



Protecting Children. Providing Solutions.

July 2017

## Lumos' Position on the Mid-Term Evaluation of the External Financing Instruments of the European Union

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### About Lumos

Lumos is an international NGO<sup>1</sup>, founded by author J.K. Rowling, working to end the institutionalisation of children around the world by transforming education, health and social care systems for children and their families and helping children move from institutions to family-based care. Lumos sits on the EU Civil Society Platform against trafficking in human beings and is a founding member of the European Expert Group on the Transition from Institutional to Community-based Care.

### Institutionalisation of children

An estimated eight million children worldwide live in residential institutions and so-called orphanages that deny them their rights and cannot meet their needs. At least 80% of these children are not orphans and have at least one living parent;<sup>2</sup> many are placed in institutions because they are poor, have a disability, or belong to a marginalised group.<sup>3</sup> In spite of what is often the best of intentions in

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<sup>1</sup> Lumos Foundation (Lumos) is a company limited by guarantee registered in England and Wales number: 5611912 | Registered charity number: 1112575

<sup>2</sup> Csáky, C. (2009). Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care. Save the Children, London, 2009, p7. Better Care Network (2009) Global facts about orphanages. [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)

<sup>3</sup> Pinheiro, P.S. (2006). *World Report on Violence against Children*. UNICEF: New York.



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setting up institutions, more than 80 years of research from across the world has demonstrated the significant harm caused to children in institutions, who are deprived of loving parental care and who suffer life-long physical and psychological harm as a consequence.<sup>4</sup> For more information, please see Lumos' factsheets: '[Children in Institutions: The Risks](#)'<sup>5</sup> and '[Children in Institutions. The Global Picture](#)'<sup>6</sup>.

Reports from many countries across the world demonstrate that institutions put children at increased risk of violence, abuse, and neglect. Children in institutions frequently have no access to education or recreation and are sometimes left in their cribs for long periods without human contact or stimulation.

There is also a strong connection between trafficking and institutionalisation of children. Establishing institutions has become a 'business' in a number of countries, which has led to a worrying trend of orphanages that are themselves trafficking children. There is evidence that institution managers and staff actively solicit parents to place children in their facilities, in turn using the children to attract donations from well-meaning donors. Little of the funding received is spent on care for the children, who are placed at risk of serious abuse and neglect.<sup>7</sup>

Furthermore, institutionalised children are at high risk of becoming victims of onward trafficking, and child victims of trafficking are often placed (back) in institutions by the responsible authorities, creating a vicious circle for trafficked children and additional risks to their peers in institutions.

## International and EU Policy and Legislation

A number of international and EU policy and legal instruments have declared institutional settings as a breach of human rights. The Convention on the Rights of the Child (CRC) affirms that, as far as possible, all children have a right to live with their families and that parents or other legal guardians have the primary responsibility to protect and care for the child.<sup>8</sup> The Convention and the UN Guidelines for the Alternative Care of Children (A/RES/64/142)<sup>9</sup> also call on States to ensure that families have access to forms of support that enable them take care of their children, thereby preventing them from being placed in an institution. The Guidelines state that, "[e]very child and young person should live in a supportive, protective and caring environment that promotes his/her

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<sup>4</sup> 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*. [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), p. 2.

<sup>5</sup> Lumos (2014) *Children in Institutions: the Risks* [http://wearelumos.org/sites/default/files/2.Risks\\_.pdf](http://wearelumos.org/sites/default/files/2.Risks_.pdf) [accessed 10/05/2017]

<sup>6</sup> Lumos (2015) *Children in Institutions: the Global Picture* [http://wearelumos.org/sites/default/files/1.Global%20Numbers\\_2\\_0.pdf](http://wearelumos.org/sites/default/files/1.Global%20Numbers_2_0.pdf) [accessed 10/05/2017]

<sup>7</sup> Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children* [https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report\\_ENG\\_WEB\\_NOV16.pdf](https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report_ENG_WEB_NOV16.pdf) [accessed 31/03/17]

<sup>8</sup> United Nations (1989) *UN Convention on the Rights of the Child* (Adopted 20 November 1989, entered into force 2 September 1990) Vol.1577, p.3.

<sup>9</sup> United Nations (2009), *Guidelines for the Alternative Care of Children, A/RES/64/142* [http://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf) [accessed 12th April 2017]



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full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment”. The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)<sup>10</sup> proclaims that States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children and that the best interests of the child shall be a primary consideration (Art. 7). Furthermore, the CRPD makes strong commitments to community living by stating that persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community (Art. 19).

The 2030 Agenda for Sustainable Development declares the UN States Parties’ determination “to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment” (Preamble, p. 24). It further describes the role of States “to provide children and youth with a nurturing environment for the full realisation of their rights and capabilities, helping our countries to reap the demographic dividend including through safe schools and cohesive communities and families.”<sup>11</sup> The 2030 Agenda is built around the principle of leaving no one behind (Preamble, p. 26). It recognises the essential role that the family plays in achieving this principle and calls for greater disaggregation of data related to disability and other factors in order to meet the needs of those who are most vulnerable, including children (Preamble, p. 25, p. 19, p. 23).

The European Union has also recognised the harm caused to children by institutionalisation. The “EU Guidelines for the Promotion and Protection of the Rights of the Child (2017) Leave no child behind” have included institutionalisation among the risks facing children in vulnerable situations.<sup>12</sup> The document highlights the importance of appropriate alternative care for children that allows them to participate in community life, preventing family and child separation (see section 5.A)<sup>13</sup> and states that the primary consideration when considering any spending should be identification of the best interests of the child (see section 5.D).<sup>14</sup> It further recommends improving coherence in the EU’s external action on children, including that carried out by member states.<sup>15</sup> The Guidelines underline the importance of data to design effective policy, and especially the importance of disaggregated data (“crucial”) in order to ensure no child is left behind.<sup>16</sup>

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<sup>10</sup> United Nations (2007), *UN Convention on the Rights of Persons with Disabilities* (Adopted by the UN General Assembly, 24 January 2007, A/RES/61/106).

<sup>11</sup> United Nations (2015) General Assembly resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015), p. 7, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E) [accessed 18/05/2017]

<sup>12</sup> European Union (2017), *Guidelines on the Promotion and Protection of the Rights of the Child* [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf), p. 4

<sup>13</sup> *Ibid*, p.19

<sup>14</sup> *Ibid*, p. 21

<sup>15</sup> *Ibid*, e.g. p. 13

<sup>16</sup> *Ibid*, p. 24



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Children in alternative care were recognised as a particularly vulnerable group by the European Commission in its Recommendation "Investing in children: breaking the cycle of disadvantage".<sup>17</sup> The Recommendation encourages EU Member States "to stop the expansion of institutional care settings for children without parental care and promote quality, community-based care and foster care within family settings instead where children's voice is given due consideration".<sup>18</sup> The European Commission's 10 Principles for Integrated Child Protection Systems also clearly state the need to ensure adequate care for children in line with international standards, including the UN Guidelines for the alternative care of children.<sup>19</sup>

Moreover, by introducing an ex-ante conditionality on social inclusion (9: 9.1.) with an investment priority on the "transition from institutional to community based services" in the Regulation 1303/2013 on the European Structural and Investment Funds (ESIF), the EU has prohibited for the ESIF to be used for the maintenance or renovation of existing, and the construction of new, large residential institutional settings.<sup>20</sup>

## Mid-Term Evaluation of the External Financing Instruments of the European Union

The Mid-Term Evaluation of the External Financing Instruments of the European Union provides an excellent opportunity to review the performance of the existing instruments in protecting children's rights, and to see what more could be done to ensure that they, and future funding instruments, work effectively to promote children's rights and protect them from institutionalisation across the world.

### Evaluation of Existing Funds

#### Development Cooperation Instrument (DCI)

The EU's external action is intended to be guided by "the principles which have inspired its own creation, development and enlargement" including "**the universality and indivisibility of human rights, ...respect for human dignity, the principle of equality and solidarity**".<sup>21</sup>

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<sup>17</sup> European Commission Recommendation of 20 February 2013 Investing in children: breaking the cycle of disadvantage, OJ L 59, 2 March 2013. [http://ec.europa.eu/justice/fundamental-rights/files/c\\_2013\\_778\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf) [accessed 8 Aug 2016].

<sup>18</sup> Ibid. p.9.

<sup>19</sup> European Commission DG Justice and Consumers (2015), 'Coordination and cooperation in integrated child protection systems', Reflection Paper for the 9<sup>th</sup> European Forum on the Rights of the Child, 30 April 2015.

<sup>20</sup> European Commission. (2015). European Structural and Investment Funds 2014 – 2020. Belgium: European Union. [http://ec.europa.eu/regional\\_policy/sources/docgener/guides/blue\\_book/blueguide\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/guides/blue_book/blueguide_en.pdf) [accessed 22nd January 2017]. p 175.

<sup>21</sup> European Union (2014) Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action OJ L 77, 15.3.2014, p. 95–108, Preamble paragraph 9



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As demonstrated above, institutionalisation is a breach of children's rights, and imposes serious risks for children's wellbeing and protection. Projects addressing children's rights have been funded under the DCI in the current programming period, such as *Keeping and Finding Families: Inclusive Social Services for vulnerable young children in Dushanbe*<sup>22</sup>; *Community Based Social Service Centres for Children with Disabilities*<sup>23</sup>; *Progressive abolition of violence against children in detention in Central Asia*<sup>24</sup>; *Prevention of violence against children in Afghanistan*<sup>25</sup>; *Strengthening NSAs participation in building Child Protection Safety Nets in Myanmar*<sup>26</sup>; *Improving the system for justice for children and child rights*<sup>27</sup> in Kazakhstan. However, the approaches taken in some of these projects are not in line with the EU's own ambition to promote children's human rights through external action.<sup>28</sup> For example, the project *Keeping and Finding Families: Inclusive Social Services for vulnerable young children in Dushanbe*<sup>29</sup> plans the creation of new Family Support Centres at Baby Homes in Dushanbe and Sughd, focusing on family crisis intervention, befriending, fostering and Early Childhood Development training. It would be more sustainable and life-enhancing for the babies, as well as more in line with their rights, if the investment were directed to the transition to family and community-based care rather than investing in new services within the existing institutions. The project *Progressive abolition of violence against children in detention in Central Asia* aims to improve conditions for children in detention rather than to end detention of children, again a clear breach of their rights. Similarly, the overall objective of the project *Community Mobilization for the rights and protection of Street working children in Patheingyi and Yangon* is to protect street working children from violence, abuse, neglect and exploitation, but not to make sure that their individual needs are being met and they can exercise their rights (i.e. access to education).

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<sup>22</sup> European Commission (n.d.) "Keeping and Finding Families: Inclusive Social Services for vulnerable young children in Dushanbe," [https://ec.europa.eu/europeaid/projects/keeping-and-finding-families-inclusive-social-services-vulnerable-young-children-dushanbe\\_en](https://ec.europa.eu/europeaid/projects/keeping-and-finding-families-inclusive-social-services-vulnerable-young-children-dushanbe_en) [accessed 27/04/2017]

<sup>23</sup> European Commission (n.d.) "Community Based Social Service Centres for Children with Disabilities," [https://ec.europa.eu/europeaid/projects/community-based-social-service-centres-children-disabilities\\_en](https://ec.europa.eu/europeaid/projects/community-based-social-service-centres-children-disabilities_en) [accessed 27/04/2017]

<sup>24</sup> European Commission (n.d.) "Progressive abolition of violence against children in detention in Central Asia," [http://ec.europa.eu/europeaid/case-studies/progressive-abolition-violence-against-children-detention-central-asia\\_en](http://ec.europa.eu/europeaid/case-studies/progressive-abolition-violence-against-children-detention-central-asia_en) [accessed 27/04/2017]

<sup>25</sup> European Commission (n.d.) "Prevention of violence against children in Afghanistan," [http://ec.europa.eu/europeaid/projects/prevention-violence-against-children-afghanistan\\_en](http://ec.europa.eu/europeaid/projects/prevention-violence-against-children-afghanistan_en) [accessed 27/04/2017]

<sup>26</sup> European Commission (n.d.) "Strengthening NSAs participation in building Child Protection Safety Nets in Myanmar," [http://ec.europa.eu/europeaid/projects/strengthening-nsas-participation-building-child-protection-safety-nets-myanmar\\_en](http://ec.europa.eu/europeaid/projects/strengthening-nsas-participation-building-child-protection-safety-nets-myanmar_en) [accessed 27/04/2017]

<sup>27</sup> European Commission (n.d.) "Improving the system for justice for children and child rights," [https://ec.europa.eu/europeaid/projects/improving-system-justice-children-and-child-rights\\_en](https://ec.europa.eu/europeaid/projects/improving-system-justice-children-and-child-rights_en) [accessed 27/04/2017]

<sup>28</sup> These conclusions are being drawn on the basis of the summaries of the projects on the EC website: <https://ec.europa.eu/europeaid/>

<sup>29</sup> [https://ec.europa.eu/europeaid/projects/keeping-and-finding-families-inclusive-social-services-vulnerable-young-children-dushanbe\\_en](https://ec.europa.eu/europeaid/projects/keeping-and-finding-families-inclusive-social-services-vulnerable-young-children-dushanbe_en)



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**Lumos calls** on the European Commission to ensure that actions are sustainable, protect children's rights and serve their best interests.

In order for the DCI to be consistent and coherent with EU principles, values and internal legislation, **Lumos recommends** that the transition from institutions to family and community-based care should be included in the Multi-annual indicative programmes (MIPs) in partner countries. Actions to be funded should include the creation of national deinstitutionalisation strategies and action plans, support for the creation of a wide range of family and community-based social services, inclusive education, prevention and other measures to help children stay or be reunited with their families.

### **European Development Fund (EDF)**

The 11<sup>th</sup> EDF has as a primary objective the reduction and eventual eradication of poverty. Furthermore, the cooperation it supports must contribute to: (i) fostering sustainable and inclusive economic, social and environmental development; (ii) consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law; and (iii) implementing a rights-based approach encompassing all human rights<sup>30</sup>. The Union should “promote a rights-based approach encompassing all human rights in order to integrate human rights principles in the implementation of the Regulation, to assist partner countries in implementing their international human rights obligations and to support the right holders, with a focus on poor and vulnerable groups, in claiming their rights.”<sup>31</sup> It should also aim to empower the populations of partner countries, employing inclusive and participatory approaches to development and the broad involvement of all segments of society in the development process. Furthermore, it commits to paying particular attention to the perspective of children in situations of conflict prevention and resolution, state- and peace-building, post-conflict reconciliation and reconstruction.

The EDF has addressed human rights by, for example, providing *Technical Assistance to the project 'Inclusive Education for Children with Special Needs in Uzbekistan'*<sup>32</sup> and *Empowering persons with disabilities living in rural areas to seek their entitlements*<sup>33</sup> in Lesotho. Supporting inclusive education is relevant, effective, sustainable, and consistent with the EU's internal policies and values. It is also one of the key pillars of the deinstitutionalisation (DI) process. However, it is often the case that

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<sup>30</sup> European Union (2015) Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund. OJ L 58, 3.3.2015, p. 17–38

<sup>31</sup> Ibid, Article 3: 8 (b)

<sup>32</sup> European Commission (n.d.) “*Technical Assistance to the project 'Inclusive Education for Children with Special Needs in Uzbekistan'*,” [https://ec.europa.eu/europeaid/projects/technical-assistance-project-inclusive-education-children-special-needs-uzbekistan\\_en](https://ec.europa.eu/europeaid/projects/technical-assistance-project-inclusive-education-children-special-needs-uzbekistan_en) [accessed 27/04/2017]

<sup>33</sup> European Commission (n.d.) “*Empowering persons with disabilities living in rural areas to seek their entitlements*” [https://ec.europa.eu/europeaid/projects/empowering-rural-persons-disabilities-seeking-their-entitlements\\_en](https://ec.europa.eu/europeaid/projects/empowering-rural-persons-disabilities-seeking-their-entitlements_en) [accessed 27/04/2017]



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inclusive education strategies and deinstitutionalisation strategies are developed and implemented separately, resulting in fragmented and at times chaotic reform that can cause harm to children.<sup>34</sup> Inclusive education must be developed in line with a comprehensive national DI strategy.

Lumos is also encouraged by the fact that the EU recognises the needs to collect data on every child, as demonstrated in the project *Giving every child the right to a legal existence* in Niger, but it is crucial to ensure that children outside of families are counted too. The 2030 Agenda for Sustainable Development is built around the principle of *leaving no one behind*.<sup>35</sup> It is therefore important that the global monitoring framework includes mechanisms to assess the most vulnerable and hard to reach populations. All children count, but not all children are counted. The world's most vulnerable children - those living in institutions, on the street, trafficked or separated from their families as a result of conflict, disaster, forced labour, or disability have fallen off the world's statistical map. There is very limited data about how many children live in such precarious circumstances, except for scattered estimates from some countries. Given the inextricable links between data, advocacy and strategic action, this kind of invisibility in the data world has real-life repercussions for millions of children and can effectively hinder the achievement of the 2030 Agenda.<sup>36</sup>

**Lumos calls** on the European Union, its Member States and its partner countries to: 1. Ensure that children living outside households and/or without parental care are represented in disaggregated data and, 2. Improve and expand data collection methodologies to ensure all children are represented. Data collection should reflect the goals and definitions included in the UN Convention on the Rights of the Child, the UN Guidelines for the Alternative Care of Children, and the UN Convention on the Rights of Persons with Disabilities.

Lumos would like to see the above principles enshrined in the projects funded by the EDF, as well as more activities supporting children's rights, families and the transition from institutions to family and community-based care.

The framework of the National Indicative Programmes under the EDF also offers an opportunity to address the institutionalisation of children and to prioritise the transition to family and community-

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<sup>34</sup> For examples of the impact on children of chaotic deinstitutionalisation, please see: Mulheir, G. et al. (2006) *De-institutionalising and Transforming Children's Services: A Guide to Good Practice*, p127, p98, and p45.

<sup>35</sup> UN General Assembly. (2015). Transforming our World: the 2030 Agenda for Sustainable Development. 70/1. [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E) [accessed 23/01/2017].

<sup>36</sup> According to UNICEF's 2015 Progress for Children report, "as the world prepares for a new development agenda, data and evidence will only increase in importance and national systems must be strengthened to meet new demands. The new data agenda will need to harness the potential of new technologies to collect, synthesize and speed up the use of data, and also reinvigorate efforts to ensure complete and well-functioning registration systems. The new data agenda will need to provide insight into the most vulnerable children, relying on household surveys that provide data regardless of whether or not a child attends school or is taken to a health facility, as well as developing new approaches for collecting information about children who are homeless, institutionalized or internally displaced." UNICEF (2015) *Progress For Children Report 2015* [https://www.unicef.org/publications/files/Progress\\_for\\_Children\\_No.\\_11\\_22June15.pdf](https://www.unicef.org/publications/files/Progress_for_Children_No._11_22June15.pdf) [accessed 13/04/2017]



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based care, inclusive education, family support and the fight against trafficking in children. Even when the focal themes for the countries do not specifically mention deinstitutionalisation, elements of it could still be addressed.

**Lumos calls** on the European Commission to include, under the focal theme of education , assistance to the government to develop a national system for identifying the most vulnerable children and prioritising the provision of school fees and clothes to ensure their inclusion in education actions under urban development and infrastructure could encompass construction of community-based services and small group homes; food security and nutrition could include providing food to families at risk of separation, families who have reintegrated their children, foster and adoptive parents.

### **European Instrument for Democracy and Human Rights (EIDHR)**

The “promotion and protection of human rights and fundamental freedoms” (Art. 2 (b))<sup>37</sup> is one of the key objectives of EIDHR, including a specific focus on the “rights of the child, as set out in the UN Convention on the Rights of the Child and the Optional Protocols thereto, including the fight against child labour, child trafficking and child prostitution, the recruitment and use of child soldiers, and the protection of children from discrimination regardless of their race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” (Art. 2, (b) (x))<sup>38</sup> and “the rights of persons with disabilities, as set out in the UN Convention on the Rights of Persons with Disabilities” (Art. 2, (b) (xi)).<sup>39</sup>

Evidence and experience have shown that a caring and protective family, immediate and extended, is central to a child’s health, development, and protection. It is also their right, as set out in international conventions such as the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, and consistent with EU policy such as the EU Guidelines for the Promotion and Protection of the Rights of the Child<sup>40</sup> and the Regulation 1303/2013 on the European Structural and Investment Funds.<sup>41</sup>

EIDHR has supported actions focusing on both children’s rights and participation (for example, the projects *Strengthening Myanmar civil society on child rights governance to empower ethnic children*

<sup>37</sup> European Union (2014) Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide OJ L 77, 15.3.2014, p. 85–94, Article 2 (b)

<sup>38</sup> Ibid, Art. 2 (b) (x)

<sup>39</sup> Ibid, Art. 2 (b) (xi)

<sup>40</sup> European Union (2017), *Guidelines on the Promotion and Protection of the Rights of the Child* [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf) [accessed 6th May 2017]

<sup>41</sup> European Commission. (2015). *European Structural and Investment Funds 2014 – 2020*. Belgium: European Union. [http://ec.europa.eu/regional\\_policy/sources/docgener/guides/blue\\_book/blueguide\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docgener/guides/blue_book/blueguide_en.pdf) [accessed 22nd January 2017]. p 175.



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*and youth to participate in local decision making*<sup>42</sup>; *Youth communicates on the rights of children, adolescents and women*<sup>43</sup>) and child protection or violence against children (*Don't look away: together against the sexual exploitation of children and adolescents*;<sup>44</sup> *Fight violence against children and adolescents in situations of social vulnerability in Fortaleza: strengthening the competencies and joint rights*;<sup>45</sup> *A Human Rights-Based Approach to Child Protection: Changing Social Norms and Engaging Civil Society to End Violence against Girls and Boys in Belize*;<sup>46</sup> *Protecting children from sexual exploitation and sexual abuse through empowerment and cooperation*<sup>47</sup> etc.). EIDHR has also recently published a call in Haiti<sup>48</sup> focusing on promotion of children's rights and protection of children that are victims of exploitation, discrimination, violence and neglect with **deinstitutionalisation and help for children that are victims of exploitation, discrimination, violence and neglect among the expected results.**

**Lumos welcomes** EIDHR's focus on children's rights and protection and its particular attention to children in institutions in Haiti.

**Lumos calls** on the EU to prioritise both children in institutions as a high risk group for violation of their rights, violence and trafficking, and actions linked to the transition from institutions to family- and community-based care in more countries, as well as in the Human Rights Dialogues and in the thematic priorities laid down in the Annex via the delegated act, which the Commission is expected to adopt by 31 March 2018.

<sup>42</sup>European Commission (n.d.) "Strengthening Myanmar civil society on child rights governance to empower ethnic children and youth to participate in local decision making" [https://ec.europa.eu/europeaid/projects/strengthening-myanmar-civil-society-child-rights-governance-empower-ethnic-children-and\\_en](https://ec.europa.eu/europeaid/projects/strengthening-myanmar-civil-society-child-rights-governance-empower-ethnic-children-and_en) [accessed 27/04/2017]

<sup>43</sup> European Commission (n.d.) "Youth communicates on the rights of children, adolescents and women," [https://ec.europa.eu/europeaid/projects/youth-communicates-rights-children-adolescentes-and-women\\_en](https://ec.europa.eu/europeaid/projects/youth-communicates-rights-children-adolescentes-and-women_en) [accessed 27/04/2017]

<sup>44</sup> European Commission (n.d.) "Don't look away: together against the sexual exploitation of children and adolescents" [https://ec.europa.eu/europeaid/projects/dont-look-away-together-against-sexual-exploitation-children-and-adolescents\\_en](https://ec.europa.eu/europeaid/projects/dont-look-away-together-against-sexual-exploitation-children-and-adolescents_en) [accessed 27/04/2017]

<sup>45</sup> European Commission (n.d.) "Fight violence against children and adolescents in situations of social vulnerability in Fortaleza: strengthening the competencies and joint rights" [https://ec.europa.eu/europeaid/projects/fight-violence-against-children-and-adolescents-situations-social-vulnerability-fortaleza\\_en](https://ec.europa.eu/europeaid/projects/fight-violence-against-children-and-adolescents-situations-social-vulnerability-fortaleza_en) [accessed 27/04/2017]

<sup>46</sup> European Commission (n.d.) "A Human Rights-Based Approach to Child Protection: Changing Social Norms and Engaging Civil Society to End Violence against Girls and Boys in Belize" [https://ec.europa.eu/europeaid/projects/human-rights-based-approach-child-protection-changing-social-norms-and-engaging-civil\\_en](https://ec.europa.eu/europeaid/projects/human-rights-based-approach-child-protection-changing-social-norms-and-engaging-civil_en) [accessed 27/04/2017]

<sup>47</sup> European Commission (n.d.) "Protecting children from sexual exploitation and sexual abuse through empowerment and cooperation" [https://ec.europa.eu/europeaid/projects/protecting-children-sexual-exploitation-and-sexual-abuse-through-empowerment-and\\_en](https://ec.europa.eu/europeaid/projects/protecting-children-sexual-exploitation-and-sexual-abuse-through-empowerment-and_en) [accessed 27/04/2017]

<sup>48</sup> Call for proposals ref EuropeAid/154706/DD/ACT/HT <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?ADSSChck=1490089154538&do=publi.detPUB&searchtype=QS&orderby=upd&orderbyad=Desc&nbPubliList=50&page=1&aoref=154706> [accessed 27/04/2017]



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### **European Neighbourhood Instrument (ENI)**

The general objective and scope of ENI include “respect for human rights and fundamental freedoms” (Article 1, 4)<sup>49</sup>. The specific objectives are focused on “promoting human rights and fundamental freedoms, (...), the fight against discrimination in all its forms, (Article 2, 2(a)), creating conditions for the better organisation of legal migration and the fostering of well-managed mobility of people (Article 2, 2(c)), reducing poverty and reducing social exclusion (Article 2, 2(d)). The **Priorities for Union support cover** human rights, development of the social sectors, in particular for young people, with a focus on social justice and cohesion, education and skills development, including vocational education and training, mobility and migration management, including the protection of migrants (ANNEX II).<sup>50</sup> These priorities have been reflected in a number of projects funded under ENI in the current programming period. A number of them have also addressed children’s rights, such as Human Rights Budget Sector Support (Armenia)<sup>51</sup>, Development of a Pilot Project to Protect the Rights of Children with Severe Disabilities and Terminal Conditions in Belarus<sup>52</sup>, Expanding Access to Education and Protection of at Risk Children (Egypt)<sup>53</sup>, Enhancing Access of Children to Education and Fighting Child Labour (Egypt)<sup>54</sup> and Establishing regional child support centres in Ukraine.<sup>55</sup>

**Lumos calls** on the European Commission to out into place more projects under the ENI that address children’s rights, particularly the rights of children in institutions and measures for their transition to family and community-based care as well as support for families. A particularly vulnerable group in the current migrant crises are unaccompanied minors. A total of 98,400 unaccompanied refugee and migrant children<sup>56</sup> applied for asylum worldwide in 2015. This is compared with 34,300 in 2014

<sup>49</sup>European Union (2014) Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument OJ L 77, 15.3.2014, p. 27-41

<sup>50</sup> *Ibid*

<sup>51</sup> Human Rights Budget Sector Support, [https://eeas.europa.eu/delegations/armenia/11248/human-rights-budget-sector-support\\_en](https://eeas.europa.eu/delegations/armenia/11248/human-rights-budget-sector-support_en) [accessed 27/04/2017]

<sup>52</sup> Development of a Pilot Project to Protect the Rights of Children with Severe Disabilities and Terminal Conditions in Belarus <http://euprojects.by/projects/health-care-and-social-inclusion/Development+of+a+Pilot+Project+to+Protect+the+Rights+of+Children+with+Severe+Disabilities+and+Terminal+Conditions+in+Belarus/> [accessed 27/04/2017]

<sup>53</sup> Expanding Access to Education and Protection of at Risk Children [https://eeas.europa.eu/delegations/egypt/8737/expanding-access-education-and-protection-risk-children\\_en](https://eeas.europa.eu/delegations/egypt/8737/expanding-access-education-and-protection-risk-children_en) [accessed 27/04/2017]

<sup>54</sup> Enhancing Access of Children to Education and Fighting Child Labour [https://eeas.europa.eu/delegations/egypt/8735/enhancing-access-children-education-and-fighting-child-labour\\_en](https://eeas.europa.eu/delegations/egypt/8735/enhancing-access-children-education-and-fighting-child-labour_en) [accessed 27/04/2017]

<sup>55</sup> Establishing regional child support centers in Ukraine [https://eeas.europa.eu/delegations/ukraine/10543/establishing-regional-child-support-centers-ukraine\\_en](https://eeas.europa.eu/delegations/ukraine/10543/establishing-regional-child-support-centers-ukraine_en) [accessed 27/04/2017]

<sup>56</sup> The UN definition of an unaccompanied or separated child is someone under the age of eighteen who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so”. UNHCR (February 1997) Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum <http://www.unhcr.org/3d4f91cf4.pdf> [accessed 21/12/2016]



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and 25,300 in 2013.<sup>57</sup> Eurostat calculates that 88,300 of these children applied for asylum in EU countries in 2015.<sup>58</sup>

Many countries rely on an institutional system of care for unaccompanied migrant and refugee children, even those who have recently moved away from this model for children who are citizens. On arrival in Europe, many children end up in camps, detention, residential institutions, or are left to fend for themselves on the streets. Evidence demonstrates that unaccompanied migrant and refugee children are likely to have suffered abuse and trauma on their journey to and through Europe and that their needs are not adequately met. Furthermore, it has been reported that some EU countries are considering building institutions outside Europe where unaccompanied minors would be sent.<sup>59</sup>

As explained above however, this is not a solution and puts these children under a serious risk of being trafficked and/or becoming victims of violence. Instead the EU should be looking, including in its external action, for ways to support family-based care that meets unaccompanied migrant and refugee children's needs and helps them integrate into the community.

**Lumos calls** on the European Commission to implement more projects under the ENI promoting family support, creation of a wide range of quality social community-based services, inclusive education, and the transition from institutions to family and community-based care.

### **Instrument for Pre-accession Assistance (IPA)**

IPA II should support reforms which comply with the Union's values (Article 1)<sup>60</sup>. Its specific objectives entail, "promotion and protection of human rights and fundamental freedoms" (1(a)(ii) and "non-discrimination" (1(a)(ii), "promotion of social and economic inclusion, in particular of minorities and vulnerable groups" (1(b)(iv), "fostering of an inclusive and integrated education system" (1 (b)(v) (Article 2) and "respect for human rights, including the rights of persons belonging to minorities and vulnerable groups" (2(a). Thematic priorities for assistance include "promoting and protecting human rights" (ANNEX II (b), "investment in education" with interventions aiming at: "promoting equal access to quality early-childhood, primary and secondary education" (ANNEX II (d); promoting social inclusion and combating poverty with interventions "integrating marginalised communities such as the Roma; combating discrimination based on (...) disability; and enhancing access to affordable, sustainable and

<sup>57</sup> UNHCR (2016) *Global Trends Forced Displacement In 2015* <https://s3.amazonaws.com/unhcrsharedmedia/2016/2016-06-20-global-trends/2016-06-14-Global-Trends-2015.pdf> [Accessed 12 January 2017]

<sup>58</sup> Eurostat (2016) *Almost 90 000 unaccompanied minors among asylum seekers registered in the EU in 2015* <http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf> [Accessed 12 January 2016]

<sup>59</sup> Wierup, L. (9 February 2017). Barnhemsbygge ska få gatubarn att återvända [Building and orphanage to make street children return]. *Dagens Nyheter*. <http://www.dn.se/arkiv/nyheter/barnhemsbygge-ska-fa-gatubarn-att-atervanda/> [accessed 6 April 2017]

<sup>60</sup> European Union (2014) Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) OJ L 77, 15.3.2014, p. 11–26



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high quality services, such as health care and social services of general interest, including through the modernisation of social protection systems” (ANNEX II (f). The Thematic priorities for assistance for territorial cooperation include “integration of immigrants' communities and vulnerable groups; investment in public employment services; and supporting investment in public health and social services” (ANNEX III (a) and “investing in youth, education and skills” (ANNEX III (e).

Lumos has not found any evidence online of projects supporting children’s rights, nor are they specifically mentioned in the Regulation 231/2014.<sup>61</sup> Institutions impose serious harm on children’s physical and mental development, bear significant risks for their protection, wellbeing and future<sup>62</sup> and are in clear breach of their rights. The EU has recognised the harm caused by institutionalisation and has prohibited ESIF to be used for their maintenance and construction, while prioritising the transition to community-based services. The EU has also ratified UNCRC, which proclaims that State Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children and that the best interests of the child shall be a primary consideration (Art. 7) commits to community living (Art 19). If IPA II is to support reforms which bring candidate countries in line with the Union's values and internal policies, it should contain a clear reference to child rights, protection and wellbeing as well as to keeping families together.

**Lumos calls** on the EU to ensure that candidate countries’ legislation and practices comply with the EU’s legislation and approaches. Regulation 1303/2013 demonstrates EU’s recognition of institutions being harmful, hence it forbids the use of ESIF for their maintenance and construction and prioritises the transition from institutional to community-based services.<sup>63</sup> The same counts for the measures linked to migrant children and unaccompanied minors – they should be offered family and community-based options and enjoy the same rights as the local children.

**Lumos calls** on the European Commission to address the transition of children from institutions to family- and community-based care in country Strategy papers.

**Lumos calls** on the European institutions to support such reform by at the very least making the creation of a deinstitutionalisation strategy and action plan a pre-accession condition.

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<sup>61</sup> *Ibid*

<sup>62</sup> Lumos (2014) *Children in Institutions: the Risks* [https://wearelumos.org/sites/default/files/2.Risks\\_.pdf](https://wearelumos.org/sites/default/files/2.Risks_.pdf) [accessed 27/04/2017]

<sup>63</sup> European Union (2013) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, OJ L 347, 20.12.2013, p. 320–469, Article 9: 9.1



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### **Partnership Instrument for cooperation with third countries (PI)**

With the PI the Union should “seek the most efficient use of available resources in order to optimise the impact of its external action”. That should be achieved through “coherence and complementarity between the Union's instruments for external action, as well as the creation of synergies between the Regulation, other instruments for financing external action and other policies of the Union”.<sup>64</sup> The PI should address challenges of global concern (Article 1, 1) and support measures promoting policy dialogue and developing collective approaches and responses to challenges of global concern. (Article 1, 2 (a). Respect for human rights is among the general principles for the use of PI (Article 3, 1) as well as “promoting a coherent multilateral approach to global challenges” (Article 3, 3) and aiming to ensure coherence and consistency with other areas of the EU external action, and with other relevant Union policies (Article 3, 4). The PI should also implement the international dimension of ‘Europe 2020’. (Article 1, 2 (b). Achieving inclusive growth and reducing poverty are among the key objectives of ‘Europe 2020’.<sup>65</sup>

Lumos has not found evidence of projects funded under the PI in the current programming period so we are not able to comment on its implementation. As with the other instruments however, we would like to see children in institutions addressed in the strategies and the multi-annual indicative programmes (MIPs) of the partner countries. That the wellbeing, development, security and life of eight million children are put under serious risk should be recognised as a challenge of global concern, having in mind as well the connection between institutionalisation and trafficking and the potential increase in number due to the approach taken towards unaccompanied minors in the current migrant crises (placing them in institutions). Following the approach the EU has taken in its internal policy and legislation and transferring it to external action would contribute to achieving synergy, coherence and complementarity. Investing in institutions and their maintenance is not the most efficient use of available resources either.<sup>66</sup>

It has been proven that after the initial investment, family and community-based care is more cost efficient in the long run, while being in line with the international and EU human rights legislation.<sup>67</sup>

Therefore, **Lumos calls** on the EU to ensure that the transition from institutions to family and community-based care and the creation of strategies and action plans for its implementation is addressed in the strategic documents and the indicative programmes of the partner countries.

<sup>64</sup> European Union (2014) Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries, OJ L 77, 15.3.2014, p. 77-84, Preamble para. 17

<sup>65</sup> European Union (2010) “EUROPE 2020 A strategy for smart, sustainable and inclusive growth” COM(2010) 2020 <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf> [accessed 27/04/2017]

<sup>66</sup> Lumos (2015) *In Our Lifetime: How donors can end the institutionalisation of children* [https://wearelumos.org/sites/default/files/In%20Our%20Lifetime\\_2015\\_Sept2015\\_0\\_0.pdf](https://wearelumos.org/sites/default/files/In%20Our%20Lifetime_2015_Sept2015_0_0.pdf) [accessed 27/04/2017]

<sup>67</sup> *Ibid*



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## Recommendations for External Financing Instruments post 2020

As already demonstrated, institutions are a serious breach of children's rights and go against their dignity. Various international instruments and policies, including the UN CRC, the UN CRPD, the UN Guidelines for the Alternative Care of children and the 2030 Agenda, state the importance of children's right to a family and to living in a supportive, protective and caring environment.

It is the responsibility of the State to support parents in order that they can fulfil their parental responsibility. The CRC and the Guidelines for the Alternative Care of Children also call on States to ensure that families have access to forms of support in the caregiving role.<sup>68</sup> Poverty should never be a reason for separating a child from their family.

During natural disasters, conflict and other crises, many children become separated from their parents. In response, humanitarian aid efforts often focus on what is perceived as the simplest service to take care of these children: institutional care or so-called orphanages. Children remain in institutions long after the crisis and insufficient efforts are made to reunite them with their family, resulting in long-term institutionalisation and serious harm to children.<sup>69</sup> The Minimum Standards for Child Protection in Humanitarian Action, which were published in 2012, call to establish systems to monitor the situation of girls and boys who may be at risk of violence – including neglect. This may include, for example, children in residential care; children with disabilities; separated children; children on the streets; or children formerly associated with armed forces or armed groups.<sup>70</sup> The goals call for preserving family unity, understanding that residential care facilities are often a pull factor leading to family separation. The Standards also state that in emergencies, institutions or residential care services “should only be considered as an alternative care option for the shortest possible time”.<sup>71</sup> The UN Guidelines on the Alternative Care of Children also “prohibit the establishment of new residential facilities structured to provide simultaneous care to large groups of children on a permanent or long-term basis” in emergency situations.<sup>72</sup>

Institutions, whilst being harmful, are also expensive to run and an inefficient use of resources. In many countries, it is considerably cheaper to support a child to live in their family than to keep them in a harmful institution.<sup>73</sup> Furthermore, the harm caused by institutionalisation has a negative impact on society as a whole. Many studies across the world have demonstrated that supporting children to

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<sup>68</sup> UN Convention on the Rights of the Child Article 19; UN Guidelines for the Alternative Care of Children Article 3

<sup>69</sup> Doyle, J (2010). *Misguided Kindness: Making the right decisions for children in emergencies*, Save the Children. UK: London.

<sup>70</sup> Child Protection Working Group. (2012). *Minimum Standards for Child Protection in Humanitarian Action*. [http://www.unicef.org/iran/Minimum\\_standards\\_for\\_child\\_protection\\_in\\_humanitarian\\_action.pdf](http://www.unicef.org/iran/Minimum_standards_for_child_protection_in_humanitarian_action.pdf), p. 125.

<sup>71</sup> *Ibid*

<sup>72</sup> UN Guidelines for the Alternative Care of Children Article 154(d)

<sup>73</sup> In Haiti, a package of health, education and social support to keep a child in a poor family for one year costs 25% of an institutional placement according to data from one local NGO [<http://www.haitianfamiliesfirst.org>]. See also Lumos (2015) *In Our Lifetime: How donors can end the institutionalisation of children* [https://wearelumos.org/sites/default/files/In%20Our%20Lifetime\\_2015\\_Sept2015\\_0\\_0.pdf](https://wearelumos.org/sites/default/files/In%20Our%20Lifetime_2015_Sept2015_0_0.pdf) [accessed 27/04/2017]



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live with their families produces better outcomes in terms of development and future life chances and that investment in ending institutionalisation produces a significant cost-benefit for society.<sup>74</sup>

In line with the EU's own commitment to Policy Coherence for Development<sup>75</sup>, if the European Commission has accepted that institutions are harmful to children and as a consequence has significantly altered its funding and policy priorities for children inside the European Union, it follows that wherever the Commission has policy and funding influence, the same logic should apply. This also reflects the recommendation for improving coherence in the EU's external action on children, including that carried out by member states<sup>76</sup>, in the EU's recently published Guidelines for the Promotion and Protection of the Rights of the Child.

On the basis of the above, Lumos makes the following key recommendations for the External Financing Instruments post 2020:

**1. All future EU external assistance initiatives and financing instruments, including those directed at migration and other humanitarian crises, should prioritise actions linked to the transition from institutions to family- and community-based care.**

This would be the only way to ensure the protection, wellbeing and respect for human rights and dignity of institutionalised children (and those under risk of being placed in institutions).

**2. A similar mechanism to the ex-ante conditionality on social inclusion with an investment priority on the “transition from institutional to community-based services” (Regulation 1303/2013) should be introduced into all EU external funding instruments, in order to secure that the harmful practice of institutionalisation of both children and adults comes to an end internationally.**

**3. A similar mechanism to the European Code of Conduct on Partnership<sup>77</sup> should be introduced for all the External Instruments, in order to secure effective civil society involvement in the shaping, implementation and monitoring of all the finance programmes.**

<sup>74</sup> Csáky, C. (2014). “Why care matters: The importance of adequate family care for children and society.” Family for Every Child, p14.

<sup>75</sup> European Commission. (n.d.) Policy Coherence for Development [http://ec.europa.eu/europeaid/policies/policy-coherence-development\\_en](http://ec.europa.eu/europeaid/policies/policy-coherence-development_en) [accessed 20 Mar 2017].

<sup>76</sup> European Union (2017), *Guidelines on the Promotion and Protection of the Rights of the Child* [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf)

<sup>77</sup> European Commission (2014) COMMISSION DELEGATED REGULATION (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds [http://ec.europa.eu/regional\\_policy/en/policy/what/glossary/e/european-code-of-conduct](http://ec.europa.eu/regional_policy/en/policy/what/glossary/e/european-code-of-conduct) [accessed 18/05/17]



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