FACTSHEET 22 – FOCUS ON….. DEINSTITUTIONALISATION OF CHILDREN

1. What is the issue?

Institutionalisation of children involves placing children in orphanages or similar residential care institutions. **Children in institutional care constitute one of the most marginalised, underserved, and vulnerable groups**. A disproportionate number of children who are placed in institutions have disabilities.

While there is variability in both living conditions and caregiving environments across different alternative care settings, **placement in institutions is now widely recognised as harmful and inherently a human rights violation**. Research has provided strong and consistent evidence indicating that **nearly all domains of development are profoundly affected** when children experience institutional care. These impacts include severe impaired social, emotional, behavioral and interpersonal impairment, physical underdevelopment, delayed motor skills, and/or stunted cognitive and language development. All of this leads to **irreparable damage to the physical and psychological well-being of children**. Institutions may be overcrowded, clinical environments with highly regimented routines, unfavourable care-giver to child ratios, and unresponsive, usually underpaid, staff.

Institutions also display a **grim record of neglect and violence**. Numerous reports have highlighted cases of **violence, physical and sexual abuse**, the use of cage beds and other physical restraints, the overuse of medication and violations of the right to privacy and family life. Reports have also exposed inhumane living conditions including lack of heating, malnutrition, unhygienic sanitation and otherwise poorly-maintained buildings. The 2006 UN Secretary General's study on Violence against Children[1] found that children in institutions were at a higher risk of all forms of abuse than those raised in families. Human Rights Watch reported in 2017 that staff in institutions in India, Indonesia, Greece, Russia, and Serbia used physical and chemical restraints on.[2] Contemporary evidence from different countries also demonstrates how orphanages are central participants in a web of modern slavery and trafficking of children[3].

It is also important to note that **many adults currently living in institutions entered institutions as children**. Studies have shown that the harmful effects of institutionalisation are likely to continue after the child reaches adulthood, triggering a range of problems and affecting adaptation to social and professional life. They are also **over-represented in negative circumstances as adults**, e.g. in conflict with the law/homeless, etc., underlining the need for early intervention and robust family support systems.[4]

According to international human rights law, children have the right to grow up in family-based settings. The **UN Convention on the Rights of the Child** recognises that the ideal setting for a child to grow up is within a family environment that provides the care, protection and love which every child needs in order to thrive. Standards on deinstitutionalisation have also been captured in the **UN Convention on the Rights of Persons with Disabilities (CRPD)** which recognises the equal right of all persons to live in

[1] UN Secretary-General, Report on Violence against Children, 2006, par. 112
[2] https://www.hrw.org/news/2017/03/07/children-disabilities-deprivation-liberty-name-care-and-treatment
[3] Doore, K.E.V. (2016). Paper orphans: Exploring child trafficking for the purposes of orphanages. The International Journal of Children's Rights. Volume 24, Issue 2
[4] http://www.equalrightstrust.org/ertdocumentbank/err9_mulheir.pdf

the community. **The UN Guidelines for the Alternative Care of Children** represent an essential reference, clarifying that 'States should develop and implement consistent and mutually reinforcing family-oriented policies designed to promote and strengthen parents' ability to care for their children'.

2. How to address the issue?

The **Common European Guidelines on the Transition from Institutional to Community Based Care**[5] refer to deinstitutionalisation as the process of closing institutions and developing services in the community in order to eliminate the need for institutional care. These Guidelines "provide practical advice about how to make a sustained transition from institutional care to family-based and community-based alternatives". In order to accelerate progress towards ending institutional care for children, the following conditions are necessary: political commitment, funding, capacity to implement reforms, and cooperation with civil society. The Guidelines call for:

- Making the case for developing community-based alternatives to institutions
- Assessment of the situation
- Developing a strategy and an action plan
- Establishing the legal framework for community-based services
- Developing a range of services in the community
- Allocating financial, material and human resources
- Developing individual plans
- Supporting the individuals and communities during transition
- Defining, monitoring and evaluating the quality of services
- Developing the workforce

The 2010 **UN Guidelines for the alternative care of children outline key principles** that should be adhered to in all care and protection options for children. These stipulate that:

- Efforts should primarily be directed at enabling children to remain in, or return to, the care of their parents or, where necessary, of other close family members;
- The removal of a child from his or her family should be considered an option of the last resort and for the shortest possible duration;
- The State is responsible for ensuring alternative care only where the family is unable, even with appropriate support, to provide adequate care for the child;
- Any alternative care placement should be decided and provided on a case-by-case basis, by qualified professionals, and should respond to the best interests of the child;
- Alternative care for all children, especially those under three, should be provided in family-type settings within the child's community, rather than in residential institutions.

More specifically, to implement the transition from a system of long-stay residential institutions to a system of family- and community-based services—deinstitutionalisation—successfully requires that **governments create sustainable strategies and action plans**. This transition is a complex, medium to long-term process. It requires careful planning with a wide range of cooperating organisations and individuals to ensure a coordinated approach.

A key challenge is ensuring that deinstitutionalisation is carried out in a way that respects the rights of the user groups, minimises risk of harm and ensures positive outcomes for all individuals involved. C**losing institutions hastily and without developing high quality alternatives can be very dangerous for children**, and even subject them to worse

---

[5] http://enil.eu/wp-content/uploads/2016/09/Guidelines-01-16-2013-printer.pdf

violations of their rights. The decision to move a child from an institution to a new placement requires individual needs assessment, careful planning and support.

Contrary to what is likely to have been the child's prior experience, **the child must be included in a meaningful way in any decisions and actions that concern him or her.** One of the worst failures has been the requirement for a child to slot into an available place in an institution irrespective of what that was, and the failure to meet the child's individual needs is a delicate transition that needs careful planning and support.

Many governments believe that providing care and protection through institutions is the most cost-effective option. However, evidence clearly shows[6] that systems that rely on **institutions are more expensive to run than those which provide community-based services**. An analysis of care provision in Romania, Ukraine, Moldova and Russia concluded that the cost-per-user for institutional care is six times more expensive than providing social services to vulnerable families or voluntary kinship carers.

3. Are there international standards/EU acquis?

➢ **United Nations:**

According to the **UN Convention on the Rights of the Child (CRC)** outlines a range of children's rights which, taken together, suggest that most children should live with and be cared for by their birth families (**Articles 9 and 7**). It is the primary responsibility of parents to raise their children and it is the responsibility of the state to support parents in order that they can fulfil that responsibility **(Article 18)**. Where their family cannot provide the care they need, despite the provision of adequate support by the state, the child has the right to substitute family care **(Article 20)**. Children with intellectual or physical disabilities have a right to live in "conditions which ensure dignity, promote self-reliance and facilitate the child's active participation on in the community" (**Article 23**).

Article 19 of the **UN Convention on the Right of Persons with Disabilities (CRPD)** recognises the equal right of all persons to live in the community. It sets out the right of all persons with disabilities to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement. It requires States to ensure that people with disabilities have access to community services "necessary to support living and inclusion in the community; and to prevent isolation or segregation on from the community". This cannot be achieved if countries continue to place individuals in institutional care.

In addition to the above mentioned instruments, the **UN Guidelines for the Alternative Care of Children** provide the framework for tackling the harmful institutionalisation of children. They set out two fundamental principles (necessity, suitability) and desirable orientations for policy and practice grounded in the UN CRC regarding the protection and wellbeing of children deprived of parental care or who are risk of being so.

The 2030 Agenda for Sustainable Development is built around the principle of leaving no one behind.[7] It recognises the essential role that families play in achieving this principle and calls for greater disaggregation of data related to disability and other factors in order to meet needs of those who are most vulnerable, including children.[8]

---

[6] http://www.hopeandhomes.org/wp-content/uploads/2016/12/DI-Myth-Buster-QA.pdf

[7] UN General Assembly. (2015). *Transforming our World: the 2030 Agenda for Sustainable Development.* (Preamble, p. 26) http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E [accessed 23 Jan 2017].

[8] Ibid, Preamble, p. 25, p. 19, p. 23

> ➢ **Council of Europe**

Article 3 of **the European Convention on Human Rights (ECHR)** states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" without any exceptions. Infringement of this Article may occur where the practices of an institution have such an impact on the person's life that the threshold is met. **Article 8** of the ECHR guarantees the right to respect for private and family life and requires that any interference with this right by a public authority be justified as being in accordance with the law and necessary in a democratic society. This Article can be applied in cases where children are arbitrarily separated from their family or where a placement interferes with the child's or adult's ability to remain in contact with their family.

Article 5(1) of the ECHR states that no one shall be deprived of their liberty save the listed cases in the article and in accordance with a procedure prescribed by law – the cases provided in the article do not include any of the main drivers of institutionalisation, such as poverty or lack of services. Furthermore, in order to determine whether someone has been "deprived of his/her liberty" within the meaning of **Article 5** ECHR, the starting point must be his/her concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The notion of deprivation of liberty within the meaning of **Article 5(1)** 1 contains both an *objective element* of a person's confinement in a particular restricted space for a non-negligible length of time, and an additional *subjective element* in that the person has not validly consented to the confinement in question.

The **Revised European Social Charter** sets out "the right of persons with disabilities to independence, social integration and participation in the life of the community" and requires parties to develop the necessary measures to achieve this right (**Article 15**). Rights of the child are set out in **Articles 16 and 17**, which state the importance of promoting family life and the child's right to grow up in an "environment which encourages the full development of their personality and of their physical and mental capacities.

The **Council of Europe 2005 Recommendation**[9] on the rights of children living in residential institutions establishes important principles to be applied whenever a child is placed outside the family. In its **Strategy on the Rights of the Child (2016-2021)**[10], the Council of Europe has also committed to paying specific attention to the situation of children in all forms of alternative care and providing guidance to professionals in this field in implementing a child-rights based and participatory approach to their work.

> ➢ **EU:**

Within the EU, the promotion of quality alternative care for children (in line with the UN Guidelines) and the de-institutionalisation of children are a priority and are considered as a case of social investment in the best interests of the child. Capacity-building is prioritised for integrated child protection systems to prevent, address and respond to all forms of violence against children, in line with the 10 principles for integrated child protection systems.[11]

The **Charter of Fundamental Rights** sets out the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational

---

[9] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805daac2
[10] https://rm.coe.int/168066cff8
[11] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-protection-systems_en

integration and participation in the life of the community (**Article 26**) and the child's right to such protection and care as is necessary for their wellbeing. It also stipulates that the best interests of the child are a primary consideration in all actions relating to children, as well as the respect for the child's right to be heard (**Article 24**).

The **EU's social investment package and 2013 Recommendation on investing in children**: breaking the cycle of disadvantage12 provide guidance on de-institutionalisation and call for a broad approach combining prevention and quality services. They emphasise the need to prevent family separation unless so required in the best interests of the child and recommend to MS to stop the expansion of institutional care settings for children.

The **European Expert Group on the Transition from Institutional to Community-Based Care (EEG)** convened in 2009 by the Commissioner for Employment, Social Affairs and Equal Opportunities delivered a report that identified common basic principles for promoting the rights of people living in in institutions and issued the Commission and MS with recommendations as to how to support the transition from institutional to family-based and community-based care. The group released Common European guidelines on the transition from institutional to community-based care and an accompanying 'Toolkit on the use of EU Funds for the development of community care.13

On 7 December 2017, the Council adopted **Conclusions on "Enhancing Community-Based Support and Care for Independent Living"**. The Conclusions show the commitment of Member States to continue investment in community-based social support services.

Financial assistance

Following criticism of the **European Structural Funds (ESIF)** for funding the construction of new institutions or renovation of existing institutions, the regulation governing ESIF for 2014–2020 includes specific protections to ensure that funds are used to support deinstitutionalisation. This built on an earlier policy commitment in the European Disability Strategy 2010–2014 to "promote the transition from institutional to community-based care by using ESIF to support the development of community-based services".

Under its **PROGRESS programme** the Commission has funded social innovation projects which sought new ways of supporting young children living in care. The successor **European programme for employment and social innovation** is supporting initiatives on de-institutionalisation led by the European Social Network. Under the **Rights, Equality and Citizenship Programme**, the EU has funded projects aiming at building integrated child protection system capacity, and also specifically in the sub-sector of alternative care.15

Regarding external action, the 'EU Guidelines for the Promotion and Protection of the Rights of the Child (2017)[16] Leave no child behind' include institutionalisation among the risks for children in vulnerable situations. The document highlights the importance of appropriate alternative care for children that allows them to participate in community life..

[12] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0112&from=EN
[13] http://www.enil.eu/wp-content/uploads/2014/07/Toolkit-07-01-2014-WEB.pdf
[14] European Commission (2010), European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe, COM(2010) 636 final, Brussels, 15 November 2010, p. 6.
[15] http://ec.europa.eu/newsroom/just/document.cfm?doc_id=40298
[16] https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf (page 4).

It further recommends improving coherence in the EU's external action on children, including that carried out by Member States.

In February 2018, a call for proposals under the Investing in People thematic Instrument for 13 million EURO was launched by DG DEVCO on **Quality Alternative Care for Children and De-Institutionalisation".** The main objective is to ensure better outcomes for children by ensuring better implementation of the UN *Guidelines for the alternative care of children.*

EU support in Enlargement and Neighbourhood countries

The Commission is supporting projects in enlargement and neighbourhood countries that aim at promoting de-institutionalisation of children. Some of these aim at preventing the separation of families, strengthening the systems of alternative care or enhancing the social protection system for vulnerable families and children. There are also projects that seek to improve the social inclusion of children with disabilities, as well as their inclusive education. In addition to national and local governments and institutions in charge of children, such activities usually involve civil society or international organisations such as UNICEF.

Activities are mainly conducted at bilateral level, through IPA for Enlargement countries and ENI for Neighbourhood countries, as well as through EIDHR. There are also projects supported by the Development Cooperation Instrument. The EU is currently funding initiatives on deinstitutionalisation in BIH, Serbia, the former Yugoslav Republic of Macedonia, Montenegro, Kosovo, Ukraine, Belarus, Moldova, Azerbaijan, Georgia, Armenia, Egypt, Morocco, Algeria, Tunisia, Jordan and OPT.

In addition to providing funding, during rights of the child peer reviews (Serbia, Albania, and Montenegro) this was always an area of focus. Moreover, all progress reports in the context of the Enlargement Package (under chapters19 and/or 23) report on the deinstitutionalisation of children. This is also the case for 2018. The rights of the child are also raised in human rights dialogues and the issue of institutionalisation of children has been discussed with countries such as Belarus, Moldova or Georgia.

4. <u>What more could be done to promote deinstitutionalisation of Children?</u>

All enlargement and neighbourhood states have ratified the UNCRC. Countries thus have a responsibility to protect children and to support parents/caregivers which demand that they address the fundamental reasons as to why children end up in institutional care rather than family-based care, or to remain within their family with appropriate supports. In addition, all DG Near countries have ratified the UNCRPD and have a duty to tackle the physical and societal barriers faced by children and adults with physical and mental disabilities.

The context of enlargement and neighbourhood policies provides a real opportunity for the EU to ensure a human rights and child rights based approach in driving forward societal change. EU focus on deinstitutionalisation has had an enormous impact within the EU and can do so again for NEAR countries through the combination of policy guidance and programming prioritisation, grounded in European values. Experience gained in EU countries in the last decade can contribute and EEG experts could be involved through TAIEX or other mechanisms to help, with a focus on national/local capacity-building to generate ownership and real and sustainable change. If major changes and reforms are to happen, the DG NEAR framework is the most conducive to making it happen. Simply put, if the EU focuses on deinstitutionalisation, making good use of guidance and tools enumerated above, change will happen.