

Universal Periodic Review - Republic of Haiti
Stakeholder report by Lumos

Submission by Lumos concerning the Republic of Haiti for consideration during the 26th session of the Universal Periodic Review Working Group in the Human Rights Council.

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Introduction

Lumos respectfully submits comments concerning the Republic of Haiti for consideration of the Human Rights Council (HRC) within the Universal Periodic Review working group at its 26th session, October-November 2016. This report outlines concerns about the situation of the institutionalisation of children in Haiti and particular concerns about children's rights protection.

1) The international legal framework for the right to live and grow up in a family environment

Children have the right, as far as possible, to know and be cared for by their birth families and not to be separated from their parents (UN Convention on the Rights of the Child (UN CRC), Article 7 and 9). Parents have the primary responsibility to raise their children and it is the State's obligation to support parents so that they can fulfil that responsibility (UN CRC, Article 18). At the same time, children have the right to protection from harm and abuse (article 19), to an education (article 28) and to adequate healthcare (article 24), all of which they should be able to enjoy while living in their family. 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). The Convention and the Guidelines for the Alternative Care of Children (A/RES/64/142)[1] also call on States to ensure that families have access to forms of support in the caregiving role. The Guidelines state that, "[e]very child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment". Moreover the Convention on the Rights of Persons with Disabilities (CRPD) emphasises the rights of children with disabilities to be raised in their families and included in their schools and communities alongside their peers.[2]

2) Normative and institutional framework of the state

a) Positive developments

i) **Child protection priorities by the Institute for Social Welfare and Research**

Lumos welcomes the adoption of the Institute for Social Welfare and Research's (IBESR)[3] 2016 – 2018 strategy at the end of 2015. The new strategy has four priority areas which are combatting trafficking of children, deinstitutionalisation, preventing and combatting violence against children and strengthening the technical and managerial capacity of IBESR.

ii) **Adoption legislation**

Lumos welcomes the adoption of the new Adoption Act of 29 August 2013 which enshrines that international adoption can only be done via accredited agencies in the home country of the adoptive parents. The entire adoption process of a child is done under the supervision of IBESR. This has resulted in a great reduction in the number of children being adopted internationally and ensures that when international adoption does take place, the process is done in accordance with international law.

b) Areas for improvement

i) **Decree Law of 22 December 1971 on the functioning of institutions**

[1] Guidelines for the Alternative Care of Children (2009) A/RES/64/142
http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf

[2] UN (2006) UN Convention on the Rights of Persons with Disabilities. United Nations, New York. Article 23 and Article 24.

[3] Directory of children's homes in Haiti (2013). Publication of the Institute of Social well-being and research. http://www.ibesr.com/fichier/Annuaire%20Corrige%202012-2014%20version%20juillet.pdf [accessed 5th Feb 2015].

The revised Decree Law of 22 December 1971 regulates the functioning of institutions and orphanages. The law established three groups of children that can be placed in institutions: orphans; children with a disability; and children in need. The primary reason for children in Haiti to be admitted into institutions is poverty and a lack of access to basic health, education and social services.[4] The UN Guidelines on Alternative Care state that "[f]inancial and material poverty, or conditions directly and uniquely imputable to such poverty should never be the only justification for removal of a child from parental care".[5]

ii) **Law No. CL/2014-0010 on trafficking**

In June 2014, authorities enacted Law No. CL/2014-0010, which prohibits all forms of human trafficking and prescribes penalties of seven to 15 years' imprisonment. According to the 2015 Trafficking in Persons report, no convictions have taken place to date. The law also obliges institution management to inform IBESR when children leave an institution and where they move onto. As of yet, there is no evidence to suggest that this happens. There is anecdotal evidence to suggest that children are being trafficked through orphanages and institutions. The establishment at the end of 2015 of the National Committee Against Trafficking in Persons is a welcome development. It is hoped this will strengthen the efforts to combat trafficking.

3) Promotion and protection of human rights on the ground

a) Institutionalisation of children in Haiti

Institutionalisation of children in Haiti is widespread. IBESR estimates that there are approximately 760 orphanages in the country. Less than 15% of these are officially registered with the Haitian authorities. The lack of registration of institutions provides a challenge in counting the number of children living in them, something that is further complicated by the fact that there is little to no information about the number of children entering and leaving institutions. Rough estimations suggest that the number might be around 32,000.[6] 80% of children in institutional care have one or two living parents.[7]

b) The right to alternative care

The only means of family-based alternative care that is currently available in Haiti is foster care. The Foster Care Family Framework provides the administrative process and procedure for developing foster care in the country. The Committee on the Rights of the Child in its most recent concluding observations, welcomed the establishment of this pilot programme, but noted with concern the lack of any mechanism to monitor the treatment of children in foster care.[8]

c) Trafficking

i) Children in institutions and orphanages, internally displaced children living in camps or other informal setting, and children in, or fleeing from, domestic servitude are at

[4] Ibid.
[5] Guidelines for Alternative care (2009).
[6] Directory of children's homes in Haiti (2013). Publication of the Institute of Social well-being and research, http://www.ibesr.com/fichier/Annuaire%20Corrige%202012-2014%20version%20juillet.pdf [accessed 5th March 2016].
[7] Committee on the Rights of the Child (2016) Concluding observations on the combined second and third periodic report of Haiti. CRC/C/HTI/CO/2-3, p.12.
[8] Ibid.

particularly high risk of trafficking in Haiti.[9] Haiti ranks number 3 in the world for modern day slavery – a ranking based on a combination of three factors, including high levels of human trafficking into and out of the country.[10] Among victims of trafficking, children are the most vulnerable. Children in institutions are even more vulnerable to trafficking because of the unregulated nature of the system and the lack of enforceable processes in place to admit children to and discharge them from institutions. Children in domesticity (Restavek)[11] are also at high risk. Both groups are moved around the country informally, with no proper system for tracking their whereabouts. The challenge in tracking children is exacerbated by the lack of an effective system for birth registration and documentation of all children. This needs to be addressed as a priority. Any efforts to combat child trafficking therefore require a strengthened, stable and effective child protection system.

ii) According to an anonymous source, one institution pays so-called 'child-finders' who go into the slums of Port-au-Prince to recruit babies for their institution. They pay the child-finder per child that they recruit, up to $100. The institution then deliberately malnourishes the children, in order to have pictures of 'emaciated orphans' to attract foreign donations. The institution receives approximately $6,000 per child annually from foreign donors. No efforts are made by the institution to attempt to reunite children with their families.[12] In a similar case, the child-finder was the founder of an institution where the deliberate malnutrition of babies with disabilities resulted in multiple deaths. The babies were buried in the grounds of the institution.[13]

iii) Lumos also has evidence of numerous occasions where foreign volunteers come and stay in the orphanage, with no authorisation from competent authorities and no background checks. This means that children are put at a high risk of sexual abuse.[14]

d) Violence, abuse and neglect

i) Haiti ranks 57th on infant mortality and an even poorer 31st on mortality of under five-year olds.[15] Violence against children in the country is endemic. According to the 2011 Violence Against Children Study, more than 60% of girls and 57% of boys have experienced physical abuse before the age of 18.[16]

ii) Lumos has evidence showing systematic physical and sexual abuse of children takes place in some institutions in Haiti.[17] Legal barriers to remove perpetrators of violence

[9] US Department of State (2015). *Trafficking in persons report.* http://www.state.gov/documents/organization/243559.pdf [Accessed 4 March 2016].

[10] The Global Slavery Index's ranking is based on a combination of three factors: the estimated prevalence of modern day slavery by population, levels of human trafficking into and out of the country, and levels of child marriage. For further information please see: Walk Free Foundation (2014) *Global Slavery Index*. Available at: www.globalslaveryindex.org . [Accessed 19 March 2016].

[11] Restavek is a form of modern-day slavery that persists in Haiti, affecting one in every 15 children. Typically born into poor rural families, restavek children are often given to relatives or strangers. In their new homes, they become domestic slaves, performing menial tasks for no pay." - Definition by the Restavek Freedom Foundation: http://www.restavekfreedom.org/the-issue/restavek

[12] Lumos (2015). Confidential, non-published data.

[13] Lumos (2015). Confidential, non-published data.

[14] Lumos (2015). Confidential, non-published data.

[15] UNICEF (2012) *At a Glance: Haiti. Statistics.* Available online: http://www.unicef.org/infobycountry/haiti_statistics.html#118 [accessed 21 March 2016].

[16] PEPFAR &CDC. (2014). Violence against Children In Haiti: Findings from a National Survey 2012, p52. http://www.cdc.gov/violenceprevention/pdf/violence-haiti.pdf [accessed 11 March 2016].

[17] Lumos (2015). Confidential, non-published data.

and abuse from an institution provide a significant challenge to protect children from harm. While in some instances the perpetrator has been interviewed by police authorities, arrests are seldom made and rarely result in prosecution. The current strategy by the Government and NGOs is to make sure abuse victims are removed from the institution where the abuse has taken place. However, the lack of alternative care services, such as foster families makes this extremely difficult in practice and children remain for long periods in situations of severe abuse, harm and neglect.

iii) In one particular institution that housed approximately 40 children, Lumos found that most children were malnourished and lacked access to medical care. None of the children were in formal education. There was no potable water in the institution and abuse was widespread; some of the children were being sexually abused by staff. Children were not allowed to receive visits from their parents.[18] At the invitation of the government, Lumos intervened because of the conditions in the institution and the children have now been removed to a place of safety.

e) Children with disabilities

In 2016, the Committee on the Rights of the Child noted with concern that children with disabilities in Haiti are marginalised and socially excluded. As a result of the earthquake, the number of children with a disability has gone up. Children with disabilities lack access to basic services and have limited access to education.[19] Consequently, children with disabilities are at increased risk of becoming institutionalised. The harm caused by institutionalisation to children with disabilities is significant.[20] Impairments and health problems may be exacerbated or even caused by the institutional setting and research suggests that children with disabilities are at an increased risk of mortality in institutions compared with their non-disabled peers.[21]

f) Access to water and sanitation

Lack of access to clean water is a driver for institutionalisation, where parents feel forced to put their children in an institution because they cannot afford to provide their children with clean water. At the same time Lumos research has found that many institutions do not have access to clean water either. As a result, many children in Haiti drink water from polluted and unsanitary streams and channels.[22]

g) Food security

As a priority for the development and future stability in Haiti, food security needs to be considered more broadly than simply the availability of sufficient food and efficient agricultural techniques. There is a need for an inter-ministerial approach to food security and nutrition, which involves at least the Ministry of Agriculture, Ministry of Health and Ministry of Social Protection. The inter-ministerial approach is essential to ensure that any

[18] Lumos (2015) Unpublished data.

[19] Committee on the Rights of the Child (2016) Concluding observations on the combined second and third periodic report of Haiti. CRC/C/HTI/CO/2-3, p.13.

[20] Jones, L., Bellis, M. A., Wood, S., Hughes, K., McCoy, E., Eckley, L., Bates, G., Mikton, C., Shakespeare, T., & Officer, A. (2012). Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies.*The Lancet*, *380*(9845).

[21] Browne, K. (2009) *The Risk of Harm to Young Children in Institutional Care*. London, UK: Save the Children. http://www.crin.org/en/docs/The_Risk_of_Harm.pdf [accessed 23 February 2016].

[22] Lumos (2015) Unpublished data.

system that targets vulnerable groups provides access to sufficient food and also gives the additional support that families may need to ensure children are benefiting fully from nutrition.

4) Recommendations for action by the state under review

Lumos recommends that the Republic of Haiti takes the following steps to improve the situation of children.

a) Legislative reviews

i) Review and revise Decree Law of 22 of December 1971; undertake a comprehensive analysis of the child care legislation and work towards the development of a comprehensive children's law.

ii) Improve the enforcement of Law No. CL/2014-0010 on trafficking. Strengthen and support the National Committee Against Trafficking in Persons.

b) End institutionalisation of all children

i) Put in place a ministerial moratorium prohibiting the opening of any new institutions.

ii) Work with donors to shift major resources currently spent on expensive but poor quality institutions and ensure that funding is spent on community based services instead, that strengthen the abilities of families and communities to care adequately for their own children. This would in turn significantly reduce the number of children at risk of trafficking.

iii) Develop an inspection system, with powers of sanction and prosecution of offenders, so that no one can establish or run an institution without government accreditation.

iv) Strengthen the capacity of IBESR and invest in greater numbers of social workers across the country to address the needs of vulnerable children and their families.

c) Develop alternative services

i) The Haitian government should support and facilitate family-based care wherever possible, which should include community based supports to vulnerable families, a nationwide foster care programme, as well as small group homes for children with specialist care requirements.

ii) Further develop the foster care programme, supporting IBESR to set up a national system of foster care, including a framework for periodic review of the placement of children in foster care families and providing channels for reporting, monitoring and responding if any issues occur in the placement family.

iii) Provide training to relevant stakeholders about the foster care framework.

iv) Develop schools as community hubs, so that families can access health, education, social protection, disability support, parenting training and economic strengthening services in one location in the local community.

v) Increase the number of frontline social workers to support families and ensure their access to services, thereby preventing institutionalisation of children and promoting family reunification of children currently in institutions.

vi) Provide a platform for civil society to engage in the process of establishing alternative family-based services.

vii) Develop support programmes for young adults leaving foster care or other alternative services.

d) Prioritise addressing the trafficking of children

i) Develop and finance specific programmes to address trafficking in children and ensure the prosecution of traffickers. Promote close cooperation between the police, courts and child protection system to ensure that child victims are protected and are supported to be able to give evidence safely, leading to successful prosecutions of traffickers.
ii) Ensure all law enforcement agency staff, including staff of the Brigade of Protection of Minors (BPM) receive training about the new anti-trafficking law and how it should be implemented. Additional training is also needed for BPM and other law enforcement officers in the identification of trafficking cases.
iii) Develop a robust and effective system for birth registration of all children.
iv) Develop a system for admission to and discharge from institutions, as well as a digital system for tracking the movement of children in the care system.
v) Strengthen the capacity of the National Committee against Trafficking in Persons.

e) Prioritise addressing violence, abuse and neglect

i) Develop standard operating procedures (SOPs) to be followed by all stakeholders whenever a child within an institution has been victim of any kind of abuse.
ii) Ensure effective implementation of the June 2003 law on the prohibition of all types of violence and mistreatment against children.
iii) Strengthen and raise awareness regarding the IBESR telephone line for reporting abuse, which should operate 24/7. The line should allow for anonymous reporting of abuse and be accessible to children reporting abuse about themselves and others. Develop procedures to ensure the proper follow up of all reported cases.

f) Ensure access to safe drinking water and sanitation

Prioritise the development of infrastructure to ensure access to safe drinking water and sanitation purposes for all children in Haiti.

g) Address food security and social protection

Establish an inter-ministerial working group between Ministries of Agriculture, Health and Social Affairs to develop a holistic approach to food security that puts in place systems to strengthen the ability of families to access adequate food and nutrition for their children.

h) Awareness raising

i) Develop and implement an awareness raising and behaviour change communications campaign, targeting a range of stakeholders that aims to educate the population about the risks of trafficking; the harm caused by separating children from their families; and the harm caused to children by violence, abuse and neglect.
ii) Raise awareness regarding support services available to vulnerable children and families.