

# The Children Behind the Wall



Protecting Children. Providing Solutions.

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# Introduction

On the 9th of November, 1989, the Berlin Wall was breached. We, the children of the cold war, watched in awe, as thousands from behind the Wall climbed to the top and began to hack and tear at the once seemingly impregnable edifice – their physical and symbolic prison of twenty-eight years – and proved, as countless others had before them, that no state is permanent, no dictatorship lasts for ever and all empires eventually fall. In the end, the Wall was nothing but concrete. It took only a few weeks to destroy – a few weeks and twenty-eight years.

Over the following weeks and months, from the vantage of the western edge of Europe, we watched as one dictatorship after another collapsed. The newspapers were filled with names we dimly recognised, of countries that in our geography school-books had disappeared into a block of red, behind the 'Iron Curtain'. In Poland, Hungary, Czechoslovakia, Bulgaria, regimes fell peacefully like dominoes, as peoples whose voices had been silenced for many decades came out on the streets in their hundreds of thousands to demand change. The term 'Velvet Revolution' was coined and people everywhere who genuinely believed in democracy felt a surge of hope: that a Europe divided for forty-five years might finally heal itself, that the path from dictatorship to democracy could be trodden without the spillage of blood.

By December, civil unrest had spread to Romania and a city in Transylvania that none of us had ever heard of, and few of us could pronounce, became the signifier of a darker chapter. In Timisoara, hundreds of protesters were shot on the steps of the Opera House. Nicolae Ceausescu, Romania's megalomaniacal dictator, was not giving up so easily. Protests spread to Bucharest and it is estimated that more than a thousand lives were lost. But in the end, the Ceausescus fled, were captured and executed. This was old style revolution, not a whiff of velvet.

As journalists poured into Romania over the ensuing weeks, images began to appear on our TV screens that were, quite simply, unbelievable. Approximately 200,000 children were locked behind the walls of Romania's system of residential care institutions. We saw row upon row of silent babies. Children whose emaciation resembled victims of the Ethiopian famine. Children tied up; others rocking back and forth in silent horror. Shaved heads, generic clothing, making it impossible to tell girls from boys, or to perceive this mass of human misery as the individual bundles of personality and potential we normally understand children to be. We could not really see children. The scenes were almost indescribable. We were all shocked by these images, finding it difficult to comprehend how such a travesty could have come to pass. We imagined it to be an aberration. But these terrible problems were not unique to Romania. Rather, in many formerly Communist countries in the region, an erroneous dogma of 'the state knows best how to care for children', coupled with discrimination against children with disabilities and Roma families, had led to the unnecessary separation of many children from their parents and their incarceration in large, prison-like institutions.

Over the next 15 years a massive outpouring of charity from well-meaning individuals and groups, as well as the larger grants, donations and loans from the EU, governments' overseas aid programmes and the World Bank, was channelled into to 'improving' Romania's institutions. Funding was used to install heating and sanitation, renovate buildings, paint walls, improve material conditions, and to bring medicine and food. Countless volunteers also visited to relieve staff of their burden and to play with the children.

This was an understandable and logical response. But the investments in improving the system did not result in significantly improved outcomes for children, because of the nature of institutionalisation itself. Efforts to improve the institutions might have made a difference in terms of helping children survive, but did little to improve their quality of life. It became apparent – and was later proven by brain imaging studies – that removing children from their families and raising them in this highly artificial and regimented environment did them untold damage.

And by the year 2000, when Romania was on the road to EU accession, it became apparent to the European Union that, in spite of all the investment to improve the care system, Romania's institutions continued to be sites of vast human rights abuse. The EU insisted Romania transform its childcare system, as a condition for accession to the Union.

This was the first instance of the European Union using its financial and policy power to influence a country to undertake a major 'de-institutionalisation' programme. It sowed the seeds for a major shift in policy and funding regulations.<sup>1</sup> Fast forward twenty-eight years from the fall of the Berlin Wall, European Union leadership is currently facilitating a major movement for change across the whole Union and beyond.

But whilst Europe may now be convinced that separating children from their families and depriving them of their liberty, irrespective of intent, constitutes an unacceptable abuse of human rights, in other regions of the world, extreme poverty and orphanage-trafficking<sup>2</sup> are fuelling a proliferation of institutions as a response to perceived vulnerability in children. Many international decision-makers and donors are still investing in orphanage systems, believing they are doing the right thing.

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<sup>1</sup> Ex-ante conditionality 9: 9.1, REGULATION (EU) No 1303/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013, Official Journal of the European Union L 347/449, p. 129

<sup>2</sup> A growing body of evidence demonstrates that many orphanages are established simply to make money from children. See for example:

Mulheir, G. & Cavanagh, M. et al. (2016). Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children.

[https://wearlumos.org/sites/default/files/Haiti%20Trafficking%20Report\\_ENG\\_web\\_20EP16.pdf](https://wearlumos.org/sites/default/files/Haiti%20Trafficking%20Report_ENG_web_20EP16.pdf)

Mulheir, G., Christopoulos, A. & Munroe, A. (Forthcoming 2017). The Case for an Australian Modern Slavery Act: Recognising the relationship between trafficking and exploitation of children in orphanages as a form of modern slavery.

van Doore, K.E. (2016). 'Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages' in *The International Journal of Children's Rights*, Volume 24, Issue 2. <http://booksandjournals.brillonline.com/content/journals/10.1163/15718182-02402006>

# The Harm Caused by Institutionalisation

**Across the world, an estimated 8 million children live in institutions. More than 80% have at least one living parent. More than 80 years of research from across the world has demonstrated the significant harm caused by confining children to institutions.<sup>3</sup>**

These studies have highlighted the difficulties that children face in forming secure attachments essential to healthy development, due to a lack of emotional and physical contact and a lack of interaction with an attuned, responsive caregiver. This inability of the institutional environment to meet individual needs can lead to developmental delays and challenging behaviours.<sup>4</sup> Research also demonstrates that institutionalisation has a severe impact on Early Brain Development (EBD).<sup>5</sup> There is extensive literature documenting that institutional care is associated with significant delays in physical growth, including head circumference that, in infants, is associated with brain growth.<sup>6</sup> Moreover children in institutions are at a much higher risk than their peers raised in families of all forms of abuse, as well as trafficking and early, avoidable death.

Whether in a prison or an institution, as Manfred Nowak has stressed, 'locking children up amounts to structural violence against children.'<sup>7</sup>

## Why do children go into institutions?

- In 2013, a study found that abuse and neglect were the most common reasons for children in developed European countries to be placed in institutional care. However in European countries undergoing economic transition, where the rate of institutionalisation was much higher, poverty and disability were common causes for institutionalisation.<sup>8</sup>
- One of the major factors associated with the admission of children with disabilities to institutional care is poverty. There is a strong inter-relationship between poverty and disability.<sup>9</sup> Research shows that providing support to persons with disabilities dramatically reduces the impact of the disability on families and reduces the significance of the relationship between poverty and disability.<sup>10</sup>
- While poverty and disability are important contributing factor to the institutionalisation of children, other social factors such as single parenthood, unemployment, migration and deprivation of parental rights also play a decisive role.<sup>11</sup>
- The reasons for admission into an institution are often directly influenced by the lack of access to free or affordable community-based health, education and social services.

3. Berens, A.E & Nelson, C.A. (2015). The science of early adversity: is there a role for large institutions in the care of vulnerable children? *The Lancet*. Available from: [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)61131-4/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)61131-4/abstract)

4. Mulheir, G. (2012). Deinstitutionalisation – A Human Rights Priority for Children with Disabilities. *The Equal Rights Review*: 119–121.

5. Nelson, C. and Koga, S. (2004). Effects of institutionalisation on brain and behavioural development in young children, Findings from the Bucharest early intervention project, paper presented at the International Conference on 'Mapping the number and characteristics of children under three in institutions across Europe at risk of harm', 19 March 2004, EU Daphne Programme 2002/3 and WHO Regional Office for Europe, Copenhagen, Denmark.

6. Mulheir, G., Browne, K. et al. (2007). De-institutionalising and transforming children's services: A guide to good practice, WHO Collaborating Centre for Child Care and Protection, University of Birmingham; Nelson, C.A., Bos, K., Gunnar, M.R., Sonuga-Barke, E.J.S.(2011). The neurobiological toll of early human deprivation, *Monographs of the Society for Research in Child Development*.

7. UN News Centre. (2017). INTERVIEW: Governments should think twice before putting children in detention – UN expert Manfred Nowak. [online] Available at: <http://www.un.org/apps/news/story.asp?NewsID=56192&WfmUD20NPY> [Accessed 31 Oct. 2017].

8. Browne, K. (2009). *The risk of harm to young children in institutional care*, Save the Children, London.

9. UNICEF. (2005). *Innocenti Insight Children and Disability in Transition in CEE/CIS and in Baltic States*.

10. Mont, D. and Nguyen, C. (2013). *Spatial Variation in the Disability-Poverty Correlation: Evidence from Vietnam*. Munich Personal RePEc Archive.

11. Carter, R. (2005). *Family matters: a study of institutional childcare in Central and Eastern Europe and the former Soviet Union*. London, EveryChild; Tinova, M., Browne, K.D. and Pritchard, C. as cited in Browne, K. (2009). *The Risk of Harm to Young Children in Institutional Care*, Save the Children, London.

## The scale of institutionalisation

Whilst the precise number is unknown, evidence suggests that an estimated eight million children currently live in residential institutions<sup>12</sup> which deprive them of their liberty and cannot meet their needs.<sup>13</sup> The actual number is likely to be higher, owing to lack of data from many countries and the large number of unregistered institutions and orphanages, particularly in the global south.

## The cost of institutionalisation

Institutional care tends to be a lot more expensive than community-based care. Research has shown that on average, institutional care is eight times more expensive than providing social services to parents and children; it is up to five times more expensive than foster care; and twice as expensive as community residential homes or small group homes.<sup>14</sup>

Evidence that supports the notion that foster care is more economically viable than institutional care has been gathered from across the world. In 13 Central and Western European countries, foster care for children with disabilities has been found to be 50% cheaper than institutional care.<sup>15</sup> In the Kagera region of Tanzania the World Bank reported that the cost of a child living in an institution was nearly six times higher than supporting a child to live in a foster family.<sup>16</sup> A case study in Eritrea showed that the annual cost per child in residential care was \$1,900USD, while the cost for family integration was below \$100USD.<sup>17</sup>

Whilst the precise number is not known, evidence suggests that an estimated eight million children currently live in residential institutions<sup>12</sup>

12. The number of residential institutions and the number of children living in them is unknown. Estimates range from more than 2 million (UNICEF, (2009). Progress for Children: A Report Card on Child Protection Number 8.) to 8 million (Cited in: Pinheiro, P. (2006). World Report on Violence against Children, UNICEF, New York).

13. Institutional care' is understood to be any residential care where institutional culture prevails. The size of the institution matters, but is not the only defining feature. Children are isolated from the broader community and/or compelled to live together. These children do not have sufficient control over their lives and over decisions which affect them. The requirements of the organisation itself tend to take precedence over the children's individual needs. This usually includes large residential units (more than 10 children) but also smaller units with strict regimes, units for children who have committed minor offences, residential health facilities, and residential special schools. Mulheir, G. (2012). 'Deinstitutionalisation: A Human Rights Priority for Children with Disabilities', Equal Rights Review, Volume Nine.

14. Carter, R. (2005). Family matters: a study of institutional childcare in Central and Eastern Europe and the former Soviet Union. London, EveryChild; Csáky, C. (2009). Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care, Save the Children, London.

15. Browne K.D., Hamilton-Giachritsis C., Johnson R., Chou, S., Ostegren, M., Leth, I., Agathonos-Georgopoulou H., Anaut M., Herczog M., Keller-Hamela M., Klimackova A., Stan V. and Zeytinoglu S. (2005a). A European survey of the number and characteristics of children less than three years old in residential care at risk of harm. *Adoption & Fostering*, 29(4): 23-33.

16. Better Care Network Secretariat. (2009). Global facts about orphanages, Better Care Network.

[http://handstohearts.org/wp-content/uploads/2011/04/Global-Fact-Sheet-on-Orphanages\\_BetterCareNetwork.pdf](http://handstohearts.org/wp-content/uploads/2011/04/Global-Fact-Sheet-on-Orphanages_BetterCareNetwork.pdf).

17. Prywes, M., Coury, D., Fesseha, G., Hounsounou, G. and Kielland, A. (2004). Cost of projects for orphans and other vulnerable children: case studies in Eritrea and Benin. *Social Protection Discussion Paper Series*. Available online: [http://www.wds.worldbank.org/ser/vl/WDSContentServer/WSP/IB/2004/10/12/00012009\\_20041012101822](http://www.wds.worldbank.org/ser/vl/WDSContentServer/WSP/IB/2004/10/12/00012009_20041012101822)

## Why do institutions still exist?

Despite all the evidence that institutions are harmful, expensive and unnecessary, and that better alternatives exist to care for vulnerable children, institutional care proliferates around the world. There are numerous reasons for this:

- **A lack of awareness among politicians and donors of the harm caused by institutionalisation and the existence of better alternatives**
- **Changing systems of care is complicated and requires significant professional and managerial capacity, as well as an investment in the process of change**
- **There are vested interests in maintaining the status quo. Many people are earning money from the institutional system – some as formal employees, others through corrupt deals and trafficking**

### **Institutionalisation is deprivation of liberty**

**Whilst institutions are usually established with the stated intent of caring for children who are vulnerable – orphans and children separated from their families – they are defined by characteristics more commonly associated with incarceration in prison, including:**

- **Deprivation of liberty.** Most institutions are in some way a locked facility and children do not have freedom to leave. High walls, locked gates, guards (sometimes armed), bars on the windows are all common in institutions. Often children are locked into one section of the institution, allegedly for their own protection.
- **Use of physical restraint – such as caged beds, ties or straitjackets – or psychotropic drugs to control behaviour.** Understaffing in institutions results in an approach to managing children that is based on control.
- **Food deprivation or sleep deprivation and other recognised forms of torture used as punishment.** Many institutions have harsh punishment regimes. Punishment rooms or cells are not uncommon.
- **Exploitation of labour.** Many institutions raise money through exploiting the labour of children – working on farms, building and heavy manual work are not uncommon.
- **Exposure to high risk of physical and sexual abuse.** Research evidence shows children in institutions are at a much higher risk of all forms of abuse than children in families.
- **Force-feeding.** In institutions for children with disabilities, who may need assistance with eating their meal, rapid force-feeding is commonly used by staff members who are only granted limited time to feed large groups of children.
- **High mortality rates.** Throughout the world, children in institutions are at a much higher risk of avoidable death than children in families.

**Moreover, the children placed in institutions tend to come from communities that already suffer discrimination or are in some way seen as threatening the government or the majority community. Institutions become a means of warehousing or dealing with the groups of children society sees as ‘the other’.**

# Children with Disabilities

**Indefinitely confined to a small room within a high-walled facility. Restrained with physical force, straps or caged beds. Subjected to force-feeding and forced medication. And exposed to a myriad of risks including violence, sexual abuse and labour exploitation.**

This description conjures up images of the incarceration of dangerous offenders and not of child care, yet this is the reality of life for many children with disabilities who are significantly over-represented in residential care institutions.

Discrimination against disability combined with a lack of access to inclusive health, education and social services has resulted in a significant over-representation of children with disabilities in institutions. Parents are often advised to put their child in an institution, where they believe their child will be cared for by experts. In truth, the level of care provided in institutions rarely meets the needs of children with disabilities and is much more likely to have a negative impact on a child's health and development. In addition, children with disabilities are more likely to be victims of abuse than children without disabilities.<sup>18</sup>

Across the European Union, the chances of survival for children with disabilities still varies considerably. In some countries, children born with certain disabilities, such as hydrocephalus, are still denied access to basic life-saving treatment. A Lumos study of discharges from one Bulgarian institution for children with disabilities (which has since closed) found that no children went home to their families or into alternative care, 22% went to another residential institution and the remaining 78% died in the institution. In some countries, children with disabilities never leave institutions: at the age of 18, they are transferred to adult institutions where they remain until their death.<sup>19</sup>

**Whilst they have not committed an offence, for many children with disabilities, institutionalisation often equates to a life sentence.**

18. NSPCC. (2003). 'It doesn't happen to disabled children', available at: [www.nspcc.org.uk/Inform/publications/downloads/itdoesnthappentodisabledchildren\\_wdf48044.pdf](http://www.nspcc.org.uk/Inform/publications/downloads/itdoesnthappentodisabledchildren_wdf48044.pdf)

19. Mulheir, G. et al. (2012). Deinstitutionalisation – A Human Rights priority for Children with Disabilities, available at: [www.equalrightstrust.org/ertdocumentbank/err9\\_mulheir.pdf](http://www.equalrightstrust.org/ertdocumentbank/err9_mulheir.pdf)



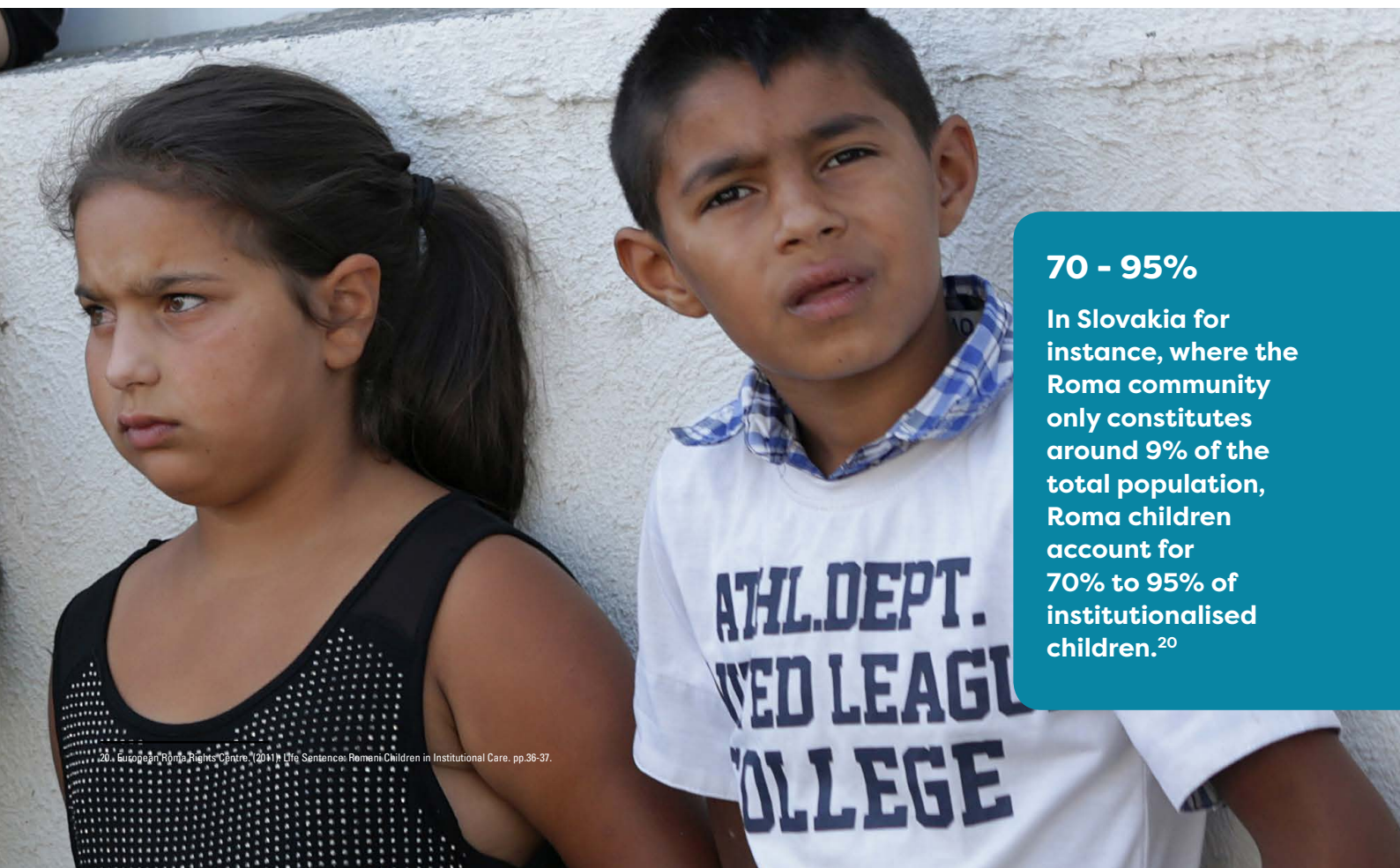
# Children from Minority Communities

**Across Europe and Central Asia, children from ethnic minority communities are significantly over-represented in institutions. In many Central and Eastern European countries, the institutionalisation of Roma children is particularly common.**

Roma children are routinely misdiagnosed as having learning disabilities. This is often due to discrimination or simply an educational delay because the child did not have the opportunity to attend kindergarten. As a result, they are arbitrarily separated from their parents and placed in residential special schools and institutions which deprive them of their liberty.

The situation is compounded by discrimination in communities, where parents of children in mainstream schools are reluctant to have their children educated together with Roma children. This has resulted in generations of children in the same family being routinely separated from their parents. Due to discrimination and this generational exclusion from access to formal education, Roma people are much more likely to live in poverty than the majority community.

In turn, these barriers to social inclusion make Roma children especially vulnerable to institutionalisation. In Slovakia for instance, where the Roma community only constitutes around 9% of the total population, Roma children account for 70% to 95% of institutionalised children.<sup>20</sup>



**70 - 95%**

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<sup>20</sup> European Roma Rights Centre, (2011) *Life Sentence: Roma Children in Institutional Care*, pp.36-37.

# Abused and Neglected Children

**A significant number of children in Europe are admitted to institutions because they are being abused or neglected in their families. However, the definition of parental neglect varies across countries and neglect is often directly attributable to poverty and a lack of support services.**

There is a world of difference between the parent who has enough resources to live and wilfully denies food to their child, and the parent who is unable to provide their child with sufficient food, clothing or shelter due to grinding poverty. Social workers may justify institutionalising a child as protecting them in cases of family crisis, but institutions are a damaging and expensive alternative to support measures which can allow children to remain safely with their family in many instances.

Even countries with exemplary community services in place have to protect some children from abusive families. However, placing children in institutions is likely to exacerbate the trauma they have suffered and exposes them to even greater risk of abuse and harm to their health and development. The monthly cost of institutional care per child can also be between six to ten times higher than foster care, which offers markedly better outcomes for abused children.<sup>21</sup>



## Six to ten times

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21. Barth, R. (2002). Institutions vs. foster homes. Chapel Hill, N.C.: University of North Carolina at Chapel Hill, School of Social Work, Jordan Institute for Families.

# Trafficked Children

**Child victims of trafficking are often placed by law enforcement officials (back) into orphanages and other institutions, allegedly for their protection. The specific institutions where trafficked children are placed are often known to the traffickers, who subsequently target them for re-trafficking. Europol intelligence notes that children in institutions are amongst groups targeted by organised criminal gangs for forced begging.<sup>22</sup> Placing trafficked and vulnerable children in institutions thus perpetuates the cycle of trafficking and effectively penalises children for their original victimisation.**

Of course, children must not be left in situations of serious risk, but locking children away in institutions is not the solution. Instead, family based alternatives are needed to support child victims of any form of abuse, including trafficking.

In recent years, a disturbing trend has produced a new and growing form of trafficking. The increasing demand for global volunteering experience, predominantly for young people from wealthy countries, has fuelled orphanage-trafficking, where bogus orphanages are established to provide the experience for volunteers and donors. Unsuspecting parents are deceived or coerced by 'child-finders' into giving their children to the orphanage, on the promise their child will receive an education or better care than the family can afford. Once in the orphanage, the promises evaporate and children are exposed to extremely poor living conditions, rarely have enough food, are not provided with an education or healthcare and are often abused and neglected. Children die or disappear without record.<sup>23</sup>

Lumos worked with several organisations and discovered similar patterns of orphanage trafficking in Nepal, Haiti, Cambodia, Thailand, Kenya and Uganda.<sup>24</sup> Recently journalists have uncovered similar abuse in India, Nigeria and Peru<sup>25</sup> and both the Global Slavery Index and the US Trafficking in Persons (TIP) report have documented patterns of orphanage trafficking in different parts of the world.<sup>26</sup>

**Lumos research in Haiti found that extremely large sums of money are involved. At least \$100 million is donated annually to Haiti's orphanages, 85% of which are unregistered and operate outside the law.<sup>27</sup>**

22. Europol. (2014). Child Trafficking for exploitation in forced criminal activities and forced begging <https://www.europol.europa.eu/publications-documents/child-trafficking-for-exploitation-in-forced-criminal-activities-and-forced-begging> [Accessed 12 April 2017].

23. Mulheir, G. & Cavanagh, M. et al. op. cit.

24. Mulheir, G., Christopoulos, A. & Munroe, A. op. cit.

25. For further information see:

Nagaraj, A. (30 October 2017). *Head of Christian-run orphanage in India arrested in trafficking investigation*. Reuters. <https://www.reuters.com/article/us-india-trafficking-children/head-of-christian-run-orphanage-in-india-arrested-in-trafficking-investigation-idUSKBN1C20Z5>

Editorial. (28 October 2017). *Check the ugly trade in children*. Nigeria Today.

<https://www.nigeriatoday.ng/2017/10/check-the-ugly-trade-in-children/>

Miller, J. (23 October 2017). *How I discovered the 'voluntourism con' in Peru*. The Telegraph.

<http://www.telegraph.co.uk/travel/family-holidays/why-voluntourism-helps-tourists-not-locals/>

26. United States of America State Department. (2017). Trafficking in Persons Report 2017. <https://www.state.gov/j/tip/ris/tiprpt/> Global Slavery Index. (2016). Global Slavery Index Report 2016. <https://www.globalslaveryindex.org/download/>

27. Lumos Foundation. (2017). Funding Haitian Orphanages at the Cost of Children's Rights. [https://wearelumos.org/sites/default/files/Funding%20Haiti%20Orphanages%20Report\\_WEB\\_16OCT17\\_0.pdf](https://wearelumos.org/sites/default/files/Funding%20Haiti%20Orphanages%20Report_WEB_16OCT17_0.pdf)

# Children in Contact with the Law

**Some children commit violent crimes and may need to be kept in locked facilities to serve their sentence and to protect the public. However, the UN Convention on the rights of the Child (CRC) states that the arrest, detention or imprisonment of a child shall only be used as ‘a measure of last resort and for the shortest appropriate period of time [and] every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family’<sup>28</sup>.**

In spite of this, there is considerable evidence globally of children incarcerated for non-violent offences, as well as children on remand or who have been convicted, being kept together with adults or in inhumane conditions.

A Human Rights Watch report on the detention of street children in Vietnam found incredibly harsh treatment in Dong Dau centre, with children and adults locked up together for 23 hours a day in filthy, overcrowded cells.<sup>29</sup> One interviewee said that children as young as two to three years old were detained together with adults as old as 79.<sup>30</sup> A toddler who was imprisoned with his mother was left on his own in the cell when his mother was subsequently sent away.<sup>31</sup> Such detention with adults puts children at serious risk of violence and sexual abuse.

## Adult sentencing

Many countries, including Ethiopia, Ukraine, Hong Kong, and states in the US and Australia set an age lower than 18 for jurisdiction in ordinary criminal courts, allowing teenagers to be tried and imprisoned as adults.<sup>32</sup> Developmental psychologists have demonstrated that young offenders should not be held to the same standards of criminal responsibility as adults, owing to their diminished decision-making capacity, greater vulnerability to coercion, and the changing nature of their character,<sup>33</sup> the latter of which makes them more amenable to rehabilitation and heightens the necessity to protect against the iatrogenic effects of incarceration.<sup>34</sup> Imprisoning a child is known to reduce the chance that he or she will graduate high school, and raises the chance of returning to prison as an adult.<sup>35</sup>

28. UN. (1989). UN Convention on the Rights of the Child. United Nations, New York.

29. Human Rights Watch. (2006). Children of the Dust: Abuse of Hanoi Street Children in Detention. <https://www.hrw.org/report/2006/11/12/children-dust/abuse-hanoi-street-children-detention> [Accessed 21 April 2017].

30. Ibid, quote from Human Rights Watch interview with Binh, age 17, Hanoi, August 2004.

31. Ibid, quote from Human Rights Watch interview with Trang, age 17, Hanoi, September 2004

32. Bochenek, M.G. (2016). Children Behind Bars: The Global Overuse of Detention of Children, Human Rights Watch <https://www.hrw.org/world-report/2016/children-behind-bars> [Accessed 21 April 2017]

33. Steinberg, L. & Scott, E. (2003). Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty. *American Psychologist*, 58(12), pp.1009-1018.

34. Scott, E. & Grisso, T. (1997). The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform. *The Journal of Criminal Law and Criminology* (1973-), 88(1), p.137.

35. Plumer, B. (2013). *Throwing Children In Prison Turns Out To Be A Really Bad Idea*, The Washington Post [https://www.washingtonpost.com/news/wnp/wp/2013/06/15/throwing-children-in-prison-turns-out-to-be-a-really-bad-idea/?utm\\_term=.297a4d1e029b](https://www.washingtonpost.com/news/wnp/wp/2013/06/15/throwing-children-in-prison-turns-out-to-be-a-really-bad-idea/?utm_term=.297a4d1e029b) [Accessed 21 April 2017]

## Use of restraint

In the UK in recent years, there have been frequent reports of children in juvenile detention facilities suffering severe abuse, in addition to a number of preventable deaths due to restraint while in custody. In 2016, the Howard League revealed that the monthly rate of restraint had leapt from 13 per 100 children in custody in January 2010 to 29.3 in 100 in January 2015, this is in spite of a significant decrease in the overall number of young people incarcerated in the UK over the last decade.<sup>36</sup> An independent medical adviser's risk assessment of the Minimising and Managing Physical Restraint (MMPR) regime used in these institutions since 2012 has determined that 28 of the 66 sanctioned restraints possess a 40% to 60% chance of inflicting injuries affecting the airway, breathing or circulation that can result in "death or permanent severe disability affecting everyday life."<sup>37</sup>

Many of the United Kingdom's secure training centres and young offender institutions are run for profit by private sector companies.<sup>38</sup> Where justice becomes a profit-making enterprise, children are at danger of being commodified, with financial motives driving institutionalisation and incarceration.

## Incarceration without sentencing

In the Czech Republic there are two forms of institution used as alternatives to young offenders' prisons which routinely deprive children of their liberty.

- **Children's home with school** – A form of institution for children between 12 and 15 years of age with challenging behaviour (truancy, parents unable to manage behaviour, expelled from mainstream children's home due to behaviour)
- **Correctional institution** (referred to locally as re-educational institutions) – for children aged 15 and upwards with challenging behaviour (truancy, parents unable to manage behaviour, expelled from mainstream children's home due to behaviour, minor criminal offence)

In these institutions, restriction of freedom is frequently used as a punishment for perceived poor behaviour and children may be prevented from going outside the institution on a daily basis. In 2016 there was a public scandal when a correctional institution run by the Ministry of Education in Chrastava was found to have been restricting children's contact with their parents as a punishment for challenging behaviour.<sup>39</sup> Shaving children's heads against their will was amongst other cruel penalties uncovered.<sup>40</sup> The institution in question has since closed but the juvenile justice system in the Czech Republic remains problematic.

Generally, outcomes for children in these institutions are poor. Children with differing individual care needs are mixed together and there is often insufficient space for carers to provide individual therapeutic treatment. Furthermore, children with potentially dangerous behaviour can be placed amongst those who have committed less serious crimes or no crime at all. Whilst such institutions may be preferable to conventional young offender prisons, the lack of formal sentences and failure to regularly re-assess individual cases can result in children remaining in institutions indefinitely, regardless of the severity of their offence.

36. BBC News UK. (20 June 2016). Restraint use on child prisoners doubles, says Howard League.

<http://www.bbc.co.uk/news/uk-36574980> [Accessed 28 October 2017]

37. Allison, E. & Hattenstone, S. (6 December 2016). Our prison restraint techniques can kill children. *Why aren't we using alternatives?* The Guardian

<https://www.theguardian.com/commentisfree/2016/dec/06/prison-approved-restraint-techniques-kill-children-alternatives-prisons-mmpr> [Accessed 28 October 2017]

38. UK Government.(n.d.). Young People in Custody [webpage]. <https://www.gov.uk/young-people-in-custody/what-custody-is-like-for-young-people> [Accessed 27 April 2017]

39. Česká televize. (26 May 2016). Ve výchovném ústavu v Chrastavě se porušovala práva dětí. <http://www.ceskatelivize.cz/ct24/domaci/1797620-ve-vychovnem-ustavu-v-chrastave-se-porushovala-prava-deti> [Accessed 27 Oct. 2017].

40. Ibid.

# Unaccompanied Refugee and Migrant Children

**Political unrest, conflict, discrimination and poverty force millions of people to leave their homes in efforts to reach stable countries. In Europe, they face many challenges during their journey, arrival and stay in the region: detention, discrimination and receiving poor or no access to services, inter alia.**

As they wait months for their applications to be processed, refugees and migrants, including children, are often housed in sports halls, former military barracks or other temporary shelters. Children do not always have access to mainstream schooling, adequate psychosocial support or regular recreational activities.<sup>41</sup>

Many children, especially those who are unaccompanied or separated, have fallen between the cracks of asylum systems that are overstretched, slow and inconsistent. Although many governments agree that institutions, especially detention, are detrimental to a child's health and wellbeing, all too often children are held behind bars – in detention facilities or in police custody – because of a lack of space in child protection centres and a limited capacity for identifying alternatives.

In Greece, there are reports of newly arrived refugee children kept in cells with adult criminals as authorities claim "they are obliged to keep the children securely for their own safety as legal minors."<sup>42</sup> In Bulgaria, one analysis found that for most of 2015 the accommodation of children by the State Agency for Refugees did not meet the legal standard. Instead, unaccompanied children were accommodated in rooms with adult unmarried applicants.<sup>43</sup>

Even in Sweden, a country which has a more developed system for assisting unaccompanied and separated children, evidence highlights a lack of adequate care. Unaccompanied children are placed in specially designated accommodation centres and the local authorities are responsible for their welfare.<sup>44</sup> According to the police, approximately seven or eight children are reported missing from their accommodation each week.<sup>45</sup>

41. UNICEF. (2016). Danger Every Step of the Way, UNICEF Child Alert June 2016 [https://www.unicef.org/emergencies/childrenonthemove/files/Child\\_Alert\\_Final\\_PDF.pdf](https://www.unicef.org/emergencies/childrenonthemove/files/Child_Alert_Final_PDF.pdf) [Accessed 21 April 2017]

42. Punter, C. (2015). Refugee Crisis: 'Orphan' children locked up in 'medieval' prisons alongside adult criminals on Greek island of Kos, The Independent

<http://www.independent.co.uk/news/world/europe/refugee-crisis-orphans-locked-up-in-medieval-prisons-alongside-adult-criminals-on-greek-island-of-a6694521.html> [Accessed 25 April 2017]

43. Bulgarian Helsinki Committee. (2015). Human Rights in Bulgaria in 2015 [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2015\\_issn-2367-6930\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2015_issn-2367-6930_en.pdf) [Accessed 24 April 2017]

44. FRA. (2016). Monthly data collection on the current migration situation in the EU, p.77. [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-monthly-compilation-com-update-4-0\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-monthly-compilation-com-update-4-0_en.pdf) [Accessed 24 April 2017]

45. FRA. (2016). Monthly data collection on the current migration situation in the EU, p.78. [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-monthly-compilation-com-update-4-0\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-monthly-compilation-com-update-4-0_en.pdf) [Accessed 24 April 2017]

A 16-year-old girl from Afghanistan who travelled on her own to Europe said she was repeatedly raped by a smuggler in Turkey. In Sweden, she was accommodated at a home with over a dozen boys. She said, "I told the social worker what happened to me. From the beginning I told them I don't want to be in a camp with 15 boys."<sup>46</sup> Instead of strengthening their own national child protection systems to respond to the needs of unaccompanied and separated children, many countries create a new system of care specifically for refugee and migrant children. The standards of these parallel systems are usually significantly below what would be considered acceptable for children who are citizens of the country

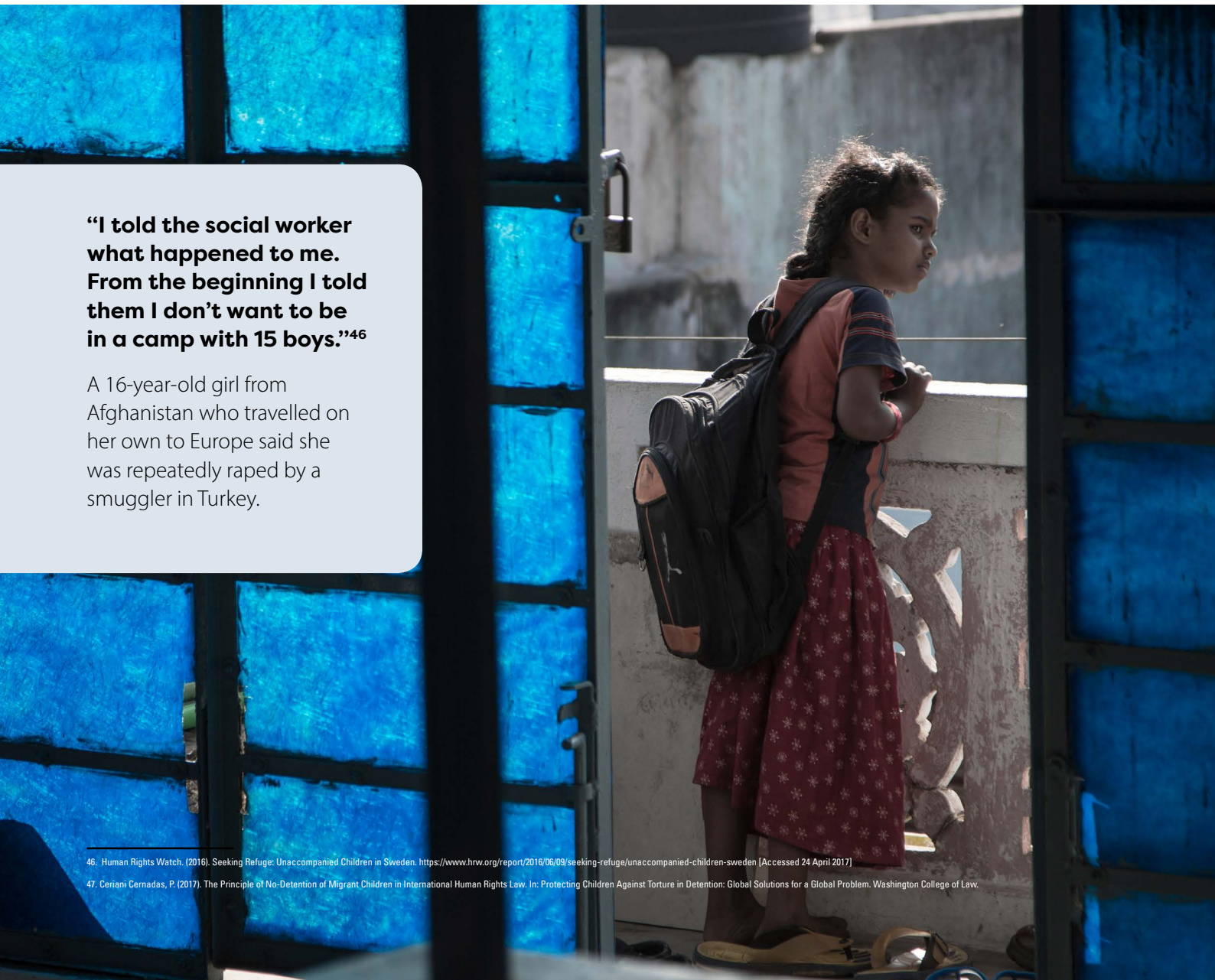
There are no provisions within the International Human Rights Law framework which authorise the restriction of a child's right to liberty within migration control procedures or on grounds of their parents' or their own migration status.<sup>47</sup> Depriving refugee and migrant children of their liberty is not only legally problematic, but also speaks to a broader lack of humanity and compassion in modern policy responses to migrants and refugees. It is of considerable irony that Hungary, the first country to breach the Iron Curtain back in 1989, recently erected a 140-kilometre electrified barbed wire fence to prevent the transit of people fleeing persecution across the Serbo-Hungarian border.

**"I told the social worker what happened to me. From the beginning I told them I don't want to be in a camp with 15 boys."<sup>46</sup>**

A 16-year-old girl from Afghanistan who travelled on her own to Europe said she was repeatedly raped by a smuggler in Turkey.

46. Human Rights Watch. (2016). Seeking Refuge: Unaccompanied Children in Sweden. <https://www.hrw.org/report/2016/06/09/seeking-refuge/unaccompanied-children-sweden> [Accessed 24 April 2017]

47. Ceriani Cernadas, P. (2017). The Principle of No-Detention of Migrant Children in International Human Rights Law. In: Protecting Children Against Torture in Detention: Global Solutions for a Global Problem. Washington College of Law.



# The Global Study on Children Deprived of Liberty

The United Nations has agreed to undertake a global study on Children Deprived of Liberty.<sup>48</sup> A similar study on violence against children has been seminal in shaping the world's response to child abuse. Over the past decade, due to the study, movements have grown across the world that have challenged a general acceptance that violence against children was normal. Many countries have changed their legislation to better protect children and donors have given the issue a high priority. Ending violence against children is now seen as central to human development and features prominently in the Sustainable Development Goals.

**The Global Study on Children Deprived of Liberty provides a vital opportunity for a similar paradigm shift. It is essential to ensure that no children are left behind.**

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<sup>48</sup> OHCHR. (n.d.). Children Deprived of Liberty - The United Nations Global Study [webpage]. <http://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>





# Conclusion

**For the past twenty-eight years, since the fall of the Berlin Wall, the European Union has played a pivotal role in healing our continent, divided for decades as a result of war and totalitarianism. The expansion of the EU has encouraged and strengthened fledgling democracies and the provision of financial assistance supports newer member-states to develop and build systems of support for the people who most need them.**

An increased understanding over the last decade of the harm caused children by institutionalisation is a key moment in that healing process. It is no coincidence that the countries of Central and Eastern Europe had a high reliance on institutionalising children. Depriving people en masse of their liberty has been a tool of authoritarian regimes for centuries and in both the Nazi regime and the Soviet Union, the institutionalisation of children served as an adjunct to vast systems of concentration camps.

The Nazi T4 programme began by insisting parents of children with disabilities place them in institutions; the institutions then became extermination centres for children with disabilities. This, provided the prototype for extermination centres for adults with disabilities and the personnel were later transferred to run Sobibór and Treblinka.<sup>49</sup> Whilst in the Soviet Union, political undesirables were sent to the Gulag and their children were sent to orphanages. Here too, children with disabilities, seen as of no utilitarian value to society, were warehoused in institutions and often left to die.<sup>50</sup>

**When countries routinely deprive children of their liberty and normalise that process as provision of care, this should be viewed as a canary in the coalmine – an early warning that democracy is in danger. Any society that feels the need to control, warehouse and lock away large numbers of children is at risk of descending into authoritarianism.**



49. Rogow, S.M. (1998). Hitler's Unwanted Children: Children with disabilities, Orphans, Juvenile Delinquents and Non-Conformist Young People in Nazi Germany Nizkor Project. Shofar FTP Archive File. <http://www.nizkor.org> www.nizkor.org

50. Frierson, C.A. & Vilenky, S. (2010). Children of the Gulag. New Haven: Yale University Press.

# Recommendations

The European Union can play a pivotal role globally in addressing the deprivation of children's liberty by:

- Continuing to drive forward the support of EU member-States and pre-accession countries to transition from institutional systems to family- and community-based forms of care and support
- Encouraging all EU member-States and pre-accession countries to incorporate the care and protection of unaccompanied refugee and migrant children into their national child protection systems, which should afford equal rights to protection for all children irrespective of citizenship and should be based on family care rather than institutions
- Ensuring all EU-funded programmes globally that aim to assist children are focused on family-based care for all children, strengthening child protection systems and making community-based healthcare and inclusive education accessible to all children.
- Identifying a mechanism to provide funding and support to the UN Global Study on Children Deprived of Liberty. This study could provide the framework for transforming the way the world cares for its most vulnerable children. Without it, millions of children globally are likely to be left behind in the implementation of the Sustainable Development Goals.

In the European Union today, we have an opportunity, indeed a responsibility, to influence other global leaders and donors, using our learning from the transformation of care systems sparked by the end of the Cold War and the reunification of our continent. We can demonstrate that for democracy to flourish, it is both necessary and possible to move away from systems that deprive children of their liberty, towards societies that empower all children to be raised in families, included in communities, to make choices and take a lead role in transforming the world around them.



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find us @Lumos on Twitter or email us on [info@wearelumos.org](mailto:info@wearelumos.org)

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