

**Submission to the UN Committee on the Rights of the Child**  
**in response to the Committee's call for submissions for the Day of**  
**General Discussion (DGD) in Geneva on "Children's Rights and**  
**Alternative Care"**

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**Serbia**

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Mental Disability Rights Initiative of Serbia and Child Rights Centre warmly welcome scheduling of the Day of General Discussion (DGD) in Geneva on "Children's Rights and Alternative Care" and the opportunity for contributing in written form to the discussion. This submission will focus on children with disabilities that are overrepresented in Serbian institutions and are under increased risk of separation from their families and being placed in alternative care.

## Introduction

After initial improvement in deinstitutionalization of children following Disability Rights International's (DRI) 2007 report, the last decade has seen no significant improvements in protection of institutionalized children with disabilities from neglect and abuse.<sup>1</sup> Documented improvements are mostly the result of enthusiasm and initiatives taken by individuals running these institutions rather than the result of systemic efforts of the authorities. In fact, recent government measures that were intended to speed up the deinstitutionalization process and improve the situation of persons with disabilities<sup>2</sup> have taken Serbia further away from meeting its human rights obligations to protect the rights of children and adults with disabilities.

Serbia has made notable progress in lowering the overall institutional population of children *without* disabilities. The number of children living in institutions has decreased by almost 50% in the last 10 years. **But Serbia has failed children with disabilities who have been left behind by reforms.** Today, children with disabilities make up 80% of all children living in institutional settings, where they are often mixed in with adults and face a lifetime of segregation.<sup>3</sup> **Infants and children under the age of 3 years old continue to be admitted and left in institutions** – a practice that will subject them to developmental delays and psychological damage (such as attachment disorder) that may last a lifetime.<sup>4</sup>

**79% of children and adults in institutions have been there for more than 10 years. The predominant reason for leaving an institution is death.** In 2018, five out of eight children with disabilities who were identified by a Serbian government report as having left institutions had actually died.<sup>5</sup>

## International obligations

Serbia is a state party to eight of the nine core international human rights instruments, as well as to the European Convention on Human Rights (ECHR). According to the Serbian Constitution: “the generally accepted rules of international law and ratified international agreements will be an integral part of the legal system in the Republic of Serbia and will be directly implemented. Ratified international agreements must be in line with the Constitution.”<sup>6</sup>

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<sup>1</sup> Compared to the findings of the report by DRI's affiliate organization MDRI-S: “Hidden and forgotten: Segregation and abuse of children and adults with disabilities in Serbian institutions (MDRI-S, 2012)

<sup>2</sup> Such as the proposed Strategy for Deinstitutionalization and Development of Community Social Care Services for 2021-2026 and the Draft Law on the Protection of the Rights of Users of Temporary Accommodation Services in Social Protection

<sup>3</sup> <https://www.unicef.org/serbia/polozaj-dece-sa-smetnjama-u-razvoju-pregled-nalaza>

<sup>4</sup> Attachment disorders occur when young children fail to form a normal bond or do not feel attachment to their parents or guardians. In attachment disorders, the child's primary feeling is abandonment. It most commonly occurs in children under the age of three who are institutionalized, abused (physically, emotionally, or sexually), or neglected. As a result, these children fail to establish a deeper connection with the people who care for them or with other people in their environment.

<sup>5</sup> Report on the Work of institutions for children and youth for 2018, <http://www.zavodsz.gov.rs/media/1876/izvestaj-o-radu-ustanova-za-decu-i-mlade-u-2018.pdf>

<sup>6</sup> Article 16.2, Constitution of the Republic of Serbia, “Official Gazette of RS” no. 98/2006

The CRPD and the Convention on the Rights of the Child (CRC) are the most relevant sources of international law concerning children living in institutions. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is another human rights instrument significant for the protection of children in all circumstances and especially important in the context of institutional care.

According to our findings, Serbia has failed to meet the international human rights standards and to address the recommendations of respective UN mechanisms for human rights because it has not fulfilled its obligation to comprehensively support children with disabilities and their families. Institutionalization of children under the age of 3 is still common, despite a prohibition stipulated in the Social Protection Law.<sup>7</sup> The fact that children with disabilities make up to 80% of all children institutionalized in Serbia is proof of a disability-based discrimination; in other words, these children are placed in residential care solely because of their disabilities. Lack of community-based care that allows for maximum possible social integration amounts to violation of UN Guidelines on Alternative Care. If these community-based services were established and developed, children with disabilities currently institutionalized would be able to live and grow up in families.

## Findings from the monitoring

Based on observations in Serbian institutions (both large institutions and small group homes) **the report *Forgotten Children of Serbia*<sup>8</sup> finds that placement in Serbia's residential facilities is emotionally and physically dangerous for children and is likely to result in increased disability.** Placement in residential care is dehumanizing, socially isolating, and does not contribute to habilitation or the development of skills that contribute to further inclusion in society. Treatment – or the lack thereof – results in increased disability, endangers children's health, and can be life threatening.

The investigation also found that Serbia has failed to address severe human rights violations and abuses that constitute inhuman and degrading treatment – and in some cases amount to torture. The investigators observed a pervasive lack of rehabilitation, denial of medical treatment by the health system, and severe cases of neglect.

### Causes of institutionalization

Children in Serbia are in institutions due to poverty and the lack of support for families and children with disabilities. They rarely end up in foster care, because the system is not equipped to respond to the needs of children with disabilities. Once in the institutional system, children will never get out. Even infants with disabilities continue to be admitted to institutions. Placement in these facilities is likely to last a lifetime.

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<sup>7</sup> Article 52(2), Social protection Law.

<sup>8</sup> <https://www.driadvocacy.org/wp-content/uploads/Serbia-2021-web-ENG-1.pdf>

## Neglect and ill-treatment

Children in residential institutions face neglect and denial of medical care that constitutes inhumane and degrading treatment in violation of international human rights law. In some circumstances, such as exposure to sexual abuse and the denial of essential medical care and pain medications, this treatment amounts to torture. Impunity for such abuse cannot be tolerated, and Serbia must take urgent action to protect children and prosecute abusers. This situation can only be resolved by stopping any further institutionalization. Prevention programs and supports for families must be improved to achieve full social integration of children in society and to put an end to new placement of children.

The violence suffered by children in institutions is exacerbated when they are housed with adults or older children. This practice puts smaller children at risk of bullying, violence, and sexual abuse. The impact of placement with adults goes beyond the immediate exposure of children to violence: long-term effects can include severe developmental delays, disability, irreversible psychological damage, and increased rates of suicide and criminal activity.<sup>9</sup>

## Reinstitutionalization

The small number of children with disabilities removed from the most abusive institutions have been simply moved to smaller facilities where they continue to languish without the love and care of families. In 2007, for example, DRI documented atrocious conditions at the Kulina facility for children.<sup>10</sup> Following the release of DRI's report, most children with disabilities were taken out of the facility. But instead of being reunited with their families or placed in kinship or foster care, they were moved to five 'small group homes' (SGH) – institutions of smaller capacity that house 12 children each. DRI and MDRI-S visited these group homes as part of the investigation in 2019 and found that they are no different from larger institutions. Some of the houses are nicely painted and decorated. But they are staffed by shift workers, a situation that does not allow children to form consistent emotional bonds with committed caregivers – as they could only find in a family.

**The report *Forgotten Children of Serbia* finds that these group homes are essentially functioning as smaller institutions** and the investigators have observed dangerous and life-threatening conditions for some of the children in the country's group homes. Investment in residential care in Serbia, while on a small scale at present, can be considered regression of human rights – moving away from ending abuses rather than resolving them. In adopting General Comment No. 5, the UN Committee on the Rights of Persons with Disabilities made clear that there is no substitute for the right of children to live with a family. Extensive scientific evidence shows that children raised in congregate settings by professional staff who work in shifts will not be able to form the emotional attachments necessary for healthy emotional development.

These findings reinforce the findings of scientific research, showing the dangers that can occur in group homes where children are raised without the love and protection of a family. It is

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<sup>9</sup> UNVAC World Report on Violence Against Children 2006 (p.171-220)

<sup>10</sup> <https://www.driadvocacy.org/wp-content/uploads/Serbia-rep-english.pdf>

important to stress that small group homes are not a viable option for alternative care because they do not provide opportunities for meaningful social inclusion and, as observed, these homes replicate institutional ways of living. Therefore, the State should not promote further development of small group homes. The state should rather respect the standards of the CRPD and support further development of family-based care

### Segregation spreads beyond institutions' walls

Segregation of children with disabilities from society continues beyond the walls of institutions. Children placed with families or foster families are often isolated in their own homes because services available to all other children are not made accessible to children with disabilities. Serbia's law guarantees a right to inclusive education, but children are placed in segregated schools (known as "special schools") where they lack access to the benefits of mainstream education.

Many children do not go to school at all and are instead placed in day care centers where they face further segregation from other children. There are no efforts to plan their transition to adulthood or support of employment or independent living.

## Recommendations

While this submission is based on our findings of continuous monitoring of position of children in residential care and the latest comprehensive research conducted in 2019,<sup>11</sup> the recommendations are applicable in all states where children with disabilities are discriminated and disproportionately separated from families and put in institutional care.

1. **Guarantee and enforce the right to family life for all children** consistent with the requirements of the CRPD, as interpreted by General Comment No. 5. The law should guarantee the right of all children to live and grow up with a family, and services and support should be provided to families to ensure that no family is ever forced to give up a child due to poverty or disability. There should be no exceptions to the right to grow up in a family for any child, and the need for care, support services, or treatment should never be used to justify breaking ties with family. Denial of the right to family – and providing services in the segregated environment of the institution – constitutes discrimination under international law.
2. **Provide adequate support for families to prevent family separation and institutionalization** and protect the right of parents with disabilities to keep their children. Programs should be specifically targeted to help those families most at risk – including families of children with disabilities, single mothers, and children living in poverty. Special outreach efforts should be made to ensure that Roma

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<sup>11</sup> <https://www.driadvocacy.org/wp-content/uploads/Serbia-2021-web-ENG-1.pdf>

and other ethnic minorities receive the services and support they need to avoid unnecessary family break-up.

3. **Ensure equal access to supported family, kinship, and foster care for all children.** Foster care programs must be made fully accessible and appropriate for children with complex support needs. For children with psychosocial challenges, models of therapeutic foster care have proven effective. It is not acceptable for authorities to accept that families are “unavailable” or “unwilling” to take children with disabilities, and a full range of supportive and therapeutic services must be made available to help families and prospective foster parents.
4. **Provide training for policymakers, judges, and service providers on the rights and potential for family inclusion of all children with disabilities.** Dangerous stereotypes of children with disabilities (including children with so-called ‘severe disabilities’ or ‘behavior problems’) as unable to live in families must be addressed through education and training – and as a matter of enforceable law and policy.
5. **New investments should protect families and provide support to stop placement – not support institutions.** Child Rights Centre and MDRI-S recommend *against* using new resources to improve staffing or care within institutions (including group homes), except to protect against immediate, life-threatening conditions. This is consistent with the requirements of the CRPD, as interpreted by the UN’s Committee on the Rights of Persons with Disabilities, which has stated that: *No new institutions may be built by States parties, nor may old institutions be renovated beyond the most urgent measures necessary to safeguard residents’ physical safety.*<sup>12</sup>

The States must not simply rename institutions to create the illusion of meeting deinstitutionalization goals. **Plans for the establishment of new ‘small group homes’<sup>13</sup> must be cancelled as they undermine further enforcement of children’s rights.**<sup>14</sup>

6. **Ensure that all children receive all essential medical care and pain medication.** Immediately evaluate medical needs of all children to ensure they receive essential care and end discriminatory denial of care for children with disabilities by medical professionals in line with the requirements of Article 25(e) of CRPD on the right to health.
7. **All residential care, including group homes, as well as community programs and foster care, must be independently monitored.** Oversight and enforcement mechanisms should be age and gender appropriate and must include participation of people with disabilities. Rights protection and monitoring programs will be more effective if they rely on forms of peer support by formerly

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<sup>12</sup> General Comment No. 5 to CRPD, para 49

<sup>13</sup> Measure 3.1.2 of the Strategy for protection of children from violence 2020-2023, ("Official Gazette of RS", No. 30/18)

<sup>14</sup> Strategija za sprečavanje i zaštitu dece od nasilja za period od 2020-2023, Mera 3.1.2, Službeni glasnik RS, No. 30/18

institutionalized children, including children with disabilities. Independent advocacy groups should be given access to visit all institutions and residential programs.

- 8. Stop torture and abuse in residential care and community programs.** No effort to stop torture or abuse should be used to justify maintaining segregation of children with disabilities. As required by CRPD Article 16, all programs for people with disabilities must be regularly monitored to prevent violence, exploitation, and abuse.
- 9. Protect women and girls with disabilities from sexual abuse and denial of reproductive rights and criminalize forced abortion and forced sterilization of women in residential institutions.** Forced sterilization is cruel, inhumane, and degrading treatment that can amount to torture.<sup>15</sup> Women with disabilities – regardless of their support needs – should not be denied the right to informed consent to medical treatments related to their sexual and reproductive rights. Article 25(d) of CRPD “requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care”. Services related to protection against gender-based violence must be made accessible to all women and girls with disabilities.
- 10. Guarantee access to inclusive education for all children with disabilities.** School programs must also be adapted to be appropriate for children of all abilities. Failure to provide education to a child in the environment in which they live cannot be an acceptable excuse for placing children in boarding schools or other types of residential institutions. No child should have to give up their family to receive services or support. Education must be fully accessible throughout the country.
- 11. Protect children from institutional placement as they become adults and provide support for independent living.** Ensure full inclusion of children and adults with disabilities throughout the life-cycle. Policies focusing on children must be closely aligned with educational and vocational programs for independent living to ensure full inclusion of children throughout the life-cycle. The best family supports for children will be undermined if adults face re-institutionalization or pervasive discrimination in society later in life. For this reason, support for advocacy and full consultation with disability rights groups is essential for any effective child protection and reform program.

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<sup>15</sup> As recognized by the UN Special Rapporteur on violence against women, UN Special Rapporteur on Torture, Committee against Torture, Committee on the rights of Persons with Disabilities, Committee on the Elimination of all forms of Discrimination against Women, Committee on the Rights of the Child. Also, Istanbul Convention asks from party-states to criminalize and prohibit forced sterilization.