in three Action areas followed by illustrations of promising practice across the world, pages 28 - 51;
- Overview and a discussion on **findings of the Global Study** and other latest studies on children in institutions, pages 52 - 65.

## 1.1 States featured in the toolkit

Argentina	Guatemala	North Macedonia
Armenia	Hungary	Russia
Australia	Ireland	Rwanda
Austria	Israel	Scotland
Bulgaria	Italy	Senegal
Cambodia	Japan	Serbia
Canada	Kenya	South Africa
Croatia	Latvia	Spain
Czech Republic	Lithuania	Tanzania
Denmark	Luxembourg	The Netherlands
Georgia	Mexico	Togo
Ghana	Moldova	United Kingdom
		USA

## 1.2 Context of the toolkit

The topic of the toolkit – ending the deprivation of liberty of children in institutions, sets the scope of this publication. In order to as clearly as possible define the boundaries and provide readers with the information necessary to understand and use this toolkit, the two main concepts – deprivation of liberty and institutions/ institutional care are briefly described and discussed below.

### What we mean by “deprivation of liberty”

According to the Global Study, the “deprivation of liberty means to confine a human being to a narrowly bounded location that he or she cannot leave at will”.<sup>1</sup> The experts faced challenges when they applied this definition to children, as especially young children are commonly held in such places and in such a way that they cannot freely leave the crib, or a bed, a stroller, the parents’ house, or even kindergarten. This and a number of other dilemmas had challenged experts, who, for the purpose of the Global Study, applied the definition of deprivation of liberty as in the international law. This means that some involvement on behalf of governmental agencies is required in the decision leading to deprivation of liberty.<sup>2</sup> Whether an institution is public or private is not crucial. The Study follows a concept of detention and places of detention as in the Optional Protocol to the Convention Against Torture (OPCAT hereafter), effectively covering all forms of de jure and de facto deprivation of liberty.<sup>3</sup> Such approach also encompasses social care institutions, foster homes, institutions for persons with disabilities, orphanages, children’s homes, institutions for the educational supervision of children regardless from the quality of care provided.<sup>4</sup>

<sup>1</sup> Manfred Nowak, "UN Global Study on Children Deprived of Liberty," Geneva: United Nations (2019). P. 12

<sup>2</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 13

<sup>3</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 64-65

<sup>4</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 65

## What we mean by “institutions” and “institutional care”

In the literature and amongst professionals, the issue of defining institutions and institutional care has taken up a lot of time and space. The attempts to define it go beyond a mere semantic issue and become a matter that interferes with interpreting the human rights law and other standards. For that reason, the following paragraphs describe the critical terms of “institutions” and “institutional care” by providing a brief insight into present discussions on both terminology and relevant international standards, setting the scope of this toolkit.

The Global Study takes a widely accepted, characteristics-based approach to defining institutions. Some of the characteristics commonly used to describe an institution include:

- residents are isolated from the broader community;
- compelled to live together;
- do not have sufficient control over their lives and decisions which affect them;
- and the requirements of the organization itself tend to take precedence over the residents' individual needs.<sup>5</sup>

It should be considered that the “institutional” characteristics laid out above are primarily related to understanding and defining institutions for adults and have their beginnings in the work of Erving Goffman's critical work *Asylums*.<sup>6</sup> Similarly, the General Comment No. 5 of the CRPD Committee takes a characteristics-based approach, but perhaps a more nuanced one. It completely abandons the size of a group or a facility as a defining element and introduces other elements of “institutionalised settings” such as no choice over assistance personnel and unavoidable sharing of assistance with other residents.<sup>7</sup> The CRPD Committee recognizes the need for a more child-sensitive elaboration of standards related to the living arrangements of people with disabilities, by emphasising that group homes of any size, large or small, “are especially dangerous for children, for whom there is no substitute for the need to grow up with a family”.<sup>8</sup>

There is an ongoing debate on the definition of institutions that is intertwined with a discussion on the suitability of some forms of residential care for children,<sup>9</sup> for example – the CRPD Committee asserted that small group care is especially dangerous for children, while the UNICEF's regional office for Europe and Central Asia, although acknowledging potential dangers, recognized that small group care can have a minimal role in the continuum of alternative care options.<sup>10</sup>

This toolkit focuses on providing guidance for the **elimination of all forms of care that can in its very nature carry characteristics that are harmful to children and where children are at risk of deprivation of liberty due to the organizational and functioning characteristics of care.**

Institutions, by their very nature, are unable to operate without depriving children of their liberty.

**Global Study, p. 501**

Although the Global Study concludes that large-scale residential facilities necessarily deprive children of their liberty, it does not specify if the deprivation of liberty is an unavoidable consequence of care in smaller group arrangements. Rather than characterising such care as one that unavoidably deprives of liberty, it needs to be noted that such establishments do carry an inherent risk for liberty deprivation of its residents. Moreover, children are commonly

<sup>5</sup> Ad hoc Expert Group, Report of the Ad Hoc Expert Group on the Transition from Institutional to Family-based Care, European Commission (2009).

<sup>6</sup> Erving Goffman, *Asylums: Essays on the social situation of mental patients and other inmates* (AldineTransaction, 1968).

<sup>7</sup> Committee on the Rights of Persons with Disabilities, General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, 2017, para. 16

<sup>8</sup> General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5. Para. 16(c)

<sup>9</sup> General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5. Para. 16(c)

<sup>10</sup> Stela Grigoras, "White paper. The role of small-scale residential care for children in the transition from institutional to community-based care and in the continuum of care in the Europe and Central Asia Region," (UNICEF Europe and Central Asia Regional Office, 2020).



## 1. INTRODUCTION

placed in out-of-family small-group care by virtue of an order by a public authority or at its instigation or with its consent or acquiescence, and should be regarded as possible places of detention in accordance with the OPCAT.<sup>11</sup> Hence, for the purpose of this toolkit, terms **“institutional care”, “residential care”, “group care” will be regarded as synonyms and used interchangeably.** The Better Care Network toolkit adopts a similar understanding of those three terms.<sup>12</sup>

The placement and living in residential care for children have aspects that go beyond the right to personal liberty and are burdened with violations of a number of other human rights. Therefore, the only proper way to address the issue of the violation of the right to personal liberty of children in institutions is to take into consideration all other aspects and treat them as a whole, which is an approach taken by the Global Study too.<sup>13</sup> For those reasons, the present toolkit does not aim to provide guidance on how to avoid the deprivation of liberty in institutional care without calling for comprehensive child-care reforms. Instead, it should help to **reduce reliance and eventually eliminate institutional forms of care, while promoting the preservation of families and the development of family-based alternative care.** Only family-based care does not inherently contain characteristics that endanger child's wellbeing.

Incentives for deinstitutionalisation came primarily from the attachment theory and scientific studies uncovering detrimental effects on the child's development, and from often appalling findings of human rights advocates and media about the conditions and treatment in institutions.<sup>14</sup> The two mechanisms were at times powerful tools for mobilising the general public in demanding better care for children, which was followed with reforms in a number of countries. Upholding the CRC and CRPD norms and having access to scientific evidence, a deinstitutionalisation policy needs to integrate this knowledge and thus set goals beyond mere closure of large institutions.

Today we know that separation from the family and placement in residential care can impede children's psychological, emotional and even physical development by disrupting the development of a child's brain, which is particularly dangerous in the youngest age.<sup>15</sup> These children have poorer outcomes later in life than their peers who grew up in families.<sup>16</sup>

Therefore, there are at least two severe threats to the wellbeing of children related to institutional/ residential/ out-of-family group care:

- 1) **heightened risks of abuse and neglect** (increases with the size of groups and poorer staff/ residents ratio, lack of training etc.),<sup>17</sup>
- 2) **inability to enable proper development of the child** due to the unavoidable lack of adequate relationships in group care.<sup>18</sup>

The size of groups in which care is organized and provided can vary from several to hundreds of children. The larger the group the higher risk of neglect and abuse is, however the smaller groups, even when counting up to 10 or 12 children, cannot save from the inherently harmful effects of out-of-family care. The professional relationships and rotation of care workers in shifts, as well as often an “extremely high” turnover of workers<sup>19</sup> due to generally low salaries in the care sector and often poor working conditions, “does not allow for the establishment of permanent emotional bonds that can only develop in the context of a family”, meaning that any group living arrangements have inherently damaging effects on the development of children.<sup>20</sup>

<sup>11</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 2003.

<sup>12</sup> Glossary of Key Terms. Better Care Network Toolkit; Better Care Network, 2010, accessed 5 November, 2021, <http://bcn.volumesquared.com/stage/glossary.html>.

<sup>13</sup> Nowak, "UN Global Study on Children Deprived of Liberty." p. 219

<sup>14</sup> Below at p. 55.

<sup>15</sup> See e.g. Harvard Center on the Developing Child, "InBrief: The Science of Neglect," (Youtube.com, 4 November 2021 2013). <https://youtu.be/bF3j5UVCSCA>.

<sup>16</sup> Charles H Zeanah et al., "Alternatives for abandoned children: insights from the Bucharest Early Intervention Project," *Current opinion in psychology* 15 (2017); Anna T Smyke et al., "Placement in foster care enhances quality of attachment among young institutionalized children," *Child development* 81, no. 1 (2010); Anne E Berens and Charles A Nelson, "The science of early adversity: is there a role for large institutions in the care of vulnerable children?" *The Lancet* 386, no. 9991 (2015); E Browne, "Children in care institutions. K4D Helpdesk Report," Brighton, UK: Institute of Development Studies, retrieved 15 (2017).

<sup>17</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 533-534

<sup>18</sup> Mary Dozier et al., "Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association," *Am J Orthopsychiatry* 84 (2014).

<sup>19</sup> Michael Rutter, "Implications of attachment theory and research for child care policies," *Handbook of attachment: Theory, research, and clinical applications* 2 (2008). P. 960

<sup>20</sup> Dozier et al., "Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association." P. 220

## 2. INTERNATIONAL LEGAL FRAMEWORK

This section provides an overview of international human rights standards related to the right to personal liberty and other complementary standards relevant to children in institutions. The norms and standards on the right to personal liberty should be read together with other corresponding standards as the problem of liberty deprivation of children needs to be addressed comprehensively. Ending the deprivation of liberty for children is possible only by upholding the international human rights law norms and principles such as the paramount consideration of best interests, prioritisation of life in a family over all other forms of settings, non-discrimination, right to alternative care, protection from torture, inhuman and degrading treatment and other forms of ill-treatment. The present chapter, however, contains an overview of the norms and standards related to **the deprivation of liberty in institutions**, the **protection of family life** for children and **the provision of alternative care** and **best interests of the child**. Norms and standards on **the right to safety, care, participation and development for children in alternative care**, as well as **the independent oversight, monitoring and complaints** are to be found in the Global Study, on **pages 516 - 518**.

For this purpose, international human rights instruments primarily considered are the CRC and the CRPD, then the International Covenant on Civil and Political Rights (ICCPR hereafter) and the International Covenant on Economic, Social and Cultural Rights (ICESCR hereafter). For further elaboration of their norms and the ways of implementation we consider non-binding documents, namely resolutions of the UN General Assembly and the Human Rights Council, and the committees' general comments.

### 2.1 Right to personal liberty

#### Concept and the scope of the right

The right to personal liberty, a concept embodied in the international human rights law, considers an aspect of freedom related only to the bodily movement, as opposed to other, broader concepts of human freedom.<sup>21</sup> Limitations of movement, such as the prohibition to leave a country, a region, or a town or deportation<sup>22</sup> do not fall into the scope of the deprivation of personal liberty, and thus do not interfere with the right to personal liberty.<sup>23</sup> Therefore, only restrictions of freedom where a person is confined to a strictly limited site that he/she cannot leave at will are considered to be the deprivation of personal liberty.<sup>24</sup>

Another critical term in relation to the deprivation of liberty is "detention". The "detention" considers any form of deprivation of liberty, regardless from the context of this deprivation, whether it is the police custody, pre-trial detention, conviction, abduction or some other act.<sup>25</sup> Nowak explains that this broad understanding of detention is the one adopted by the Global Study, which is also aligned with other with the Havana Rules and the views of the Inter-American Commission for Human Rights.<sup>26</sup>

#### Deprivation of liberty in institutions

Practices of the **Subcommittee for the Prevention of Torture** and the **Committee for the Prevention of Torture**, based on art. 4 of the OPCAT establish that places of detention include social care institutions, psychiatric hospitals, orphanages etc. This leads us to the main point for the purpose of this paper – the placement of children with or without disabilities in institutional care (such as orphanages, special care homes, mental health hospitals, boarding schools and other residential forms of care) presents **de facto deprivation of liberty**. This is a position expressed by the Human Rights Committee.<sup>27</sup>

<sup>21</sup> Manfred Nowak, *U.N. covenant on civil and political rights : CCPR commentary*, 2. rev. . ed. (Kehl [u.a.]: Engel, 2005). p. 160, cited in Nowak, "UN Global Study on Children Deprived of Liberty." P. 61

<sup>22</sup> However, a person can be deprived of personal liberty in the process of deportation, e.g. while he/she is being held in detention prior to deportation or during transportation.

<sup>23</sup> (!!! INVALID CITATION !!! ). P. 321, cited in Nowak, "UN Global Study on Children Deprived of Liberty." P. 61

<sup>24</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 61

<sup>25</sup> Nowak, *U.N. covenant on civil and political rights : CCPR commentary*. p. 169 cited in Nowak, "UN Global Study on Children Deprived of Liberty." P. 64

<sup>26</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 65

<sup>27</sup> Human Rights Committee, General Comment 35 of 2014, CCPR/C/GC/35, para.62, according to which any 'placement of a child in institutional care amounts to deprivation of liberty within the meaning of article 9'.



### Art. 37 b CRC

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time

The **CRC** in art.37b prohibits deprivation of liberty that is unlawful or arbitrary. Further the provision prescribed that detention of a child must be applied only as a measure of last resort and “for the shortest appropriate period of time”. Nowak explains that this in principle means children should not be deprived of liberty, and when the deprivation is necessary in a given case it should be short, while the priority should be always given to non-custodial solutions.<sup>28</sup>

The **CRPD** prohibits detention of children and adults with disabilities justified on the basis of disability in art. 14.1 (b).



### Art.14 1 (b) CRPD

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty

The phrase “the existence of a disability shall in no case justify a deprivation of liberty” covers a broad range of liberty deprivations where disability might be one of the factors and not the only factor. In other words, according to the CRPD text the deprivation of liberty cannot be even indirectly based on a person's disability, or when other factors are present alongside - e.g. institutionalisation of a disabled child due to the lack of family-based support and services.<sup>29</sup> Instead, States must ensure that children with disability have access to family-based support and services (art. 19b CRPD) and if a child cannot stay in his/her immediate family, then a State must undertake every effort to provide alternative care in a family setting (art. 23.5). Hence, the norm of art. 14 CRPD must be interpreted with regard for the internal context of the CRPD (Preamble and the text), primarily art. 23 (Respect for the home and family life)<sup>30</sup> and art. 19 (Living independently and being included in the community)<sup>31</sup>, then with art. 20, 23 and 37 CRC<sup>32</sup> and other relevant provisions.<sup>33</sup>

The art. 14 CRPD is essentially an anti-discrimination provision as it prohibits the deprivation of liberty in relation to disability, and thus creates no new rights.<sup>34</sup> The need for such a norm stemmed for the omnipresent institutionalisation of children and adults with disabilities worldwide. With a similar reason, a provision of art. 23.4 CRPD prohibits separation of children on the basis of a disability either that of the child or his/her parents.<sup>35</sup> Although the CRPD allows for deprivation of liberty of persons with disabilities on other grounds than disability, it practically abolishes institutionalisation of children with disabilities on any grounds, by obliging states to provide alternative care in a wider family, and failing that in the community, in a family setting.<sup>36</sup>

The complementary nature of the conventions, and rights and obligations (the right to personal liberty and security of a person, protection of family life, the obligation of States to provide alternative care within a community in a family setting etc.) make the deprivation of liberty of children in institutions a multi-faceted issue of the international human rights law. Such a complex legal issue must be firstly interpreted and then addressed in its entirety, with due regard for the internal and external contexts of those treaties, other applicable rules of international law, while upholding a principle of effectiveness in accordance with the good faith principle of the VCLT. The following paragraphs, thereby, explore complementary and equally important provisions and norms of the CRC and the CRPD.

<sup>28</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 67

<sup>29</sup> The CRPD Committee confirms this meaning in its Guidelines on article 14, and supports this interpretation by providing insights from the drafting process where states opposed introducing a qualifier “solely” or “exclusively” before the phrase “the existence of disability” in art. 141 (b): CRPD Committee, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, 2015.

<sup>30</sup> Cross ref / <sup>31</sup> Cross ref / <sup>32</sup> Cross ref / <sup>33</sup> Cross ref

<sup>34</sup> Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, para. 4

<sup>35</sup> Cross ref

<sup>36</sup> Cross ref page. 26, discussion on art. 23.5 CRPD

## 2.2 Right to Family Life

The CRC Preamble recognizes that a family is a fundamental unit and natural environment for growth and well-being of everyone, especially children, for whose harmonious growth and development family environment is indispensable.<sup>37</sup> Similarly, the ICESCR stipulates that, considering the importance of the family as an essential group of the society, States have an obligation to provide a “widest possible protection and assistance”.<sup>38</sup> In a similar way, the CRPD preamble acknowledges the family as a natural and fundamental unit of the society and adds that persons with disabilities should receive necessary protection and assistance.<sup>39</sup> On the basis of the preambular texts of the two conventions and several other provisions related to the protection of family life, the CRC Committee and the CRPD Committee recognize the existence of the right to family life, although it is not explicitly mentioned in those conventions.<sup>40</sup>

In the case where a child is deprived of a family environment, States are obliged to ensure special protection and assistance, and provide alternative forms of care. In spite of the alternative care provision sometimes being commissioned to NGOs or private organizations, it stays the obligation of States.<sup>41</sup>

The right to special protection and alternative care for children deprived of the family environment should be understood and applied in conjunction with art. 3 CRC that deals with non-discrimination.



### CRPD Article 23.3

States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

Discrimination in relation to the provision of alternative care is two-fold – children with disabilities, indigenous children and children from ethnic minorities end up in alternative care, especially institutional care, more often than others.<sup>42</sup> This is an indication of disproportionate support that States provide to immediate families of these children and support provided to foster care or institutional care, and can be seen as discriminatory in the realisation of the family life of those children. Once placed in alternative care, these children often face discrimination in accessing other rights such as education, health protection and other public services.<sup>43</sup>

As a response to the vicious circle of institutionalisation and discrimination of children with disabilities, the CRPD reinforces the protection of family life in art. 23 by setting an obligation for States to ensure equal enjoyment of family life of children with disabilities and to provide all necessary support and services to “prevent concealment, abandonment, neglect and segregation”.<sup>44</sup> This provision



### CRC Article 20.1 & 2

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

<sup>37</sup> Convention on the Rights of the Child, 1989. Preamble.

<sup>38</sup> International Covenant on Economic, Social and Cultural Rights, 1967. Art. 101

<sup>39</sup> Convention on the Rights of Persons with Disabilities, 2006. Preamble (x)

<sup>40</sup> Joint Statement: The rights of children with disabilities, CRC Committee and CRPD Committee (2022).

<sup>41</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 513

<sup>42</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 521-523.

<sup>43</sup> Nigel Cantwell and Anna Holzschneider, A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment (Brill | Nijhoff, 2007). Para. 8

<sup>44</sup> Convention on the Rights of Persons with Disabilities, art. 233

made of a primarily positive obligation to States, contains also an implicit negative obligation as the States should refrain from placing children in segregating living arrangements. Furthermore, the CRPD produces an obligation of States to provide alternative care in a family setting in the community for children, where the immediate family is unable to care for the child.<sup>45</sup> The obligation of a State to “undertake every effort” to provide alternative care primarily within the wider family, reflects which form of alternative care is the most appropriate according to the CRPD. It is also an acknowledgement that it might be impossible to provide care in a wider family in each case, nevertheless, it obliges States to make all efforts to realise that, and only after failing should the alternative care be provided in another form of care in a family setting in the community. The list of acceptable care options is exclusive as it obliges States to provide care only in a family setting, but it does not preclude which forms care in family settings, hence it allows States parties to choose and develop forms of care in accordance with domestic cultural contexts. Therefore, the CRPD increases the obligation and duty of States to protect the family life of children with disabilities by formulating an obligation of states parties to provide alternative care only in families.



### Art. 23.5 CRPD

States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Unlike the CRPD, art. 20.3 CRC gives a non-exclusive list of alternative care options among which are also “suitable” institutions, but only as a necessity. This CRC provision provides non-obligatory guidance to the States parties in complying with obligations contained in art. 20.1 and 2 CRC on States’ duty to provide special protection, assistance and alternative care to children who are deprived of their family environment.



### Art. 23.5 CRPD

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

In that regard, if a State party to both conventions would apply this guiding provision of the CRC by placing a child with disabilities in an institution, that State would fail to comply with the obligation from the CRPD to provide placement in a family setting, when the immediate family is unable to care for the child (art. 23.5), and likely the obligation to prevent segregation of children (art. 23.3). However, State parties can both apply art. 20 of the CRC and at the same time comply with the obligation of art. 23.3, by providing alternative care in a family setting (when the immediate family is unable to care for a child) in a wider family, foster family, or through adoption or Kafalah.

The adjective “if necessary” in art. 20.3 CRC, in practice is viewed from the standpoint of social care systems, according to Cantwell and Holzscheiter, and gives to the “suitable institutions” a quality of an inherently undesirable solution.<sup>48</sup> Therefore, the placement in (suitable) institutions, according to the CRC, is permitted only when it is inevitable, which is a situation that in practice arises from the lack of better alternatives - family-based options.<sup>49</sup>

<sup>45</sup> Convention on the Rights of Persons with Disabilities, art. 23.5

<sup>46</sup> Cantwell and Holzscheiter, A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment. Para. 11

<sup>47</sup> Convention on the Rights of the Child, art. 20

<sup>48</sup> Cantwell and Holzscheiter, A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment. Para. 136

<sup>49</sup> Ibid.



On the other hand, the CRPD creates an obligation to States to prevent “concealment, abandonment, neglect and segregation” by providing information, support and services to children and families, and an obligation to “undertake every effort” to provide alternative care in a family setting. It is clear that the inherent undesirability of out-of-family care is even more emphasised in the CRPD, and the



#### CRPD Article 23.4

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

obligation for states to create conditions for family-based care strengthened. Therefore, when there is a necessity to place a child in a (suitable) institution from a standpoint of the system in accordance with the CRC, that is to say when there is no family-based alternative care option available, the State would not comply with obligations from paragraphs 3 and 5 art. 23 CRPD as it would have failed to create and provide information, services and support to the child and his/her family and to make alternative care in a family setting within the community available. Likewise, CRC art. 23 recognizes the right to full and decent life of children with disabilities in conditions that ensure dignity and advance their self-reliance and inclusion in the community.

The CRPD art. 23.4 reinforces the protection of family life by setting a negative obligation to States to not separate children from their families on the basis of a disability of either the child or his/her parents “in no case”.<sup>50</sup> Although this paragraph does not contain positive obligations it must be read in conjunction with the remaining paragraphs of art. 23, which create positive obligations of States. Unlike the CRPD, art. 9.1 CRC

explicitly mentions that where it is in the child’s best interest, he/she can be separated from family in cases of neglect.

This difference between CRC and CPRD norms on the separation from the family should be interpreted as an expression of the intent of the CRPD to oblige States to stop rooted practices of taking children away from parents with disabilities mainly due to entrenched prejudice against their parental skills, and due to the lack of support and services that are either inexistent or directed to alternative forms of care. This norm has a solid anti-discriminatory character, as it tends to prohibit separation on the basis of disability and, together with the remainder of art. 23, sets an obligation to provide resources and conditions for achieving substantive equality and promoting transformative equality by addressing rights violations that come from deeply rooted, institutionalised biases, stereotypes and prejudice.

**Only the provision of alternative care in a family setting within the community can comply both with the CRC and the CRPD at the same time.**



#### Art. 9.1 CRC

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

<sup>50</sup> See more: Janos Fiala-Butora, “Art.23 Respect for Home and the Family,” in *The convention on the rights of persons with disabilities: a commentary*, ed. Ilias Bantekas, Michael Ashley Stein, and Dimitris Anastasiou (Oxford Commentaries on Interna, 2018).

## Resolutions

United Nations bodies have adopted a number of documents related to alternative care and preservation of family life for children, which should assist States in implementing the treaties. The **UN Guidelines for Alternative Care of Children** (UN GACC hereafter) adopted in 2009 by the UN General Assembly, like the CRC, CRPD and ICESCR, recognized that the family is a fundamental and natural unit of the society and the best place for children to grow and develop. The UN GACC invite States to focus on the preservation or restoration of family life for children by directing their efforts to support families.<sup>51</sup> Particular emphasis is given to the prevention of separation of children from families where members have disabilities, are from indigenous groups and minorities, families with a problem of alcohol and drugs misuse, those living in areas of armed conflict and under foreign occupation, and children who are vulnerable due to various reasons.<sup>52</sup> The removal from the family must be seen only as a last resort measure and such decisions should be regularly reviewed.<sup>53</sup>

**Removal from the family is a measure of last resort and such decision should be regularly reviewed.**

Aimed at facilitating the implementation of the CRC, the UN GACC reiterate that residential care should be provided to children where it is “appropriate, necessary and constructive” and in the best interest of the child. Similarly to art. 20.5 CRC, the UN GACC adopt the element of necessity to residential care, still, the approach to such care is more constructive than in the text of the CRC.<sup>54</sup> Another subtle difference between art. 20.3 CRC and the UN GACC para. 21 is that instead of the words “suitable institutions”, the UN GACC refer to “residential care”. This difference is not substantive, as these terms can be used interchangeably, especially when it is considered that the adjective “suitable” refers to the quality of care and its appropriateness for the care of a specific child in case.<sup>55</sup> Furthermore, according to the UN GACC, residential care and family-based care complement each other, and States in their deinstitutionalisation efforts should develop small-group care that promotes children’s development.<sup>56</sup> However, reiterating predominant scientific evidence, children under the age of three should be only provided family-based alternative care.<sup>57</sup> The UN GACC does not contain any reference to the CRPD.

A newer **Resolution on the Rights of the Child**, adopted by the **UN General Assembly** in 2019 (Resolution 74/133 hereafter), calls for the full implementation of the CRC and the CRPD several times. It stresses family-based care as the most appropriate care for children, and expresses deep concerns for potential harm of institutional care on child’s well-being.<sup>58</sup> States are called to support families by providing quality alternative care in compliance with the CRC and the CRPD, and by considering the UN GACC.<sup>59</sup> The Resolution urges State to implement progressive institutionalisation by substituting institutional care for the “family and community-based care” and, by reiterating content of the art. 23 5 CRPD - where the immediate family is unable to care for the child, provide alternative care within the community in a family setting.<sup>60</sup> Adopted ten years after the UN GACC, the Resolution 74/133 takes a more balanced approach, dully promoting the implementation of both the CRC and CRPD, and emphasising the provision of the quality alternative care in family and in the community.

<sup>51</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7, 2009.

<sup>52</sup> Ibid. para. 9.

<sup>53</sup> Ibid. para. 14.

<sup>54</sup> See more: Cantwell and Holzscheiter, *A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment*. Par. 136

<sup>55</sup> Cantwell and Holzscheiter, *A Commentary on the United Nations Convention on the Rights of the Child, Article 20: Children Deprived of Their Family Environment*. para. 137

<sup>56</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. para. 23

<sup>57</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. para. 22

<sup>58</sup> 74/133. Rights of the child, A/RES/74/133, 2019. Para. 26

<sup>59</sup> 74/133. Rights of the child, A/RES/74/133. Para. 34(l)

<sup>60</sup> 74/133. Rights of the child, A/RES/74/133. Para. 35

**Resolution on empowering children with disabilities for the enjoyment of their human rights, including through inclusive education**, adopted by the Human Rights Council in 2019, calls States to replace institutionalisation by developing measures to support family and community-based services, and, reiterating the text of art. 23.5 CRPD, provide family-based alternative care.<sup>61</sup>

**Declaration on the Rights of Indigenous People** is an essential resolution considering the rates of institutionalisation of indigenous children worldwide. Although the CRC treaty and the resolutions above apply to all children, this Declaration prescribes the right of indigenous peoples to transmit their culture and language through generations and to maintain their indigenous identities, placing a higher responsibility on States to prevent separation of children from their families, and if the immediate family is unable to care for the child, to place him/her in alternative family-based care in indigenous families.<sup>62</sup>

## Treaty bodies' General Comments

Another type of human rights bodies' documents are General Comments (GC hereafter). These authoritative interpretations of treaties texts should help States and other actors understand and implement human rights treaties. GCs are developed by Committees, often after a consultative process with other State and non-state actors.

The CRC Committee adopted the **General Comment No. 9** on children with disabilities in February 2007, shortly before the CRPD was opened for signatures. According to the CRC Committee, the "leading principle" of the CRC treaty regarding children with disabilities is art. 23.1, meaning that all efforts of States parties should be directed toward full inclusion in the community.<sup>63</sup> After acknowledging all the potential consequences of institutional care, the CRC Committee stated that children with disabilities should be placed in institutions, only as a measure of last resort, when it is absolutely necessary and in the child's best interests<sup>64</sup>. It also stated that the states should conduct deinstitutionalisation reforms and substitute institutions for care in families, wider families and foster care<sup>65</sup>.

On the other hand, **CRPD Committee General Comment No. 9** on Article 19: Living independently and being included in the community, adopted almost ten years later, asserts that the core of the right under this article entails a right to grow up in a family for children with disabilities.<sup>66</sup> Elaborating on the appropriateness of different living arrangements, the CRPD Committee stipulates that institutions are not characterised only by the size, but other elements such as "...obligatory sharing of assistance... lack of choice over whom to live with... 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". On this, the CRPD Committee adds:

**"Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. "Family-like" institutions are still institutions and are no substitute for care by a family."**

<sup>61</sup> Human Rights Council, Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14, 2019. Para. 16

<sup>62</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 515.

<sup>63</sup> Committee on the Rights of the Child, General comment no. 9 The rights of children with disabilities, CRC/C/GC/9, 2006. Para. 11

<sup>64</sup> General comment no. 9 The rights of children with disabilities, CRC/C/GC/9. Para. 47

<sup>65</sup> General comment no. 9 The rights of children with disabilities, CRC/C/GC/9. Para. 49

<sup>66</sup> General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5. Para. 37



Apart from the art. 23 CRPD that protects the family life of children with disabilities, this statement was influenced by emerging scientific evidence on the potential harm of institutional types of care. Similarly, the UN GACC stipulate that overwhelming evidence proved the detrimental effect of institutional care of children under 3 years of age and that such care should not be provided to the youngest children.<sup>67</sup> Such evidence first emerged seven decades ago in empirical psychology research, and until these days the detrimental effects of out of family care, especially institutional care where deprivation is the most prominent, were proved numerous times.<sup>68</sup> Many of these studies confirm through comparisons that the children in foster care, even when they had been residents of institutions before going to foster families, had drastically better outcomes than the children in institutional care. Nevertheless, research has shown that early placements in residential care can be particularly dangerous for children with lower baseline cognitive ability.<sup>69</sup>

Alternative care where children share carers who work in shifts, whether those shifts last several hours or several days, does not allow children to form a relationship with a parental figure.<sup>70</sup> This and many other findings from psychology and cognitive science, together with a need to eradicate historically omnipresent placement of children with disabilities in residential care, as well as recent evidence from human rights monitoring, have arguably strengthened the authority of the CRPD's Committee's interpretation of art. 19 regarding the inadequacy of residential care of any size.

The CRC Committee and the CRPD Committee together recognize the existence of the right to family life for all children. Their joint statement emphasises the need for deinstitutionalisation and the development of supports and services directed at families, while calling for the adoption of strategies with clear timeframes and sufficient budgets aimed to end discrimination and segregation of disabled children.<sup>71</sup>



### Art. 3.2 CRC

States Parties shall ensure to the maximum extent possible the survival and development of the child.

## 2.3 Right to Family Life

The art. 3.1 CRC obliges States parties to take the child's best interest as a primary consideration in all matters concerning children, regardless of the authority who undertakes actions, in the private and public sphere. The CRC Committee elaborates that the best interests principle has a three-fold function: it is a substantive right; a principle of legal interpretation; and a rule of procedure.<sup>72</sup> It is a dynamic concept, as it is highly context-dependent.<sup>73</sup> Still, as the CRC Committee asserted in two General Comments, a judgement of child's best interests cannot override the obligation to respect all child rights under the CRC.<sup>74</sup>

General Comment No. 14 especially emphasises the importance of considering the best interests when it comes to the preservation of the family environment for a child. The Committee reiterates the importance of protection of the family as a natural and fundamental unit of the society.<sup>75</sup>

<sup>67</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 22

<sup>68</sup> See more on the relationship of attachment disorders and institutional care: . In Anna T. Smyke et al., "A Randomized Controlled Trial Comparing Foster Care and Institutional Care for Children With Signs of Reactive Attachment Disorder," *Am J Psychiatry* 169 (2012), <https://doi.org/10.1176/appi.ajp.2011.11050748>.

<sup>69</sup> Smyke et al., "A Randomized Controlled Trial Comparing Foster Care and Institutional Care for Children With Signs of Reactive Attachment Disorder:" p. 513

<sup>70</sup> Dozier et al., "Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association." P. 220

<sup>71</sup> Joint Statement: The rights of children with disabilities. Para. 10

<sup>72</sup> Committee on the Rights of the Child, General comment no. 14 on the right of the child to have his or her best interests taken as primary consideration, CRC/C/GC/14, 2013. Para. 1

<sup>73</sup> Ibid.

<sup>74</sup> General comment no. 14 on the right of the child to have his or her best interests taken as primary consideration, CRC/C/GC/14. Para. 4; Committee on the Rights of the Child, General comment no. 13 The right of the child to freedom from all forms of violence, CRC/C/GC/13, 2011. Para. 61

<sup>75</sup> General comment no. 14 on the right of the child to have his or her best interests taken as primary consideration, CRC/C/GC/14. Para. 59

Reiterating the potential harm of separation from the family, the Committee asserts that the separation can be only applied as a measure of last resort, for the shortest period of time, or when a child is in imminent danger.<sup>76</sup> State parties have an obligation to provide support to families in risk of separation before it occurs, and the separation must not take place when a less intrusive measure is available. Special Rapporteur on Torture, Juan Mendez, asserted that “best interests of the child should not be defined in accordance to the convenience of the State,”<sup>77</sup> recognizing the issue of flexibility of this principle in practice. The CRC Committee agrees that this flexibility of the best interests principle as much as it is a strength it is also a weakness.<sup>78</sup> One of the criticisms on the application of this principle relates to the tendency of authorities to justify a child’s placement in residential care on the basis of his/her best interest, in cases when there is a lack of family and community-based support and family-based alternative solutions, in spite of the plethora of evidence about the potential harm of residential care for children. Manfred Nowak, the former Special Rapporteur against torture and lead of the Global Study, argues that deprivation of liberty of a child, regardless of the context (administration of justice, social care, educational purposes, regulation of migration etc.) cannot be in the child’s best interest practically under any conditions.<sup>79</sup> In Concluding observations on the implementation of the CRC in States parties, the CRC Committee acknowledged that the South African judiciary is especially successful in applying this principle<sup>80</sup> while in some other jurisdictions, it expressed concern over the lack of understanding of this principle’s meaning and the responsibilities it encompasses.<sup>81</sup>

<sup>76</sup> General comment no. 14 on the right of the child to have his or her best interests taken as primary consideration, CRC/C/GC/14. Para. 61

<sup>77</sup> Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, A/HRC/28/68, 2015. Para. 44

<sup>78</sup> General comment no. 14 on the right of the child to have his or her best interests taken as primary consideration, CRC/C/GC/14. Para. 34

<sup>79</sup> Manfred Nowak, “Detention of Children for the Purpose of Educational Supervision,” in *European Yearbook on Human Rights 2020*, ed. Gerd Oberleitner et al. (Intersentia, 2020). P. 199

<sup>80</sup> Concluding observations on the second periodic report of South Africa, Committee on the Rights of the Child (2016). Para. 25

<sup>81</sup> For example: Concluding observations on the combined second and third periodic reports of Serbia, Committee on the Rights of the Child (2017). Para 24

### 3. INTERNATIONAL LEGAL FRAMEWORK

Based on the findings of the Global Study, the international legal framework, and examples of good practices in transition to non-residential, non-custodial types of care for children, a set of recommendations was developed to help States in their efforts. The **overarching recommendations** of the Global Study are to be found in **Chapter 15 Overarching Recommendations and Conclusions**,<sup>82</sup> recommendations for ending institutional care for children in mainstream institutions are listed in **Chapter 12**,<sup>83</sup> and the recommendations specifically aimed at ending the deprivation of liberty of **children with disabilities** are in **Chapter 7**.<sup>84</sup>

#### Areas of action

Drawing from the Global Study's findings, conclusions and recommendations, and the international standards on the right of the child without parental care and children with disabilities, this toolkit lists key recommendations for ending institutional care for all children. The recommendations are grouped into three action areas:

- **Prioritise families and prevent separation by providing support and services to families;**
- **Provide appropriate, quality, family-based alternative care and support in the community, where the immediate family is unable to care for a child;**
- **Stop institutionalisation and progressively eliminate institutional care.**



**BOX 2 – Global Number of Children in All Situations of Deprivation of Liberty**  
*Source: data from the research findings*

<sup>82</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 656 / <sup>83</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 562 / <sup>84</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 221

Each of the three action areas contains recommendations from the Global Study supplemented with recommendations asserted in the UN resolutions on the rights of the child and other actors, such as academia, international non-governmental organizations and NGOs. It should be noted that there is a significant overlap between action areas because those policies and practices sometimes fulfil multiple roles and feed into each other, for example – closing institutions should be impossible without efficient prevention of family separation and without family-based alternative care options. Therefore, **a comprehensive strategy on deinstitutionalisation should encompass all three areas of action.**

The recommendations are followed with **illustrations of practice** around the world in respective areas. These examples can serve States and other actors to plan their own actions and advance the understanding of policy and practice reforms needed to promote life in families for all children. Some of the examples are followed by major issues identified in relation to the implementation of such practices or in the deinstitutionalisation process as a whole in a given country to increase awareness of possible pitfalls that should be avoided. All actions should be planned and executed upholding the **best interest of the child** principle in all of its three functions.

## Action area 1: Prioritise families and prevent separation by providing support and services to families and through awareness-raising.

Under this policy area, it is recommended that States:

1. Review laws to recognize that a family is a fundamental unit of the society and that for a child there is no substitute for the need to grow up in a family;
2. Repeal laws that allow for separation on the basis of poverty, and real or perceived impairment, either that of the child or his/her parents;
3. Prevent discrimination against children with disabilities, including by explicitly prohibiting discrimination on the ground of disability in law and practice,<sup>85</sup> recognize denial of reasonable accommodation as a form of discrimination,<sup>86</sup> and conduct awareness-raising and education campaigns to address stereotypes, prejudice and stigmatisation;<sup>87</sup>
4. Allocate budget and human resources to support children and their families, especially children with disabilities and children living in financial hardship and marginalised and stigmatised families, to address root causes of family separation;<sup>88</sup>
5. Provide early and comprehensive information, and specific services and support to children with disabilities and their families,<sup>89</sup> make general services inclusive without discrimination,<sup>90</sup> and provide parenting and child care support;<sup>91</sup>
6. Provide free, inclusive, quality education, and reasonable accommodation in accessing the education where needed, for all children, including children with disabilities, children from ethnic minorities, indigenous groups and migrant children.<sup>92</sup>

<sup>85</sup> Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 5

<sup>86</sup> Committee on the Rights of Persons with Disabilities, General comment no. 6 (2018) on equality and non-discrimination :Committee on the Rights of Persons with Disabilities, CRPD/C/GC/6, 2018. Para. 17

<sup>87</sup> Human Rights Council, Rights of the child : empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14, 2019. Para. 5

<sup>88</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 34; 74/133. Rights of the child, A/RES/74/133. Para. 34

<sup>89</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 34; 74/133. Rights of the child, A/RES/74/133. Para. 34;

<sup>90</sup> General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5. Para. 39

<sup>91</sup> 74/133. Rights of the child, A/RES/74/133. Para. 34.

<sup>92</sup> Rights of the child : empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 18-31; 74/133. Rights of the child, A/RES/74/133. Para.

## Illustrations of Practice

### Family preservation services and support

According to Bezeczký *et al.* in the **United States of America** were pioneered intensive support services to families where children are in imminent danger of displacement from the family. Original service of this kind, "Homebuilders", provided emergency and intensive support to families since its beginnings. The support was provided within 24h of a referral, each family would have its caseworker available around the clock, while the support provided is supposed to be individualised and flexible. The researchers found that this type of service had a significant effect on reduction of placement in the period of 12 months after intervention and non-significant reductions at more than two years after an intervention. Similar services in regard to their home-based, individualised, flexible and multi-component character were developed and implemented in the USA and around the world, especially Europe.

"Healthy Families America" provides an in-home visiting service in the **USA** and **Israel**, aimed at families with children up to 5 years old who are at risk of abuse and neglect due to different factors, including parents' substance abuse and mental illness. Families have weekly sessions with the service provider's staff for the first six months, after which the intensity is gradually reduced until it is ceased when a child reaches three years of age. Future parents can benefit from the service even before their child is born. Apart from support aimed at increasing parenting skills, the staff helps parents to benefit from other medical, financial and substance abuse services.<sup>93</sup> The staff do not need to possess any specific qualifications, but they must receive training, while their supervisors need to have at least a bachelor degree in a relevant field.<sup>94</sup>

"Isibindi: A family Strengthening Approach" is a type of in-family, community-based, outreach, multi-component service in **South Africa**, specifically aimed at vulnerable children. It is highly culturally sensitive and provides counselling, training, supervision, conflict resolution and assistance in caring for children with disabilities.<sup>95</sup>

"Parental Plus Early Years Programme" is a service in **Ireland**<sup>96</sup> that focuses on providing a parenting course for parents of children 1-6 years old who have behavioural problems and developmental disabilities. It runs for 12 weeks and entails group and individual work with parents and the child. The service aims to support parenting, assist with childcare and help vulnerable children.<sup>97</sup>

"Family Associate" is a type of in-family, outreach, multi-component service in **Serbia** aimed at preventing separation, neglect and abuse, facilitating a child's return to the family after being in institutional care and increasing parental skills. Beneficiaries are families preparing for the reintegration of a child, foster families, families with children with disabilities, and families otherwise at risk. The role of the Family Associate, who is a social welfare professional, is to "consult, educate, guide, motivate and lead families to positive change in functioning."<sup>98</sup> The support is practical, as the associate advocates for and represents the interests of the child and the family before different authorities in order to facilitate the realisation of their rights. Moreover, the associate can provide one-time cash transfers to the families.<sup>99</sup> A major strength of this service is its **multi-component character**, meaning that it addresses multiple aspects of a child's life and thus has an impact on different vulnerabilities of a family and a child.<sup>100</sup> A major issue in providing this service in Serbia was its **sustainability and availability**, as the funding of the service was mainly ensured from international donors and private donors, not the Government of Serbia. The service was only available to families living in four major cities in Serbia.

<sup>93</sup> Michelle Macvean *et al.*, "Review of the evidence for intensive family service models," (Melbourne: The Parenting Research Centre and The University of Melbourne, 2015). P. 42-43 / <sup>94</sup> Macvean *et al.*, "Review of the evidence for intensive family service models."

<sup>95</sup> Nowak, "UN Global Study on Children Deprived of Liberty" P. 554 / <sup>96</sup> See more promising practices from the EU member states: / <sup>97</sup> Ibid.

<sup>98</sup> Sanja Miloradović and Snežana Jović, "Pilotiranje usluge "Porodični saradnik" i evaluacija rezultata pružanja usluge," (Piloting of the "Family Associate" service and evaluation of the service and results) (Republički zavod za socijalnu zaštitu, 2016). P. 13

<sup>99</sup> See more: Miloradović and Jović, "Pilotiranje usluge "Porodični saradnik" i evaluacija rezultata pružanja usluge."

<sup>100</sup> Macvean *et al.*, "Review of the evidence for intensive family service models." P. 20

Another promising service in Serbia is the **Personal Child's Companion**, aimed at children with disabilities and developmental issues, this service is designed to provide support in fulfilling basic, daily needs of a child for mobility, personal hygiene, feeding, clothing, communication, use of public transport, playing and other forms of activities, while the child is enrolled in elementary and secondary school<sup>101</sup> (duration of elementary and secondary education in Serbia is 8 and 4 or 3 years respectively). The service is flexible and accommodates to the needs and wishes of a particular child. The weekly duration of the service is 40 hours, and the personnel is not necessarily educated for the provision of social services or in child welfare in general, unlike the personnel who provides the Family Associate service, allowing for a larger pool of interested candidates and a higher coverage with the service. In the last several years, the number of children using this service increased sixfold.<sup>102</sup> Major issues that occurred in the provision of this service in Serbia, that other states should avoid, are the **availability** – 1/3 of municipalities still does not provide this service, and the lack of **training for personnel** as well as **poor monitoring of quality**.<sup>103</sup>

Finally, a type of a promising, family-preservation, in-home service in Serbia is called “**intermittent family accommodation**”. This is a form of respite care, since its primary goal is to provide time for rest for a biological or a foster family of a child with disabilities by placing the child in another family for a limited period<sup>104</sup>. Research has shown that parents of children with disabilities, who do not receive adequate support, are at a higher risk of poverty, unemployment, poor physical and mental health and divorce<sup>105</sup>. In such circumstances, parents sometimes resolute to institutional care for their child. It is crucial to ensure children's participation in decision-making about the temporary placement in another family. Similarly to the previously mentioned services, this service has been available in a very limited scope in Serbia.

**Tanzania** introduced a social safety net programme called Social Action Fund, which entails cash transfers and other incentives. It is aimed to increase resilience and protect the poorest children and families, covering approximately 15% of the Tanzanian population.<sup>106</sup> Similar programmes have been developed in other Sub-Saharan Countries.<sup>107</sup>

**Kenya** adopted National Care Reform Strategy that expressly prioritizes children with disabilities in all processes of the reform and prescribes awareness raising campaigns to address stigma surrounding children with disabilities, data collection on children to effectively plan and allocate services and support, and the development of a range of preventive services (such as respite care, inclusive day care, support groups, increased cash transfers etc.).<sup>108</sup>

<sup>101</sup> "Obezbeđivanje usluge u oblasti socijalne zaštite - Lični pratilac deteta," (Securing social protection services - Personal Copmanion of a Child) (Belgrade: State Audit Institution, 2020).

<sup>102</sup> "Deca u sistemu socijalne zaštite 2020," (Children in the social protection system 2020) (Belgrade: Republic Institute for Social Protection, 2021). Figure 6.9. P. 66

<sup>103</sup> "Obezbeđivanje usluge u oblasti socijalne zaštite - Lični pratilac deteta."

<sup>104</sup> Vesna Ančić et al., "Smernice za povremeni porodični smeštaj," (Guidelines for the intermittent family accommodation) (Provincial Institute for Social Protection, 2016).

<sup>105</sup> Ančić et al., "Smernice za povremeni porodični smeštaj," P. 11-12

<sup>106</sup> "Tanzania Social Action Fund (TASAF) III," 2021, accessed 27 October, 2021, <https://socialprotection.org/discover/programmes/tanzania-social-action-fund-tasaf-iii-productive-social-safety-net-pssn>.

<sup>107</sup> Nowak, "UN Global Study on Children Deprived of Liberty," P. 553

<sup>108</sup> Kenya's National Care Reform Strategy (Government of Kenya 2021), in press. As cited in: *Children with Disabilities and Care Reform in Eastern and Southern Africa*, (UNICEF Eastern and Southern African Regional Office, 2021). P. 8



## Area 2: Provide appropriate, quality, family-based alternative care and support in the community, where the immediate family is unable to care for a child.

Measures recommended to States under this area of action:

1. Develop and support family-based alternative care, including kinship and foster care; as well as adoption or kafala;<sup>109</sup>
2. Prioritise placements in a wider family over other alternative care options,<sup>110</sup> and provide support and a range of services to informal and formal kinship carers;<sup>111</sup>
3. Ensure that children placed in alternative are not separated from their siblings and facilitate contact with their parents, friends and relatives and work on their reintegration;<sup>112</sup>
4. Ensure that child's views and preferences are respected and that adolescents may decide to live in supported living arrangements in the community;<sup>113</sup>
5. Support children leaving alternative care and their transition to adulthood; provide supported independent living arrangements;<sup>114</sup>
6. Ensure licensing, oversight and accountability mechanisms for all forms of formal alternative care; ensure accessible complaint mechanisms for children.<sup>115</sup>

## Illustrations of Practice

In **Australia**, States have recognized the importance of kinship care as a primary form of alternative care and stepped up to promote the development of the care in a wider family<sup>116</sup>. Davidson et al. illustrating Australian policies, note that **New South Wales** provides the **same level of allowance** to kinship carers as to the foster carers, which is supplemented with **additional financial support** for children with high support needs and **support for child's livelihood** (goods and services) as well as **counselling** and support for maintaining contact with the child's primary family. According to Hugh, these measures have been particularly beneficial for grandparents<sup>117</sup>.

**Serbia** and **Bulgaria** both significantly strengthened their foster care systems in the last 10 - 20 years. In Serbia, 89.2% of children without parental care are placed in foster and kinship care, while 10.4% of them are in some type of institutional care<sup>118</sup>. The number of children in foster care in Serbia **increased threefold** from 2003 to 2012 (from approximately 2000 to 6000 children). This coincided with the change of government and the start of democratic transition, which is consistent with a WHO study<sup>119</sup> findings that leadership changes provide opportunities for deinstitutionalisation. However, two challenges need to be noted – a high number of children in alternative care indicates **poor prevention of family separation** and the overrepresentation of children in institutional care (70%, in total 435 children with disabilities in institutional care<sup>120</sup>).

<sup>109</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 217

<sup>110</sup> Unless it's in the child's best interest not to be placed in a wider family.

<sup>111</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 56; 74/133. Rights of the child, A/RES/74/133. Para. 35(h); Rights of the child : empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 16;

<sup>112</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 11; 74/133. Rights of the child, A/RES/74/133. Para. 28; Nowak, "UN Global Study on Children Deprived of Liberty." P. 512, 533

<sup>113</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 6; Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para.8; 74/133. Rights of the child, A/RES/74/133. Para. 35(h); Nowak, "UN Global Study on Children Deprived of Liberty." P. 562

<sup>114</sup> 74/133. Rights of the child, A/RES/74/133. Para. 35(l); Nowak, "UN Global Study on Children Deprived of Liberty." P. 562

<sup>115</sup> 74/133. Rights of the child, A/RES/74/133. Para. 35(c); Nowak, "UN Global Study on Children Deprived of Liberty." P. 563

<sup>116</sup> Jennifer C Davidson et al., "Developing family-based care: complexities in implementing the UN Guidelines for the Alternative Care of Children," *European Journal of Social Work* 20, no. 5 (2017). P. 764

<sup>117</sup> Marilyn McHugh, "A framework of practice for implementing a kinship care program," (2009). As cited in Davidson et al., "Developing family-based care: complexities in implementing the UN Guidelines for the Alternative Care of Children." P. 764

<sup>118</sup> "Deca u sistemu socijalne zaštite 2020." Figure 2.3. P. 21 / <sup>119</sup> World Health Organization, "Innovation in deinstitutionalization: a WHO expert survey," (2014).

<sup>120</sup> "Deca u sistemu socijalne zaštite 2020." Figure 6.6. P. 64

Although 9 out of 10 children in alternative care in Serbia are placed in family care, State funds allocated to such care are **only 2.4 times higher** than the amount of funds allocated to the institutional care of children,<sup>121</sup> indicating disproportionate allocation of funds. Interestingly, Serbia has never adopted a deinstitutionalisation strategy.

**Bulgaria** has increased the number of children in foster care **tenfold** between 2010 and 2017.<sup>122</sup> For Bulgaria, this progress happened after the accession to the EU and after uncovering appalling conditions and treatment in Bulgaria's institutions for children through media. Significant assistance was provided by the EU, primarily through ESI funds.<sup>123</sup> Although being a good example for the development and expansion of foster care, it should be stressed that in Bulgaria this process was followed with the development of a large number of small group homes. These have been mainly populated by children with disabilities who had previously resided in large institutions, **which effectively continued their segregation and exclusion**<sup>124</sup> and negative impact on their well-being,<sup>125</sup> but in smaller groups. The Committee for the Prevention of Torture of the Council of Europe, commenting the development of small group care in Bulgaria called the transition to care in "family-type" accommodation "...at best **trans-institutionalisation...**".<sup>126</sup> According to UNICEF regional office, such a problem reflects **the lack of vision** of Governments to implement complete deinstitutionalisation for all children,<sup>127</sup> and at the same time it is **contrary to the non-discrimination principles** of the CRC and the CRPD.

Foster care in the **United Kingdom** has eight types, in order to cover a range of situations and needs of the child. Installing a range of foster care types is generally understood as good state practice, and these types are:

- **Long-term:** For children who cannot go back to their families but do not want to be adopted, they go in long-term foster until they become adults;
- **Short-term:** Children are looked after by carers for a few weeks or months while plans are made for their future;
- **Family and Friends or Kinship:** Placement in the wider family or with friends;
- **Emergency:** Children stay for a few nights or weeks with the foster family;
- **Short Breaks:** Children with a disability stay for a while with a family, while their parents/foster carers take a break;
- **Remand:** For young people after court remand are placed with a carer who is specially trained;
- **Fostering for Adoption:** Babies or young children stay with foster carers before their possible adoption in the family;
- **Special Therapeutic:** For children with very complex needs or challenging behaviour.<sup>128</sup>

**Togo** has started developing foster care intensively in the last decade, after acknowledging the problem of a **large number of private residential institutions** and the absence of family-based alternatives.<sup>129</sup> Together with UNICEF, The Government of Togo started a comprehensive program to develop a foster care system, which included **awareness-raising** campaigns to recruit carers, **training** for foster families, **accreditation**, **placement** and **monitoring** of children in care.<sup>130</sup> Interdisciplinary teams for provision of

<sup>121</sup> It should be noted that institutions for children also accommodate adults, who have reached maturity and stayed in the same institutions as adults. "Deca u sistemu socijalne zaštite 2020." Table 8.1. p. 73

<sup>122</sup> Brankica Janković, (Međunarodna konferencija: Izazovi hraniteljstva na početku 21. veka, Belgrade, Centre for family placement and adoption Belgrade, 2013). P. 5

<sup>123</sup> 15 years of Deinstitutionalisation Reforms in Europe and Central Asia. Key results achieved for children and remaining challenges, (2018).

<sup>124</sup> Eric Rosenthal, Dragana Ćirić Milovanović, and Laurie Ahern, *A Dead End for Children: Bulgaria's Group Homes* (2019).

<sup>125</sup> Grigorias, "White paper. The role of small-scale residential care for children in the transition from institutional to community-based care and in the continuum of care in the Europe and Central Asia Region." P. 6

<sup>126</sup> "Public statement concerning Bulgaria", (Strasbourg: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 4 November 2021).

<sup>127</sup> Grigorias, "White paper. The role of small-scale residential care for children in the transition from institutional to community-based care and in the continuum of care in the Europe and Central Asia Region." P. 7

<sup>128</sup> "Becoming a foster parent," Government of the United Kingdom, accessed 26 October, 2021, <https://www.gov.uk/becoming-foster-parent/types-of-foster-care>.

<sup>129</sup> Davidson et al., "Developing family-based care: complexities in implementing the UN Guidelines for the Alternative Care of Children.

<sup>130</sup> Albertine Azambo-Aquitame, "Lignes Directrices Sur La Prise en Charge Alternative: Impact sur la prise en charge des enfants privés de protection parentale au Togo" (Mobilisation autour du Renforcement de la Famille et de la Prise en Charge conference, Dakar, 2012). As cited in Davidson et al., "Developing family-based care: complexities in implementing the UN Guidelines for the Alternative Care of Children."



**multicomponent** support to children in foster families were developed and put to work, which together with other systemic adjustments supposedly produced favourable results.<sup>131</sup>

In **Russia**, organization of the institutional care is somewhat complex and with an infamous tradition still, foster care has contributed to the reduction of institutionalised children in the last two decades. The largest increase in the number of children in foster care was seen between 2005 and 2015.<sup>132</sup> Biryukova and Sinyavskaya suggested that a **legal reform influenced** these changes – adoption of federal law on guardianship and foster care, gradual **shift in attitudes** at the beginning of 2000s from seeing children in care as deviant to recognizing their vulnerability, development of a **system of education** for foster carers, assistance and selection. Last but not least, the named law guarantees **professional support** and **financial assistance** to foster carers. The authors also acknowledged an issue of “**repeated orphanhood**” – re-institutionalisation of children after being placed in foster care.<sup>133</sup> This serious problem, that can have a devastating impact on the well-being of the child, seems to be a consequence of poor training of some foster carers and lack of assistance.<sup>134</sup> Therefore, improvement of training and more robust in-family support with access to flexible, multi-component services can potentially mitigate this issue.

In **Croatia, Latvia, Lithuania, Italy** and **Spain**, a project aimed at assisting children leaving alternative care and starting independent lives was implemented by SOS Children's Villages, CELCIS and Eurochild.<sup>135</sup> Among other activities, the project consisted of training for professionals and the development of policy guidelines.<sup>136</sup> Young people were directly involved in shaping the program and in training delivery. The project is a good example of children's and youth participation and the capacity-building of professionals.

**Rwanda** conducted capacity building of social workers on how to support children with disabilities and their families. The training focused on acquiring knowledge about the inclusion and disablement, the importance of terminology and case management<sup>137</sup>

## Action Area 3: Stop institutionalisation and progressively eliminate institutional care

Measures recommended to states under this area of action:

1. Conduct assessment of the situation including by mapping all institutions, public and private, collecting data and analysing the situation of beneficiaries and reasons for institutionalisation, assessing existing resources (human, financial and material), current and future costs, sources of funding;<sup>138</sup>
2. Adopt a comprehensive deinstitutionalisation policy and action plans, in a participatory and transparent process, with a clear goal to close institutions;<sup>139</sup>
3. Ensure intersectoral, multi-level cooperation among State agencies, including sectors for social care, health care, justice and education;<sup>140</sup>

<sup>131</sup> Ibid.

<sup>132</sup> Svetlana Biryukova and Oxana Sinyavskaya, "Children out of Parental Care in Russia: What We Can Learn from the Statistics," *Zhurnal issledovaniy sotsial'noy politiki* 15 (2017), <https://doi.org/10.17323/727-0634-2017-15-3-367-382>. P. 376

<sup>133</sup> Biryukova and Sinyavskaya, "Children out of Parental Care in Russia: What We Can Learn from the Statistics." P. 376-37

<sup>134</sup> Ibid.

<sup>135</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 554-555.

<sup>136</sup> "Prepare for Leaving Care Practice Guidance," 2018, accessed 27 October, 2021, <https://www.celcis.org/knowledge-bank/search-bank/prepare-leaving-care-practice-guidance>.

<sup>137</sup> *Children with Disabilities and Care Reform in Eastern and Southern Africa*. P. 9

<sup>138</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 69; Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 7; 74/133. Rights of the child, A/RES/74/133. Para. 35(d); Nowak, "UN Global Study on Children Deprived of Liberty." P. 563

<sup>139</sup> Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para 16; Joint Statement: The rights of children with disabilities. Para. 10

<sup>140</sup> 74/133. Rights of the child, A/RES/74/133. Para. 31;

4. Prohibit further placements into institutional care, and further expansion of institutions and renovations;<sup>141</sup>
5. Redirect State funds from institutional care to development of family and community-based support and services;<sup>142</sup>
6. Prioritise reintegration of children with disabilities and those already in institutional care back to families;<sup>143</sup>
7. Train institutions' staff and new professionals to provide family and community-based services;<sup>144</sup>
8. Ensure regular, independent human rights monitoring of all forms of residential care for children until the completion of deinstitutionalisation; ensure children's access to complaint mechanisms; monitor the implementation of deinstitutionalisation policy;<sup>145</sup>
9. Cooperate with governmental and non-governmental, national and international donors on redirecting funds to the development of programs supporting family-based care, instead of institutions;<sup>146</sup>
10. Raise awareness among professionals working with children and the general public about the inadequacy of institutional care and the benefits of family-based care.

## Illustrations of Practice

**Ghanian** authorities undertook the effort of **mapping** all forms of residential care in the country, which was a particularly challenging task considering that those institutions were almost exclusively in private ownership and that the majority were **unlicensed**.<sup>147</sup> This initial phase of the childcare reform in Ghana came after a tremendous surge of orphanages from 1996 to 2006, when the number of these facilities increased from 10 to 148.<sup>148</sup> In 2019 the number of institutions was 139, of which only 3 were run by the Government.<sup>149</sup> According to an earlier study of the Department for Social Welfare, up to 90% of children living in residential care facilities were not orphans and could have been supported to live in the community.<sup>150</sup> Although some critical data are still not available, data collection in **Ghana** presents an example of good practice in spite of challenging circumstances.<sup>151</sup> Otherwise, the progress in deinstitutionalisation in **Ghana** was limited, with several closed institutions. The outcomes of reunified children are reportedly dissatisfying due to **limited support and follow-up**.<sup>152</sup>

In the period of the state-run reforms in **Ghana**, an NGO "Brave Aurora", which previously had been providing resources and support to orphanages, completely **shifted its vision** and redirected all efforts to deinstitutionalisation of children and support to families.<sup>153</sup> After realising that the children in orphanages had living parents and that the separation harms families, instead of providing means for orphanages, Brave Aurora started successfully working on the reintegration of children into their families. The work focused on the provision of multi-stranded assistance to children, families and local communities. This is an example of a private organization's **shift in vision** and actions, which should also be encouraged among **large international non-governmental organizations**.

In **Cambodia**, the main reason for placing children in institutions is poverty. Although burdened with many challenges, such as the proliferation of private orphanages and the problem of orphanage tourism, **Cambodia** has tried to address this issue through **campaigns towards foreign donors** to encourage investment in family and community-based care, by informing them of the consequences of institutional care on children, and benefits of family and community-based care.<sup>154</sup>

<sup>141</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 221

<sup>142</sup> 74/133. Rights of the child, A/RES/74/133. Para. 34(f). / <sup>143</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 562 / <sup>144</sup> 74/133. Rights of the child, A/RES/74/133. Para. 34(f)

<sup>145</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Paras. 35, 128 - 130; 74/133. Rights of the child, A/RES/74/133. P. 35(c); Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 9

<sup>146</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Paras. 24 & 25; Rights of the child: empowering children with disabilities for the enjoyment of their human rights, including through inclusive education, A/HRC/RES/40/14. Para. 30

<sup>147</sup> "Guidelines for Deinstitutionalization of Residential Homes for Children (RHC) Transitioning to Family Based-Care in Ghana," ed. Department of Social Welfare (UNICEF Ghana, Department of Social Welfare, 2020). P. 17-19.

<sup>148</sup> P. 364 / <sup>149</sup> Ibid. / <sup>150</sup> Ibid. / <sup>151</sup> Kwabena Frimpong-Manso and Abraham Gyimah Bugyei, "The Challenges Facing Children Reunified With Their Families From an Orphanage in Ghana," Children & society 33 (2019), <https://doi.org/10.1111/chso.12314>. P. 365

<sup>152</sup> Frimpong-Manso and Bugyei, "The Challenges Facing Children Reunified With Their Families From an Orphanage in Ghana."

<sup>153</sup> "Guidelines for Deinstitutionalization of Residential Homes for Children (RHC) Transitioning to Family Based-Care in Ghana."

<sup>154</sup> Catherine Flagthier, *Alternative Child Care and Deinstitutionalisation in Asia* (European Commission and SOS Children's Villages International, 2016). P. 49

Although many countries started deinstitutionalisation processes, with more or less success, arguably most intensive processes have been implemented in **Central and Eastern Europe** (CEE hereafter) in the last two or three decades. We have already exemplified several CEE countries regarding developments of family-based support and foster care and kinship care; however, other novel practices were implemented to reduce and close institutions in this region. Apart from the reforms in the CEE countries, their cooperation with the EU especially through funding, is an example of good practice regarding **international cooperation**.

**Moldova** has often been a reference point concerning the so-called “**ring-fencing**” of funds. This practice considers that funds saved from the reduction of residents in institutions and their eventual closure, are **redirected to family-based services**.<sup>155</sup> The ring-fencing is supposed to help **avoid the de-funding of social care**, and at the same time, **support funding** and **sustainability** of family-oriented policies. The number of children in institutional care in Moldova **decreased 90%** between 2007 and 2017.<sup>156</sup>

**Bulgaria** adopted its first deinstitutionalisation strategy in 2010, called “Vision for Deinstitutionalisation of Children in the Republic of Bulgaria”, which was followed by action plans to enable the strategy's implementation. This document stated that 7716 children lived in institutions, excluding boarding schools, in 2009. Although a short document for its clarity and emphasis on general principles that are supposed to guide the process, the Strategy listed out state and EU funding designated for the implementation and an assessment of costs of institutional care per one child. It also included a statement that the principle “**money follows the child**” should be upheld in the process of transition of children from institutions to families. The document also emphasises that the deinstitutionalisation of children with disabilities is a priority, due to the severity of their exclusion and their vulnerability levels. Another provision of this strategy was that once closed the institutions cannot be used for residential care anymore. However, the outcomes of deinstitutionalisation of children with disabilities were not satisfying according to the CRC Committee, the CRPD Committee and other sources.<sup>157</sup> This was mainly due to a large number of small group homes being built and populated with children with disabilities, instead of their reunification in the families. The CRC Committee accentuated the high risk for institutionalisation of Roma children and children with disabilities, despite good progress made in reducing the overall number of children in institutions and increasing the number of children in family-based care.<sup>158</sup>

The Bulgarian National Audit Office published a report on the implementation of the Strategy in 2019 and emphasised an issue of the lack of impact assessment of developed services.<sup>159</sup> According to the Bulgarian Helsinki Committee, one of the issues in the process of deinstitutionalisation in Bulgaria was that **too much emphasis was put on closing the large residential facilities, and less attention to the development of family-based services**, which resulted in the proliferation of small residential facilities.<sup>160</sup>

Despite many issues in the process, **Serbia** has significantly reduced the number of children in residential care in the last 15 years and falls into group of countries with the **lowest rate of institutionalisation** of children. There are still several large facilities for children in Serbia, in which conditions and treatment concerned international human rights bodies as well as NGOs who conducted human rights monitoring there.<sup>161</sup> Most of the children remaining in institutional care have disabilities, and in this category, Serbia is in a group of countries with the **highest share of children with disabilities** in institutional care. The backbone of deinstitutionalisation in Serbia has been the development of **foster care**, while measures for the prevention of separation from biological families were not sufficiently developed, as the number of children entering formal alternative care has been increasing slightly but steadily during the process.<sup>162</sup>

<sup>155</sup> Ines Bulic and Liliya Anguelova-Mladenova, “Common European guidelines on the transition from institutional to community-based care,” (Brussels: European Expert Group on the Transition to Community-based Care ..., 2012). P. 106 / <sup>156</sup> Opening Door for Europe's Children, Moldova: 2018 Country Fact Sheet (2018).

<sup>157</sup> Committee on the Rights of Persons with Disabilities, “Concluding observations on the initial report of Bulgaria,” (2018). Paras. 19, 39 & 45; UNICEF, “Situation analysis of children and women in Bulgaria, 2017,” (2018). P. 97-98; Rosenthal, Ćirić Milovanović, and Ahern, A Dead End for Children: Bulgaria's Group Homes; Bulgarian Helsinki Committee, “Human Rights in Bulgaria in 2019 (Summary),” (2020). P. 49; Kapka Panayotova, “Bulgaria Country Brief: Deinstitutionalization for children with disabilities,” (2021). / <sup>158</sup> Committee on the Rights of the Child, “Concluding observations on the combined 3rd to 5th periodic reports of Bulgaria,” (2016). Para. 34 & 38(b) / <sup>159</sup> Committee, “Human Rights in Bulgaria in 2019 (Summary),” P.48 / <sup>160</sup> Committee, “Human Rights in Bulgaria in 2019 (Summary),” P. 49

<sup>161</sup> Dragana Ćirić Milovanović et al., The Hidden and Forgotten: Segregation and neglect of children and adults with disabilities in Serbia (MDRI-S, 2013); Human Rights Watch, “It is My Dream to Leave This Place : Children with Disabilities in Serbian institutions,” (2016). ; Eric Rosenthal et al., Serbia's Forgotten Children (MDRI-S, 2021).

<sup>162</sup> Anita Burgund et al., *Hraniteljstvo i dobrobit adolescenta. Istraživanje za unapređenje politika i praksi* [Foster Care and Adolescents' Wellbeing. Research to improve policy and practice], ed. Nevenka Žegarac and Zora Krnjačić (2019).

**Georgia** is another CEE country that had some success in the process of deinstitutionalisation, by **closing 46 large institutions** by 2017.<sup>163</sup> The CRC Committee commended the country's efforts but stayed concerned about the **slow progress in deinstitutionalisation of children with disabilities**, especially in rural areas, and the insufficient development of family-based care. One of the important elements of this process in Georgia was the establishment of an **intersectoral body** composed of three ministries involved with organizing, funding and running institutional care for children – Ministry of Education and Science, Ministry of Labour Health and Social Affairs and the Ministry of Finance.<sup>164</sup> Another critical driver of these reforms, according to Greenberg and Partskhaladze, was **funding obtained from international donors** such as EU, United States Agency for International Development, Swedish International Development Agency. Moreover, the USA has delivered one billion dollars package of aid to Georgia following the Russian-Georgian war in 2008.<sup>165</sup> A part of these funds was administered through UNICEF for deinstitutionalisation. The deinstitutionalisation process in Georgia has also seen the spreading of residential care in smaller groups. One particularly concerning issue in Georgia is the lack of access to and oversight of institutions ran by **faith-based organizations**.

In **Australia**, Christian Churches International Program launched a campaign to increase awareness of other faith-based organization to invest in deinstitutionalisation of children, instead of in orphanages and other types of institutions<sup>166</sup>. The campaign was followed by a toolkit that should help such organization **shift their mindset and practice**<sup>167</sup>.

## Oversight

In the sphere of standardisation and quality oversight **Argentina** has developed **monitoring and data collection** practices that can help other countries develop similar systems. The Federal Board of Childhood, Adolescence, and Family (FBCAF hereafter) produced guidelines to fulfil the character of **integral protection** of children, which influenced different Argentinian jurisdictions to develop minimum standards for the quality of services.<sup>168</sup> It also developed **intervention protocol** and **registry systems** in the area of infancy, a federal system of **monitoring and evaluation**, and **national surveys** about children without parental care, including those in alternative care. FBCAF has a role in **linking and coordinating** different childcare bodies on the federal and provincial levels, which was commended by the CRC Committee,<sup>169</sup> as it facilitates implementation of child-care policies in this diverse, federal country, and can be regarded as an example of good practice for intersectoral, multilevel coordination among state agencies.

Monitoring of institutions is sometimes conducted by independent **NGOs**, which have brought to light grave violations of the human rights of children in institutions, often with the help from media. Such monitoring reports have been published for a number of countries, including **Bulgaria**,<sup>170</sup> **Hungary**,<sup>171</sup> **Serbia**,<sup>172</sup> **Mexico**,<sup>173</sup> **Guatemala**,<sup>174</sup> **Russia**,<sup>175</sup> **USA**,<sup>176</sup> **Japan**,<sup>177</sup> **Armenia**<sup>178</sup>. Most of those reports

<sup>163</sup> Group of organizations, Comprehensive Alternative Report of DPOs and CSOs of Georgia submitted regarding to the United Nations Convention on the Rights of PWDs (2017). Para. 46 / <sup>164</sup> Aaron Greenberg and Natia Partskhaladze, "How the Republic of Georgia Has Nearly Eliminated the Use of Institutional Care for Children," *Infant Mental Health Journal* 35(2) (2014). / <sup>165</sup> Ibid. / <sup>166</sup> Nowak, "UN Global Study on Children Deprived of Liberty," P. 525

<sup>167</sup> Rebecca Nhep, *Changing Mindsets and Practice. Engaging Christian faith based actors in deinstitutionalisation and child welfare systems reforms* (ACC International, 2016).

<sup>168</sup> Nowak, "UN Global Study on Children Deprived of Liberty," P. 557-558

<sup>169</sup> Committee on the Rights of the Child, Concluding observations on the combined 5th and 6th periodic reports of Argentina, CRC/C/ARG/CO/5-6, 2018. Para. 8

<sup>170</sup> Kate Blewett, "Bulgaria's Abandoned Children," (United Kingdom, 2007); Rosenthal, Ćirić Milovanović, and Ahern, A Dead End for Children: Bulgaria's Group Homes.

<sup>171</sup> Mental Disability Advocacy Centre, *Straightjackets and Seclusion: An Investigation into Abuse and Neglect of Children and Adults with Disabilities in Hungary* (2017)

<sup>172</sup> Ćirić Milovanović et al., *The Hidden and Forgotten: Segregation and neglect of children and adults with disabilities in Serbia*. Watch, "It is My Dream to Leave This Place : Children with Disabilities in Serbian institutions." Rosenthal et al., *Serbia's Forgotten Children*.

<sup>173</sup> Laurie Ahern et al., *Crimes Against Humanity: Decades of Violence and Abuse in Mexican institutions for Children and Adults with Disabilities*, Disability Rights International (2020). / <sup>174</sup> Priscila Rodriguez et al., *Still in Harm's Way: International voluntourism, segregation and abuse of children in Guatemala*, Disability Rights International (2018). / <sup>175</sup> Human Rights Watch, "Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages," (2014 ).

<sup>176</sup> Laurie Ahern and Eric Rosenthal, *Torture not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center* (Mental Disability Rights International, 2010).

<sup>177</sup> Human Rights Watch, "Without Dreams. Children in Alternative Care in Japan," (2014).

<sup>178</sup> Human Rights Watch, "When Will I Get to Go Home? Abuses and Discrimination against Children in Institutions and Lack of Access to Quality Inclusive Education in Armenia," (2017).

have uncovered grim material conditions, strict living regimes and different forms of ill-treatment that are described in the Global Study.<sup>179</sup> Some of those reports incited governments to start reforms, such as in Bulgaria, after BBC broadcasted the movie “Abandoned Children of Bulgaria”. It is of utter importance that countries allow independent NGOs to monitor institutions, as it sometimes may be the only way to uncover human rights violations, especially in cases where countries have not yet established independent state oversight mechanisms, such as the **National Mechanisms for the Prevention of Torture** (NPM hereafter).

**Austria** operates a “multiple body” mechanism under the Austrian Ombudsman Board, together with six regional commissions, and is mandated with monitoring and reporting on the situation of people in private and public institutions, in accordance with art. 4 OPCAT.

In **Serbia**, the NPM is also governed by the Republic Protector of Citizens (Ombudsman) and includes **civil society organizations’** representatives in its monitoring visits. This type of NPM is called “**ombudsman plus**”, as there is a formal agreement between an NHRI and civil society organizations in conducting monitoring and reporting. The inclusion of civil society organizations in this NPM mechanism is **an example of good practice**, as the NGOs often have **more independence** than National Human Rights Institutions from the Government and the Parliament, and they can strengthen the NPM with its **expertise** and **resources**.<sup>180</sup> Although the Serbian NPM is mandated to monitor private institutions where people might be deprived of liberty, such visits are not common or not conducted at all.

The NPM in **Senegal** was established as a **new specialised institution**, and not under Ombudsperson’s office as in Serbia and Austria. It involves civil society organizations, together with governmental agencies, through a body called Advisory Committee.<sup>181</sup> Hence, although involved in the work of the NPM, the civil society does not directly participate in monitoring and reporting.

The NPM in the **United Kingdom** is a multiple body mechanism composed of 21 different independent bodies and is governed by Her Majesty Inspectorate of Prisons in England and Wales.<sup>182</sup> The NPM has a **special workgroup** that focuses on places where people are held de facto in detention, such as social care institutions and psychiatric hospitals.<sup>183</sup> The creation of the workgroup came from the need to strengthen oversight of places that had previously not been monitored, unlike prisons.<sup>184</sup>

In terms of monitoring the implementation of the CRPD, since 2014 the Public Defender of **Georgia** has been assigned the authority to **oversee the fulfilment of the CRPD** by the state agencies. Such practice is in compliance with art. 332 CRPD.

## Inquiries and court proceedings

After decades of significant overrepresentation of indigenous children in **Canada’s** alternative care system, significant **law and policy reforms** have been initiated in the last years. Currently, the majority of children in care are indigenous, although they present less than 8% of children in Canada. The primary aim of these reforms is to reduce the number of indigenous children in alternative care, and is based on the appalling findings of the **Truth and Reconciliation Commission’s** investigation of “Indian residential schools”. The Commission issued several reports and recommendations, containing *inter alia* a call to reduce the number of Aboriginal children in care by **providing resources** to Aboriginal communities and child welfare organizations, and to keep children in culturally appropriate environments.<sup>185</sup> This resulted

<sup>179</sup> Nowak, “UN Global Study on Children Deprived of Liberty.” P. 527 - 539

<sup>180</sup> Dragana Čirić Milovanović, ““Ombudsman Plus” : The value of civil society experiences,” in *Putting prevention into practice* (Association for the Prevention of Torture, 2016); Abdirahman Maalim Gossat, Promoting the Effectiveness of South Africa’s NPM. The Case for Civil Society Collaboration, 2020, African Policing Civilian Oversight Forum.

<sup>181</sup> Seydi Gassama, “Stronger NPM with continuous support from human rights activists,” in *Putting prevention into practice* (Association for the Prevention of Torture: 2016).

<sup>182</sup> United Kingdom National Preventive Mechanism, “Influencing detention policy through collective efforts,” in *Putting prevention into practice* (Association for the Prevention of Torture, 2016). “National Preventive Mechanism,” 2021, accessed 31 October, 2021, <https://www.nationalpreventivemechanism.org.uk/members/>.

<sup>183</sup> National Preventive Mechanism, “Influencing detention policy through collective efforts.”

<sup>184</sup> National Preventive Mechanism, “Influencing detention policy through collective efforts.”

<sup>185</sup> Truth and Reconciliation Commission of Canada, *Calls to Action* (2015).



in law and policy reform and **significant funding** by the Government of Canada to the indigenous peoples to establish their own childcare and family support systems. Other inquiries in the **United Kingdom, the Netherlands, Scotland, Ireland** and **Australia** are described in the Global Study on page 552.

In 2010 and 2011, an inquiry about the abuse of children between 1945 and 1976 in 19 children's homes in **Denmark** was initiated by the **Care Leaver Association of Godhavn's Boys**.<sup>186</sup> The inquiry was commissioned by the Welfare Museum of Svendborg, financed by the Ministry of Social Affairs. The inquiry found that the abuse of children was common, including beatings.<sup>187</sup> In 2019, the Prime Minister of Denmark publicly apologised for the abuse.<sup>188</sup>

In 2016, **Canada's Human Rights Tribunal** adopted a decision in the case *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*, finding that the Government of Canada has **deliberately underfunded** the child and family services of the First Nations on reserves.<sup>189</sup>

The **European Committee on Economic and Social Rights** decided on merits in the *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic* that the **Czech Republic** violated art. 17 of the European Social Charter. The violation was contained in the failure to conduct deinstitutionalisation, to provide appropriate protection and care services, including for Roma children and children with disabilities under the age of three.<sup>190</sup>

The **European Court of Human Rights** found the violation of both substantive and procedural aspects of art. 3 ECHR, in the case *L. R. v. North Macedonia*.<sup>191</sup> The applicant was an 8-year-old child with an intellectual disability and physical impairments, who lived in an institution for children with disabilities. The guardian of the child was the state guardianship authority. The Court declared the complaint admissible, which the State contested on the account that the representing NGO did not have legal standing. The Court granted the legal standing to the NGO, although it did not have the power of attorney or a written authority by the applicant nor his/her guardian. The court elaborated the legal standing with the recognition of the vulnerability of the applicant, the exceptional circumstances of the case and the severity of allegations. The judgement presents a significant step forward to enabling access to justice to children with and without disabilities in institutional care.

In another case, *Blokhin v. Russia*, concerning the detention a child (the plaintiff was 12 years old at the time of detention) for the purposes of educational supervision, the ECtHR found a violation of art. 3, 51 (d), and 6.<sup>192</sup> Therefore, the inappropriateness of the detention centre and the lack of proper education, as well as the short period of the detention (30 days) that could not be enough to improve a child's behaviour and provide appropriate treatment,<sup>193</sup> according to the Court, were decisive elements to determine the violation. From this and several other cases concerning the deprivation of liberty for the purpose of educational supervision,<sup>194</sup> Manfred Nowak summarizes that the Court's jurisprudence deems such a detention permissible when the decision is made by a competent authority, the duration is long enough and when it is carried out in an appropriate facility.<sup>195</sup> Nowak goes on to conclude that the ECtHR's jurisprudence contradicts the art. 37b of the CRC, and calls for a higher consistency between rules and standards developed on the international level and the ECtHR's practice.<sup>196</sup>

<sup>186</sup> "The Age of Inquiry: A global mapping of institutional abuse inquiries," La Trobe University, 2020, accessed 2 November, 2021, <https://www.lib.latrobe.edu.au/research/ageofinquiry/index.html>.

<sup>187</sup> Ibid.

<sup>188</sup> "Danish PM apologises for historical abuse in children's homes," BBC, 2019, accessed 2 November, 2021, <https://www.bbc.com/news/world-europe-49320260>.

<sup>189</sup> Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification - From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia* (2016). As Cited in Nowak, "UN Global Study on Children Deprived of Liberty." P.

<sup>190</sup> *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, Complaint No. 157/2017, (European Committee of Social Rights 2020).

<sup>191</sup> *L.R. v. North Macedonia*, Application No. 38067/15, (European Court of Human Rights 2020).

<sup>192</sup> *Blokhin v. Russia*, Application No. 47152/06, (European Court of Human Rights).

<sup>193</sup> Ibid. para. 169

<sup>194</sup> For example: Registry of the European Court of Human Rights, *Guide on Article 5 of the European Convention on Human Rights: Right to liberty and security* (2022). P. 23 - 24

<sup>195</sup> Nowak, "Detention of Children for the Purpose of Educational Supervision." P. 192

<sup>196</sup> Nowak, "Detention of Children for the Purpose of Educational Supervision." P. 199

## 4. MAIN FINDINGS OF THE UN GLOBAL STUDY<sup>197</sup>

The Global Study is a turning point in the research on the deprivation of liberty of children worldwide. Until recently, data on children deprived of liberty in different contexts was inexistent or simply unavailable to researchers and stakeholders. The Global Study has marked the start of worldwide interest in the situation of these children by uncovering appalling rates of institutionalisation of all children, especially children with disabilities. In spite of a solid international legal framework, many countries have not progressed enough in ensuring the rights of children to personal liberty and other complementary rights, contained primarily in the CRC and the CRPD.<sup>198</sup>

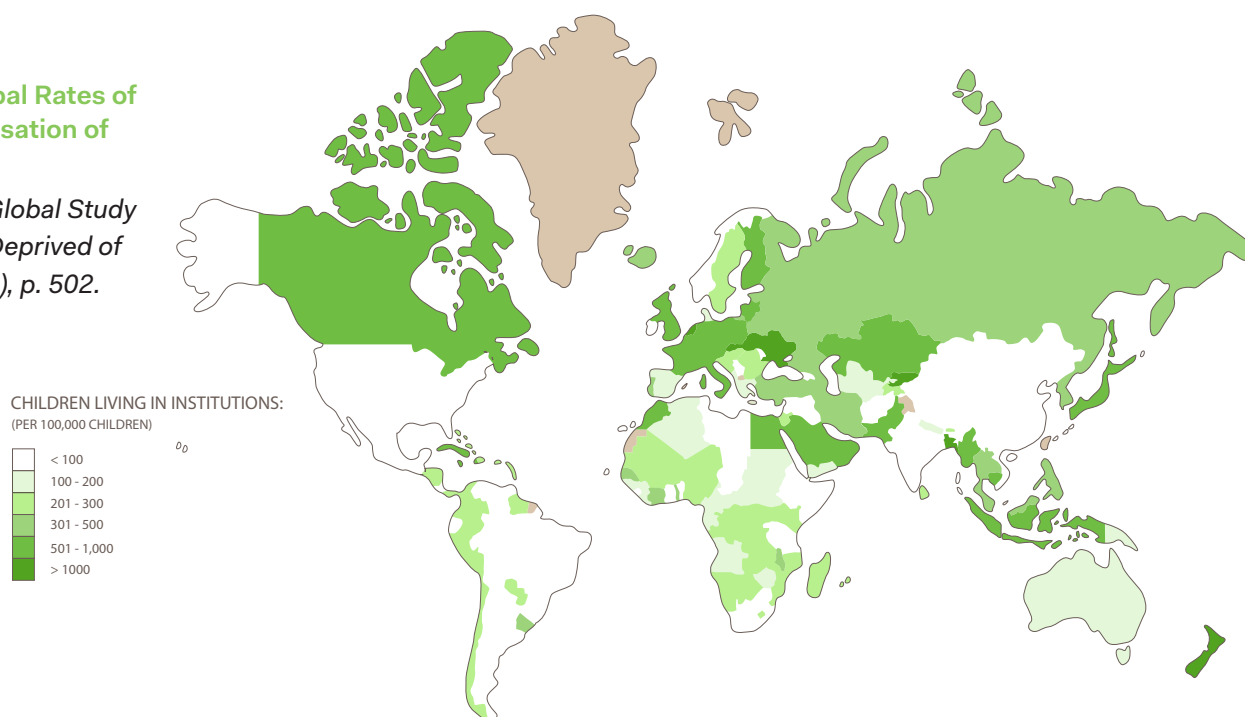
**5.4 million children are placed in institutions. One in three children in institutions have a disability.**

Due to several limitations in obtaining and analysing the data,<sup>199</sup> further data collection and analyses are needed to inform reforms around the world properly. Significant limitations were found in the quality of data, lack of disaggregation, lack of consistency of definitions between studies and the reluctance of states to provide data.<sup>200</sup> Another important consideration is that the data contained in the Global Study does not include children living in smaller group arrangements, usually counting up to 10 - 12 children. Although institutionalisation is omnipresent, its rates vary across the world. Overall, a higher prevalence of institutionalisation is present in high-income countries, while low-income countries have the lowest prevalence.<sup>201</sup>

In the last decades many programs were implemented in order to move children from large institutions to either families or small institutions, commonly referred to as small group homes, with more or less success.<sup>202</sup> In some countries children with disabilities were and still are over-represented in institutional care.<sup>203</sup>

### BOX 3 – Global Rates of Institutionalisation of children

Source: UN Global Study on Children Deprived of Liberty (2019), p. 502.



<sup>197</sup> The following paragraphs contain only a part of findings expressed in the Global Study publication, hence readers of this Toolkit are advised to visit Chapter 12 *Children deprived of liberty in Institutions Chapter 7 Children with disabilities deprived of liberty*: Nowak, "UN Global Study on Children Deprived of Liberty." pp. 499 – 561 & 182 – 221

<sup>198</sup> Global Study Nowak, "UN Global Study on Children Deprived of Liberty." P. 500

<sup>199</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 501

<sup>200</sup> Ibid.

<sup>201</sup> P. 370

<sup>202</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 507

<sup>203</sup> Ibid.

## 4.1 How and why children end up in institutional care

The Global Study lays out several most commonly seen factors related to children's placements in institutional care. In the following paragraphs, the findings are briefly described and discussed. Although the Global Study does not contain findings on institutionalisation in times of a global health crisis, the last paragraph contains a brief consideration of the situation of children living in institutions during the Covid-19 pandemic. The pandemic has had significant impact on the enjoyment of the right to personal liberty and other complementary rights of children in institutions.

### Factors leading to the placement in institutional care

- Socio-economic conditions;
- Discrimination and marginalisation of children with disabilities and indigenous children and children from ethnic minorities;
- Lack of support and services to families and family-based solutions in community;
- Lack of gatekeeping;
- Unregistered institutions;
- Funding of institutional care by private donors and faith-based organizations;
- Family violence;
- Drug and alcohol dependence.

### Socio-economic conditions

The Global Study lays out several most commonly seen factors related to children's placements in institutional care. Although one of the root causes of institutionalisation of children, poverty is often not a legal basis on which children are placed in institutions.<sup>204</sup> Sometimes poverty is prohibited in national laws as a reason for the removal of children from their families. Rather, the lack of access to proper housing, employment, health care, education and hygiene create a basis for a child's removal on the basis of neglect.<sup>205</sup> Governments sometimes rather resort to institutionalisation of children than to provide necessary support and services to families.

**Poverty is one of the main causes for institutionalization of children, in spite of national laws that often prohibit removal of children on this basis.**

<sup>204</sup> Nowak, "UN Global Study on Children Deprived of Liberty," P. 520

<sup>205</sup> Ibid.



## Lack of support and services for children and families

Family-oriented support and services are commonly seen as a backbone of social protection and assistance to vulnerable families, especially families with children with disabilities. Unfortunately, many countries worldwide do not put enough effort to develop these services and make them available to all families in need. Sometimes, State policies prioritise funding for institutions and other forms of out-of-family care instead of focusing on the support to families<sup>206</sup>, and when a child cannot stay in his/her immediate family, then kinship, foster or adoptive families or kafalah. This brings us to a notion of deinstitutionalisation, which is less commonly but more accurately referred to as the transition from institutional forms of care (orphanages, institutions for children with disabilities, psychiatric hospitals etc.) to family-based care, in this case for children with and without disabilities. It is important to understand this transition process (deinstitutionalisation) as a holistic social and political process, where institutional care is made redundant due to appropriate, available and accessible support and services in the community and for families.<sup>207</sup> Therefore, closing institutions is rather a consequence than a goal in itself, while the main goal is to create conditions for all children to grow up in families regardless from disability, poverty, ethnic background and other personal characteristics that in interaction with social, economic, legal and political contexts put them in risk of displacement. Still, the risk of maintaining two parallel systems of care should be avoided by setting clear strategic objectives to reduce and eventually close institutions.<sup>208</sup>

One of commonly used concepts in social welfare is **gatekeeping**, which includes policies, procedures and practices aimed at preventing a child to enter an alternative care system, and if a child enters such system, that the placement is least restrictive, most appropriate for the child in a particular situation, and for the shortest period of time.<sup>209</sup> A continuum of different, family-oriented quality services is a backbone of a gatekeeping mechanism, together with professionals, then adequate legal and normative frameworks, tools, protocols and standards, human and financial resources, but also effective oversight, coordination, monitoring and regulation, research and data collection.<sup>210</sup> It is a notion that can be understood also to include attitudes and practices in the community that contribute to the preservation of families.<sup>211</sup> Therefore, the “gatekeeping” is a concept that can designate a system of institutions (laws, policies, resources, procedures etc.) and societal factors that are aimed at preservation of families and prevention of unnecessary separation in conformity with the CRC and the CRPD. Sometimes legal norms are called “gatekeeping norms”, such as the prohibition of placement of children under certain age in institutional care.

**In the transition from institutional care to family-based care children and families with highest support needs are often left behind.**

The family and community-based support and services can address particular needs or be holistic. Services available to the general population, such as schools and health care, must be made accessible and available to children with disabilities, families in poverty and children from minority backgrounds. They should be flexible, adaptable, personalised and starting from individual needs, rather than be organized in so-called “block services”. They are supposed to prevent institutionalisation, to provide placements in families for children who are already in institutional care, and support to families and children living in the community but without enough support.<sup>212</sup>

<sup>206</sup> Ibid.

<sup>207</sup> See for example: General comment no. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, para. 58

<sup>208</sup> Group, Report of the Ad Hoc Expert Group on the Transition from Institutional to Family-based Care. P. 15 - 1

<sup>209</sup> Nowak, "UN Global Study on Children Deprived of Liberty." pp. 541 - 542

<sup>210</sup> Ibid.

<sup>211</sup> *Gatekeeping Factsheet*, (Changing the way we care, 2021), [https://bettercarenetwork.org/sites/default/files/2021-11/92.11\\_EN\\_%20What%20is%20Gatekeeping%20Factsheet.pdf](https://bettercarenetwork.org/sites/default/files/2021-11/92.11_EN_%20What%20is%20Gatekeeping%20Factsheet.pdf)

<sup>212</sup> Group, Report of the Ad Hoc Expert Group on the Transition from Institutional to Family-based Care. P.19

## Discrimination

The Global Study has relied on previous researches which have assessed that 1 in 3 children in institutions have disabilities.<sup>213</sup> This comes as a consequence of stigmatisation, lack of family and community-based support and services, as well as the overreliance on the so-called medical model of disability. A human rights model of disability, that emerged with the development of international human rights law and especially CRPD, stipulates that children with disabilities are rights holders and that states and other social actors are obliged to ensure realisation of those rights, amongst which are non-discrimination, the right to personal liberty, the right to grow up in a family etc.<sup>214</sup> The whole purpose of the human rights model and the CRPD, is to enable the enjoyment of all human rights, which have commonly been denied to children and adults with disabilities through history, on equal basis with others.<sup>215</sup> From this point of view, institutionalisation can be seen as a form of structural discrimination, which comes from the failure of States to enable children with disabilities to live in families by developing supports and services to families and communities results in their institutionalisation, which deprives them of a number of their rights and negatively impacts their overall wellbeing.<sup>216</sup> Although institutionalisation on the basis of disability is often prohibited, these children are placed in institutional care because their parents are unable to care for them due to inexistence of support and services. Nonetheless, there is a tight “bidirectional” link between poverty and disability, meaning that disability can be both a consequence and a cause of poverty.<sup>217</sup> Such correlation of poverty and disability calls for a multidimensional approach, first to the understand of the position and then take steps to eradicate institutionalisation of children with disabilities and children living in poverty.

Similarly to children with disabilities, indigenous children and children of Romani descent are highly overrepresented in care systems over the world. Some of the reasons for drastically higher rates of institutionalisation than in the general population are racism and oppression, systemic discrimination, underfunding of family services and poverty.<sup>218</sup> Crackdowns on members of certain ethnic or religious groups, such as Uyghur’s in China, resulted in institutionalisation of Uyghur children for purposes of “re-education” and as a consequence of imprisonment of their parents.<sup>219</sup>

## Domestic violence

One of the leading reasons for the placement of children in institutional care is family violence, including neglect, psychological, physical and sexual violence.<sup>220</sup> Actions aimed at prevention of institutionalisation in case of family violence are proactive and reactive, as they focus on the development of protective measures and social programmes that support families to prevent violence on one side, and when it is necessary the provision of family-based care out of the immediate family where a child was a victim of violence.

Another finding of the Global Study was that in some countries children and adolescents are still being institutionalised because of drug abuse, despite the plethora of evidence that such approach does not bring desired results, while it crushes many of the human rights of young people.

**Children from historically disadvantaged and marginalised social groups are overrepresented in institutional care across the world.**

<sup>213</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 218

<sup>214</sup> See for example: Anna Lawson and Angharad E Beckett, "The social and human rights models of disability: towards a complementarity thesis," *The International Journal of Human Rights* 25, no. 2 (2021).

<sup>215</sup> See for example: Oddný Mjöll Arnardóttir, "A Future Of Multidimensional Disadvantage Equality?," ed. Gerard Quinn and Oddný Mjöll Arnardóttir, *International Studies in Human Rights* (2009).

<sup>216</sup> See for example: Gerard Quinn et al., Segregation and segregated facilities as a prima facie form of discrimination: the impermissibility of using the ESIF to invest monies in long term care residential institutions for persons with disabilities, 2018, ENIL - The European Network on Independent Living.

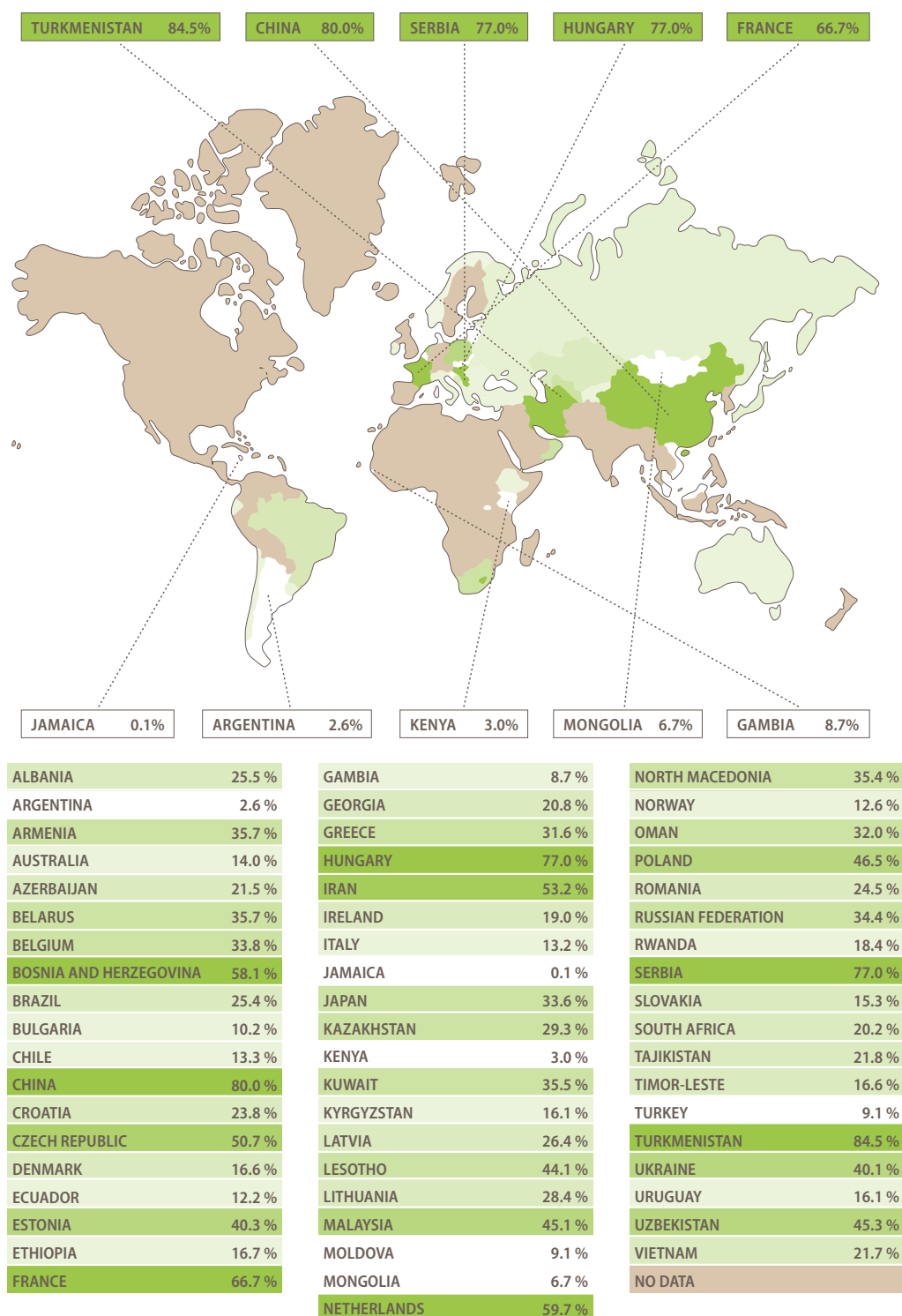
<sup>217</sup> See for example: Monica Pinilla-Roncancio, "Disability and poverty: two related conditions. A review of the literature," *rev.fac.med* 63 (2015). P. 115

<sup>218</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 522

<sup>219</sup> Ibid.

<sup>220</sup> Nowak, "UN Global Study on Children Deprived of Liberty." P. 523

#### 4. MAIN FINDINGS OF THE UN GLOBAL STUDY



#### BOX4 – Global Number of Children in All Situations of Deprivation of Liberty

Figure 3 Share of children with disabilities among the population of all children in institutions per country. The data for individual countries was extracted from CRC State-party reports (2010–2019), CRPD State-party reports (2017–2019), UNICEF/TransMonEE database, UNICEF, administrative data, Opening Doors project, Global Study questionnaire, Human Rights Watch, Lumos, as cited in the UN Global Study on Children Deprived of Liberty page 190.

## Funding institutional care

Reasons for continuing institutionalisation can be also found in the way some forms of institutional care for children are funded and run. The Global Study recognized the issue of faith-based foundations that traditionally keep pouring money into institutional care, or run these institutions by themselves. Provision of care and accommodation to children and adults with disabilities, people living in the street and in poverty, has a long history in many religious organizations.<sup>221</sup> In many crisis times this help was crucial and provided much-needed relief, however, nowadays we know that institutional care is not suitable for children and that many of their rights are being violated just by the mere placement in care of such form. Therefore, initiatives to promote the transition to family and community-based care inside religious organizations are particularly important.

For some, the institutional care for children can be a lucrative business, as research showed is a case in many countries. Businesses are motivated by the profit, which means they are interested in placing many children in their facilities and have their capacities fully used because “an empty bed is the most expensive bed”. The position of those private actors is inherently in conflict with the transition from institutional to family-based care, unless these organizations transform themselves in providers of support and services to the families. Likewise, even state-run institutions have an intrinsic tendency to “suck in” new children to ensure self-preservation. This comes from a dominant model of financing that is closely related to the number of residents, meaning that institutions need new residents to “survive”.

A special problem is “**orphanage tourism**” or “**voluntourism**” where individuals, usually from the countries of Global North, are paying to institutions in Central America, Africa and Asia to do voluntary work there.<sup>222</sup> These orphanages heavily rely on such paying volunteers who are not trained to work with children, hence the voluntourism contributes to the development and perpetuation of institutional care of typically deficient quality. **Cambodia** has seen an unprecedented increase in the number of institutions for children and the number of institutionalised children. The orphanage tourism reportedly had a significant impact on the increase of the numbers in the country<sup>223</sup>. Nearly 1/3 of children in orphanages in Cambodia participated in fundraising activities, such as dancing for tourists<sup>224</sup>.

Considering that “voluntourists” are normally well-intended and probably clueless about the bigger picture of voluntourism, awareness raising actions targeting travellers from countries in Europe and North America should be conducted. The countries should prohibit by law solicitation and recruitment of children in residential facilities<sup>225</sup>.

Allocation and use of **European Union Structural and Investment Funds** (ESI Funds) have been met with criticism by deinstitutionalisation watchdogs and UN Special Rapporteurs for health, persons with disabilities and housing. The European Union ratified the CRPD 2010, becoming the first regional organization to ratify an international human rights treaty. Also, all member states to the EU have ratified both the CRC and the CRPD. Therefore, the argument of scholars and advocates for the alignment of all EU funding to the CRPD is based on the premise that the CRPD is superior to the secondary law of EU, most importantly to the ESI Funds regulations that need to be created and implemented in conformity with the CRPD.<sup>226</sup> Still, a large amount of ESI funds has been invested into the development, expansion and renovation of large residential institutions for children and adults with disabilities, especially in Central and Eastern EU Member States. Apart from the use of ESI Funds for large residential facilities,

<sup>221</sup> See for example: Paulo Sérgio de M. S. Pinheiro, “World report on violence against children,” (Geneva: UN, 2006).

<sup>222</sup> See for example: Linda Richter, “Inside the thriving industry of AIDS orphan tourism,” (2010). P. 6-8; Tess Guiney, “Orphanage Tourism: The Need for Protection and Policy,” in Risk, Protection, Provision and Policy, ed. Claire Freeman, Paul Tranter, and Tracey Skelton (Singapore: Springer Singapore, 2017). P. 287-307; Rodriguez et al., Still in Harm’s Way: International voluntourism, segregation and abuse of children in Guatemala.

<sup>223</sup> Tess Guiney, ““Hug[?]an[?] orphan vacations”: “Love” and emotion in orphanage tourism,” *The Geographical Journal* 184, no. 2 (2018).

<sup>224</sup> Lindsay Stark et al., “National estimation of children in residential care institutions in Cambodia: a modelling study,” *BMJ open* 7, no. 1 (2017). P. 5

<sup>225</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Para. 127

<sup>226</sup> See for example: Quinn et al., Segregation and segregated facilities as a prima facie form of discrimination: the impermissibility of using the ESIF to invest monies in long term care residential institutions for persons with disabilities. P. 23.

they have been increasingly used to build smaller group living arrangements during the last decades. The UN Special Rapporteur for health, Mr. Dainius Pūras, criticised this and called the Government of Bulgaria and the European Commission to stop building large number of small institutions and commit to transition to family-based care, provision of services and support in the community and independent living.<sup>227</sup> The Fundamental Rights Agency of the European Union published a series of publications promoting independent living and family life for people with disabilities. One of the publications focused specifically on funding and delivered a clear message that the funds should be relocated from institutions to personalised services delivered in the family and the community.

Despite the various legal and non-legal initiatives, reportedly the EU funds are being used for the development and expansion of residential capacities in some EU states up to date.<sup>228</sup> The greatest potential for the use of EU funds is seen in covering the costs of the transition in the initial phases of a deinstitutionalisation process, when states run two types of systems – institutional and family-oriented one.<sup>229</sup>

**“Put the money where the love is. Move the money from institutions, buildings, and responsive systems to preventive, supportive, family-based solutions.”**

**Ann Skelton, CRC Committee Member, CRC Day of General Discussion 2021**

## 4.2 Residential care in times of a global health crisis

Although the Global Study was published before the outbreak of the Covid-19 pandemic, and thereby does not contain information on the situation of children in institutional care in times of such crisis, this toolkit provides a brief overview and lessons learnt from different countries' responses to this crisis.

The Covid-19 pandemic brought grievous consequences for the entire population. Still, the children and adults living in different forms of detention almost certainly carried a heavier burden of the crisis. Many governments applied anti-pandemic measures in the form of further restrictions on the freedom of movement in residential care in an attempt to prevent contagion.<sup>230</sup> The attempts to hermetically close group homes led to the isolation of children from the outer world, curtailing their social contacts with friends and families, peers and reducing activities. Moreover, in some countries, National Mechanisms for Prevention of Torture were not allowed access to these places to avoid possible contagion. Numbers of available personnel, due to infections reduced, which in already understaffed institutions put children at a higher risk of neglect and abuse. Although children, in general, are less susceptible to Covid-19 than adults, according to research<sup>231</sup> children with disabilities sometimes have compromised immune systems due to disability and comorbidities. Group living arrangements, especially large groups, are also dangerous due to often lower hygiene standards and cramped spaces.<sup>232</sup> Although the pandemic and the containment measures have had negative impact on mental health of children, for some children the quality of life increased as a consequence of more quality-time spent with one's family and lower pressure related to schooling.<sup>233</sup> Needless to say, children in residential care were not able to experience the positive aspects of anti-pandemic measures, instead they experienced even further distancing from their families.

<sup>227</sup> Dainius Pūras, High-level communication to the Government of Bulgaria, Reference AL BGR 1/2020, (Geneva 2020).

<sup>228</sup> See for example: ENIL and CIL Portugal Call on Government to Investigate Cercibeja Institution and Role of EU Funds, accessed 8 October, 2021, [Austria: Segregation and social exclusion of disabled people in facilities co-financed by the EAFRD](#), accessed 8 October, 2021, [Austria: Segregation and social exclusion of disabled people in facilities co-financed by the EAFRD](#).

<sup>229</sup> Bulic and Anguelova-Mladenova, "Common European guidelines on the transition from institutional to community-based care." P. 102-103

<sup>230</sup> See for example: Lazar Stefanović, "Implications of Anti-pandemic measures of Serbian Authorities on the Right to Life for Persons with Disabilities," in Yearbook Human Rights Protection: Right to Life, ed. Zoran Pavlović (Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research in Belgrade, 2021).

<sup>231</sup> See for example: Shamez N Ladhani et al., "COVID-19 in children: analysis of the first pandemic peak in England," Archives of disease in childhood 105, no. 12 (2020); Ping-Ing Lee et al., "Are children less susceptible to COVID-19?," Journal of microbiology, immunology, and infection = Wei mian yu gan ran za zhi 53, no. 3 (2020).

<sup>232</sup> Policy Brief: A Disability-Inclusive Response to COVID-19, (2020), [https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_on\\_persons\\_with\\_disabilities\\_final.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_persons_with_disabilities_final.pdf). P. 5

<sup>233</sup> Life in Lockdown: Child and adolescent mental health and well-being in the time of COVID-19, UNICEF office of research - Innocenti (UNICEF, 2021), <https://www.unicef-irc.org/publications/pdf/Life-in-Lockdown.pdf>. P. 57 - 58

Amongst other recommendations for a disability-inclusive response to the crisis, United Nations called States to immediately **invest in services in the community** to accelerate and finalise deinstitutionalisation processes,<sup>234</sup> as **the transition to family and community-based living is the most efficient form of protection in such crisis.**

The art. 11 CRPD prescribes an obligation of states to “to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.<sup>235</sup> In its concluding observations prior the Covid19 pandemic the CRPD Committee recommended States to develop strategies, plans, protocols and tools to assist and protect children and adults with disabilities during emergency. Unfortunately, many states had not developed adequately or effectively implemented such plans, which was noted with criticism by the CRPD Committee in the case of **France, Estonia and Djibouti**.<sup>236</sup> The CRC Committee noted the issue of fake news and disinformation of children regarding vaccination against Sars-Cov-2 in **Czech Republic**,<sup>237</sup> and commended measures taken by **Luxembourgish** authorities aimed at supporting and assisting families of children with disabilities to overcome the Covid-19 crisis.<sup>238</sup> The States and other actors should use lessons learnt from this pandemic not only to improve emergency response, but also to “build back better”, especially in relation to the provision of in-home, family-oriented services and support as well as the transition from institutional, group care to the life and care in families for disabled and non-disabled children, which have shown to be critical aspects of prevention during a pandemic.

<sup>234</sup> Policy Brief: A Disability-Inclusive Response to COVID-19. P. 17

<sup>235</sup> For more on art. 11 CRPD and corresponding standards see: *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, Office of the United Nations High Commissioner for Human Rights (2015).

<sup>236</sup> Concluding observations on the initial report of France, CRPD/C/FRA/CO/1, 2021.; Concluding observations on the initial report of Estonia, CRPD/C/EST/CO/1, 2021.; Concluding observations on the initial report of Djibouti, CRPD/C/DJI/CO/1, 2021.

<sup>237</sup> Concluding observations on the combined fifth and sixth periodic reports of Czechia, CRC/C/CZE/CO/5-6, 2021. para. 23.

<sup>238</sup> Concluding observations on the combined fifth and sixth periodic reports of Luxembourg, CRC/C/LUX/CO/5-6\*, 2021. para. 22.



# ANNEX 1: GLOSSARY OF KEY TERMS

- **Adoption** - The legal transfer of parental rights and responsibilities for a child which is permanent. The adoption itself is not a form of alternative care (for children without parental care). Notwithstanding, pre-adoption or probationary placement of a child with the prospective adoptive parents is considered a form of alternative-care and the UN Guidelines on Alternative Care of Children apply.<sup>239</sup>
- **Alternative care** – “A formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents.”<sup>240</sup>
- **Child** – any human being under the age of 18, in line with the definition provided in art. 1 CRC.
- **Community Based Support** – “A range of measures to ensure the support of children and families in the community.”<sup>241</sup>
- **Family-based alternative care** – alternative care that is provided in a family.
- **Formal care** – “All care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures”.<sup>242</sup>
- **Foster care** – “Situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family that has been selected, qualified, approved and supervised for providing such care”.<sup>243</sup>
- **Institutional care** – “The short-term or long-term placement of a child into any non-family-based care situation. Other similar terms include residential care, group care, and orphanage.”<sup>244</sup>
- **Kafalah** - A form of family-based care used in Islamic societies that does not involve a change in kinship status, but does allow an unrelated child, or a child of unknown parentage, to receive care, legal protection and inheritance.<sup>245</sup>
- **Kinship care** – form of informal or formally recognized alternative care in a wider family of a child.

<sup>239</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Article 30 (b)

<sup>240</sup> "Glossary of Key Terms. Better Care Network Toolkit."

<sup>241</sup> "Glossary of Key Terms. Better Care Network Toolkit."

<sup>242</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Article 28 (b) ii)

<sup>243</sup> Guidelines for the Alternative Care of Children, A/HRC/RES/11/7. Parra 29 (c) ii)

<sup>244</sup> "Glossary of Key Terms. Better Care Network Toolkit."

<sup>245</sup> "Glossary of Key Terms. Better Care Network Toolkit."

# ANNEX 2: RELEVANT SOURCES & TOOLS FOR ANALYSIS AND RESPONSE

## 1. UN Global Study on Children Deprived of Liberty

Full report: <https://omnibook.com/global-study-2019>

General Assembly report: <https://undocs.org/A/74/136>

Website: <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

## 2. UN databases:

OHCHR Treaty bodies database: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en)

UN Digital Library: <https://digitallibrary.un.org/>

## 3. International monitoring mechanisms (e.g. UN human rights treaty bodies), fact-finding mechanisms (e.g. UN Human Rights Council special procedures), Universal Periodic Review (UPR)

- UN Committee on the Rights of the Child website: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>;
- UN Committee on the Rights of Persons with Disabilities website: <https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>
- UN Human Rights Council special procedures: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
- Special Rapporteur on the rights of persons with disabilities: <https://www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx>
- Universal periodic review (UPR): <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

## 4. Regional human rights mechanisms:

Organization of American States (OAS): <http://www.oas.org/en/topics/children.asp>

African Union/African Charter: <https://www.acerwc.africa/about-the-charter/>

European Court of Human Rights database: <https://hudoc.echr.coe.int/eng>

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment database: <https://hudoc.cpt.coe.int/eng>

European Committee of Social Rights database: <https://hudoc.echr.coe.int/>



## 5. Deinstitutionalisation and care reform tools and resources:

Guidelines on transition from institutional to community-based care in Europe: <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf>

Guidelines for the transition to family-based care in Ghana: <https://www.unicef.org/ghana/reports/guidelines-deinstitutionalisation-residential-homes-children>

Operational Guidance on Inclusive Children's Reintegration in Rwanda: <https://www.unicef.org/rwanda/media/3211/file/Operational%20Guide%20.pdf>

Maximising synergies between care reform and child protection system strengthening in Eastern and Southern Africa: [https://bettercarenetwork.org/sites/default/files/2021-11/302.11\\_Caring%20Systems%20FINAL%20.pdf](https://bettercarenetwork.org/sites/default/files/2021-11/302.11_Caring%20Systems%20FINAL%20.pdf)

Case management procedures for reunification and reintegration of children and adolescents into family and community-based care: <https://bettercarenetwork.org/library/principles-of-good-care-practices/leaving-alternative-care-and-reintegration/case-management-procedures-for-reunification-and-reintegration-of-children-and-adolescents-into>

De-institutionalising and transforming children's services. A guide to good practice: <https://resourcecentre.savethechildren.net/document/de-institutionalising-and-transforming-childrens-services-guide-good-practice/>

Guidelines on reintegration of children: [https://resourcecentre.savethechildren.net/pdf/guidelines\\_on\\_childrens\\_reintegration\\_digital\\_1.pdf](https://resourcecentre.savethechildren.net/pdf/guidelines_on_childrens_reintegration_digital_1.pdf)

Application of the UN Guidelines for the Alternative Care of Children. A guide for practitioners: <https://resourcecentre.savethechildren.net/pdf/4990.pdf/>

Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care: <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=614&furtherNews=yes>

Lessons learnt about deinstitutionalisation and quality alternative care in Europe: [https://resourcecentre.savethechildren.net/pdf/di\\_lessons\\_learned\\_web\\_use.pdf](https://resourcecentre.savethechildren.net/pdf/di_lessons_learned_web_use.pdf)

Ten steps to deinstitutionalisation: <https://resourcecentre.savethechildren.net/pdf/4613.pdf>

## 6. Ensuring DI-compliant funding:

Checklist to ensure EU-funded measures contribute to independent living by developing and ensuring access to family-based and community-based services: <https://deinstitutionalisationdotcom.files.wordpress.com/2021/07/updated-checklist-new-eeg-logo.pdf>

Toolkit on the Use of European Union Funds for the Transition from Institutional to Community-based Care: <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/toolkit-10-22-2014-update-web.pdf>

CRPD compliance in development assistance: <https://asksource.info/sites/default/files/Funding%20Does%20Not%20Equal%20Inclusion.pdf>

Funding and budgeting DI in the EU: <https://fra.europa.eu/en/publication/2017/institutions-community-living-part-ii-funding-and-budgeting>

## 7. Civil society and academia resource centres and database:

Better Care Network library: <https://bettercarenetwork.org/>

Save the Children resource centre: <https://resourcecentre.savethechildren.net/>

International online resource centre on disability and inclusion by Humanity and Inclusion: <https://asksource.info/>

“Transmonee” database on children and women in Europe and Central Asia: <http://transmonee.org/>

“Innocenti” Research Centre: <https://www.unicef-irc.org/>

## 8. Assessments from national monitoring mechanisms (e.g. reports from National Preventive Mechanisms, NHRIs):

Overview by Global Alliance of National Human Rights Institutions: <https://ganhri.org>

## 9. Tools for human rights monitoring and the prevention of torture:

Association for the prevention of torture website: <https://www.ap.t.ch/en>

National Mechanism for the Prevention of Torture Toolkit: <https://www.ap.t.ch/en/knowledge-hub/npm-toolkit>

OPCAT ratification and NPMs information interactive map: <https://www.ap.t.ch/en/knowledge-hub/opcat>

Toolkit for the prevention of abuse against children in institutions (Mental Disability Advocacy Centre): <http://www.mdac.org/en/charm-toolkit>

Toolkit for human rights monitoring in psychiatric and social care institutions ITHACA: [https://cdn.fbsbx.com/v/t59.2708-21/13711236\\_10204953835486096\\_1985173322\\_n.pdf/ithaca\\_toolkit\\_english.pdf?\\_nc\\_cat=105&ccb=1-5&\\_nc\\_sid=0cab14&\\_nc\\_ohc=IBruWh6rkvQAX-Esfbs&\\_nc\\_ht=cdn.fbsbx.com&oh=38ed01652ea9d55da10ed0f9256e5040&oe=618A9B84&dl=1](https://cdn.fbsbx.com/v/t59.2708-21/13711236_10204953835486096_1985173322_n.pdf/ithaca_toolkit_english.pdf?_nc_cat=105&ccb=1-5&_nc_sid=0cab14&_nc_ohc=IBruWh6rkvQAX-Esfbs&_nc_ht=cdn.fbsbx.com&oh=38ed01652ea9d55da10ed0f9256e5040&oe=618A9B84&dl=1)

Practical guide for the National Mechanisms for the Prevention of Torture: [https://www.ohchr.org/Documents/Publications/NPM\\_Guide\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf)

## 10 Civil society monitoring reports (e.g. ‘shadow reports’ for state monitoring processes:

Child Rights Connect database of civil society reports to the Committee on the Rights of the Child from 1991 to 2014: <https://www.childrightsconnect.org/alternative-reportarchive/>

OHCHR treaty bodies database: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en)

## 11. Documented involvement/participation of children (including in monitoring processes):

UN Committee on the Rights of the Child: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/ChildParticipation.aspx>

PRI Toolkit on interviewing children: <https://cdn.penalreform.org/wpcontent/uploads/2012/01/Toolkit-for-Interviewing-Children-Guardians-Staff-of-JuvenileDetention-Facilities.pdf>

Save The Children: [https://resourcecentre.savethechildren.net/pdf/consultation\\_toolkitpdf\\_1.pdf](https://resourcecentre.savethechildren.net/pdf/consultation_toolkitpdf_1.pdf)

Eurochild – Child participation Toolbox: [https://eurochild.org/uploads/2021/01/We\\_Are\\_Here\\_Toolbox.pdf](https://eurochild.org/uploads/2021/01/We_Are_Here_Toolbox.pdf)

## 12. Advocacy tools:

EU Alliance advocacy toolkit: <https://eurochild.org/resource/eu-alliance-publishes-advocacy-toolkit/>

A guide to policy advocacy in transition countries: <https://advocacyguide.icpolicyadvocacy.org/>

Power mapping grid/stakeholder mapping template: [https://resourcecentre.savethechildren.net/node/8557/pdf/part\\_2.pdf](https://resourcecentre.savethechildren.net/node/8557/pdf/part_2.pdf), p. 29;

<https://www.careinternational.org/files/files/Care%20International%20Advocacy%20Handbook.pdf>, p. 17

<https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNICEF%20Advocacy%20Toolkit.pdf>, p. 30 – 31;

# ANNEX 3: KEY QUESTIONS AT A PREPARATORY STAGE

## Action area 1: Law and policy

- Has the country ratified CRC, CRPD, CAT and optional protocols to these treaties?
- Does national legislation prioritize care in the immediate family, and if that such care is not possible in a family environment?
- Does national law prohibit discrimination on the basis of age and disability?
- Does national law prohibit institutionalisation on the basis of poverty and real or perceived disability to that of a child and/or a parent?
- Does national law prohibit placement of young children in institutions even for short periods of time, due to the especially detrimental effects such care has on children of young age?
- Does national legislation recognize denial of reasonable accommodation to children with disabilities in education, social care, health care and other spheres as a form of discrimination?
- Does national legislation prescribe quality, free and inclusive education for all children?
- Is the best interest principle recognized and upheld as a right, interpretive principle and a procedural rule in legislation, policy, by courts and in all matters concerning children?
- Is the allocation of funds conducive to the prioritisation of family-based care and the eradication of residential care?
- Is building new and expansion of existent institutional care prohibited?
- Is foreign aid monitored to comply with the goals of deinstitutionalisation?
- Do national policies set clear goals, with timeframes and allocated budgets to support children with disabilities and children living in financial hardship and marginalised and stigmatised families, to address root causes of family separation?
- Do national policies set a clear goal of eradicating institutional care and transitioning to family-based care for all children?
- Do national policies address abuse, violence and exploitation of children in institutions?
- Are those policies based on evidence, properly funded and prioritised?
- Are there coordination mechanisms between departments horizontally (e.g. social welfare and education) and vertically (e.g. national and local) for the development and application of those policies?
- Are children involved in the development and evaluation of the implementation of policies?
- Is civil society involved in the development, implementation and monitoring of policies?
- Do authorities have the capacity to implement those policies?

## Action area 2: Support and services

- Do immediate families receive adequate support?
- Are multi-component, outreach services provided to the families to prevent separation, neglect and abuse and facilitate reintegration in the family?
- Are kinship care and foster care systems developed, properly funded, and carers supported and overseen?
- Are different types of foster care available to accommodate children in different circumstances (e.g. long term, short term, emergency foster care etc.)?
- Are informal kinship carers recognised and supported?
- Is personal assistance provided to children with disabilities, especially in relation to attending inclusive education and participating in community life?
- Are supported living arrangements available for adolescents?
- Are children leaving alternative care and transitioning to adulthood supported and are independent living arrangements available?
- Are awareness-raising campaigns on the rights and livelihoods of children with disabilities conducted?
- Are data on children in alternative care and data on residential care existent and accessible?

### Action area 3: Access to justice, protection and oversight

- Are children in institutions protected from all forms of abuse and violence, and is independent monitoring of these places ensured?
- Do children in institutions have access to complaint mechanisms and is this access facilitated where needed?
- Is the quality of family-based services monitored and are children included in the evaluation of quality?
- Is licensing, oversight and monitoring of all forms of alternative care established?
- Are children involved in planning and evaluation of all forms of alternative care?
- Are access to justice and age-appropriate and procedural accommodations ensured for all children, including children with disabilities and those living in institutions?

## ANNEX 4: BACKGROUND INFORMATION ON THE GLOBAL STUDY

In December 2014 the UN General Assembly invited the Secretary-General to commission an in-depth global study on children deprived of liberty. In October 2016, Professor Manfred Nowak was appointed as Independent Expert to lead the UN Global Study on Children Deprived of Liberty.

The research process involved many actors, from governments who collaborated filling out a questionnaire for data and information gathering, to UN agencies, regional organizations, National Human Rights Institutions, the international academic research community as well as some 170 civil society organizations led by an NGO Panel co-convened by Defence for Children International and Human Rights Watch. Particular efforts were made to enable 274 direct consultations with children from 22 countries. The Global Study portrays a table of all organizations involved in the research and writing process on pages 21 and 22, and their dedicated roles.

Manfred Nowak presented the main findings from the research in his report to the UN General Assembly in New York in October 2019. The full publication on the UN Global Study on Children Deprived of Liberty with more than 750 pages was presented in Geneva in November 2019, on the occasion of the 30th Anniversary event celebrating the adoption of the CRC. A revised version of the Global Study and its Executive Summary were published in 2020.

The findings of the Global Study concern six thematic areas in which children live deprived of liberty: **juvenile justice, detention with their primary caregivers**, for **migration-related reasons, in institutions**, in the context of **armed conflict** or on **national security** grounds.

The Study also includes four cross-cutting aspects to be taken into account along these 6 thematic areas, thus: the gender **dimension**, the impact on children's **health**, the situation relating to **children with disabilities** and the **views and perspectives of children** themselves.

As a follow-up to the Study, many further activities have been conducted to assist the implementation of the Global Study recommendations, including this toolkit

# ANNEX 5: NGO PANEL FOR THE UN GLOBAL STUDY ON CHILDREN DEPRIVED OF LIBERTY

The Global Study process has led to several processes for cooperation and exchange, most notably among the members of the thematic international research groups. For the Global Study Chapter 11 on migration, research was led by Günter Schumacher and Simon McMahon, from the Joint Research Centre of the European Commission, and Michael Bochenek, from Human Rights Watch and joined by many experts. UNHCR and IOM acted as the focal points in relation to other UN agencies, while the international NGO Panel supporting the Global Study was represented in the group by International Detention Coalition and Global Detention Project. The NGO Panel, bringing together some 170 member organizations, proved an essential resource for the research process.

Core Group:

1. Defence for Children International (DCI) – co-convenor
2. Human Rights Watch (HRW) – co-convenor
3. Child Rights International Network (CRIN)
4. International Catholic Child Bureau (BICE)
5. International Detention Coalition (IDC)
6. International Juvenile Justice Observatory (IJJO)
7. Penal Reform International (PRI)
8. Terre des Hommes International Federation
9. World Organization against Torture (OMCT)

Full list of Members of the NGO Panel: <https://childrendeprivedofliberty.info/about/the-ngopanel-for-the-global-study-on-children-deprived-of-liberty/members-of-the-ngo-panel/>





