



Protecting Children. Providing Solutions.

January 2017

Lumos Response to EC Communication on future ACP – EU relations

About Lumos

Lumos is an international NGO¹, 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. We are a founding member of the European Expert Group on the Transition from Institutional to Community-based Care. Lumos also sits on the Leaders' Council of the Washington-Based Global Alliance for Children, a coalition of US Government departments, the World Bank, the Canadian Government and major foundations.

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.² In spite of what is often the best of intentions in 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.³ For more information, please check Lumos factsheets: 'Children in Institutions: The Risks'⁴ and 'Children in Institutions. The Global Picture'⁵.

Evidence and experience have shown that a caring and protective family - immediate and extended - is central to a child's health, development, and protection. 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.⁶ The Convention and the Guidelines for the Alternative Care of

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

² 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

³ Berens, A.E. & Nelson, C.A. (2015). The science of early adversity: is there a role for large institutions in the care of vulnerable children? The Lancet. [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.

⁴ http://wearelumos.org/sites/default/files/2.Risks_.pdf

⁵ http://wearelumos.org/sites/default/files/1.Global%20Numbers_2_0.pdf

⁶ Convention on the Rights of the Child (Adopted 20 November 1989, entered into force 2 September 1990) Vol.1577, p.3.



Protecting Children. Providing Solutions.

Children (A/RES/64/142)⁷ 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*”. The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)⁸ 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). 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).

Ceasing the use of EU funding for institutional care

The EU has recognised the harm caused by institutionalisation and has played an instrumental role in the efforts to end this form of care. 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 their use for the maintenance, renovation or construction of residential institutions while encouraging Member States that have not yet made the transition to prioritise programmes which support it.

This change in regulations is a landmark decision that will have positive repercussions for millions of Europe’s most vulnerable and excluded citizens and the European Commission is to be congratulated on this ground-breaking achievement, which is also now beginning to influence other major funders around the world.

It is our position that in the interest of achieving policy coherence, the same criteria should be applied to other important funding streams worldwide, with connected goals and priorities, including EU development and cooperation funding and the loans provided by the European Investment Bank. 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. The evidence is clear: children are harmed

⁷ Guidelines for the Alternative Care of Children (2009) A/RES/64/142
http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf

⁸ Convention on the Rights of Persons with Disabilities (Adopted by the UN General Assembly, 24 January 2007, A/RES/61/106.



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by institutionalisation; they only thrive in a family environment, irrespective of where they live. You can find more information on this in our publication 'In Our Lifetime. How donors can end institutionalisation of children'.⁹

Pursuing a Rights Based Approach to Development

The **2030 Agenda for Sustainable Development** 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 same logic is enshrined in the **EU Action Plan on Human Rights 2015-2019**, with objective 27. *Pursuing a Rights Based Approach (RBA) to Development* including the following action point: "a. Implement the EU commitment to move towards a rights based approach to development cooperation, **encompassing all human rights by pursuing its full concrete integration into all EU development instruments and activities**, using training and guidance, capacity support, results-oriented monitoring guidelines and criteria for evaluation with a view to achieving a full integration within the assessment of the implementation of a rights-based approach to development cooperation in 2016 targeting the mid-term review; EU Member States will work towards increasingly integrating a rights-based approach in their development cooperation policies." Institutionalisation of children imposes a serious breach of their human rights. Thus, this should be reflected in all the development policies and legislation.

Finally, the **UN CRPD** states that international cooperation, including international development programmes, must be inclusive of and accessible to persons with disabilities (Art. 32).

Lumos Response to EC Communication on future ACP – EU relations

Lumos welcomes the publication of the Joint Communication to the European Parliament and the Council - A renewed partnership with the countries of Africa, Caribbean and Pacific¹⁰. Our response to it can be summarised in the points below:

⁹ http://wearelumos.org/sites/default/files/In%20Our%20Lifetime_2015_Sept2015_0.pdf

¹⁰ https://ec.europa.eu/europeaid/sites/devco/files/joint-communication-renewed-partnership-acp-20161122_en.pdf



Protecting Children. Providing Solutions.

- While Lumos appreciates the focus on human rights for all, respect for human dignity and the enshrined principles of equality and solidarity, as well as good governance with particular attention to the most vulnerable people, we note that children are almost entirely left out of the scope of the Communication. We would like to see a clear assertion of children’s rights, protection and well-being in the post-Cotonou framework, including children in institutional care, children with disabilities and migrant children.
- We would like to see a specific reference to the transition from institutional to family and community-care for children when addressing the protection and promotion of human rights for all.
- We would like to see the UN CRC and CRPD as well as the EU internal legislation referred to in the post-Cotonou framework.

Below we provide specific proposed amendments, which are highlighted in yellow in the boxed excerpts from the Communication, on how the text can be strengthened, and the child perspective secured.

“3.1 EU priorities towards partner countries

3.1.1 Promoting peaceful and democratic societies, good governance, the rule of law and human rights for all

The future partnership should be based on a shared strong commitment to promote and respect democratic principles, the rule of law, universal human rights and fundamental freedoms for all; respect for human dignity and the principles of equality and solidarity; and good governance. In particular, attention to gender equality, the most vulnerable people **and children**¹¹ and youth perspective should further inspire mutual efforts towards democratic governance and human rights for all.”

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.”¹² The 2030 Agenda is built around the principle of leaving no one behind (Preamble,

¹¹ The highlighted text has been introduced by Lumos

¹² 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



Protecting Children. Providing Solutions.

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).

Therefore it is essential that children are mentioned in the specific priorities of the future framework.

“The partnership should therefore be based on the full respect of the principles of the UN Charter and international law, including the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, and should play an active role within this framework. It should also be consistent with the existing EU legislation.”

The UNCRC and UNCRPD are key human rights instruments, adopted and valid internationally. The two Conventions contain the main principles and rights of children and persons with disabilities which must be acknowledged in and further addressed by the future EU-ACP relations.

“3.1.3 Turning migration and mobility into opportunities and addressing challenges together

The partnership should also engage on the protection of refugees and asylum seekers, with particular attention paid to vulnerable groups. It should promote the resilience of long-term forcibly displaced persons and their inclusion in the economic and social life of host countries. It should give special attention to migrant children and unaccompanied minors and provide solutions for them in line with their best interest and in line with the EU and the international principles and legislation.”

An issue which needs to be addressed in a future Partnership is the situation of unaccompanied minors, very common in migration and refugee flows. These minors are usually placed in shelters, which are, in effect, large residential care institutions. Since those shelters are often “open”, many unaccompanied minors escape from them after a short stay (usually through contact with a trafficker or a smuggler). Another problem linked to unaccompanied minors is that they are often placed together with adults, which is an additional risk for their safety and protection. In some EU countries, these children are placed in institutions or detention centres that have been built for youth with challenging behaviour or who have been in conflict with the law.

Looking for individual solutions for these children and providing community support to them should be done simultaneously with enhancing deinstitutionalisation reforms in the ACP



Protecting Children. Providing Solutions.

countries. European and other societies accepting them should ensure that they treat and protect them with the same principles as they would citizens of their own countries. Given the trauma many of these children would have experienced, it is especially important that they are not victimised further.

“3.1.4 Ensuring human development and dignity

The partnership should work towards increased prosperity for its people by fulfilling the SDGs. The EU should seek a strong political engagement with partner countries in order to meet the needs of all, in particular among the poorest and most vulnerable, ensuring that all human beings can fulfil their **potential in dignity and equality and in a healthy environment. It should support reforms to eradicate poverty, tackle inequalities, prevent vulnerabilities and ensure equitable access to decent work and social services, in particular quality inclusive education and health, and social protection. It should support the transition from institutional services to family and community-based care, prevent children being abandoned, support families to reintegrate or keep their children, including when they have disabilities.** Actions towards poverty eradication should be focused on the poorest and most vulnerable countries including Least Developed Countries (LDCs) and fragile and conflict-affected countries, where difficulties are expected to persist compounded by demographic factors, and where a stronger focus on human development remains essential. The partnership should contribute to strengthen resilience, and address chronic vulnerability, by enhancing the synergies between lifesaving assistance and long term development needs.”

While Lumos fully agrees with the above listed principles, we find that they are too general and provide too much room for interpretation. What does “in dignity and equality and in a healthy environment” mean? Are the eight million children who live in institutions around the globe able to fulfil their potential in dignity and equality and in a healthy environment? How could “prevent vulnerabilities and ensure equitable access to ... social services” be translated to reality? How do children in general, children with disabilities and children in institutions fit this picture?

Lumos calls on the European institutions to ensure that the text of the future framework is targeted and can easily be translated into action.

Lumos urges the European institutions to ensure their instruments address children in institutions among the vulnerable groups and recommends the transition to family and community-based care, including the provision of a replacement system of affordable, high-quality, and accessible services.



Protecting Children. Providing Solutions.

As the Communication goes on to directly refer to women, girls, and young people in general, Lumos would like to see similar attention being paid to children, their rights, vulnerabilities and well-being.

In addition, Lumos would like to see the issues discussed below addressed in the future partnership.

On the implementation of the Agenda 2030

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. 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.

The Partnership should proactively implement these commitments and provide a framework and guidance for ensuring that the implementation of the SDGs is in line with them and other human rights principles, through sharing of expertise in data collection and national monitoring mechanisms and indicators.

This question of data is especially important for the eight million children in institutions or orphanages around the world. This is an estimated figure, quoted by the UN World Report on Violence against Children¹³, but due to the unregulated nature of residential care the figure may be much higher. Many orphanages are unregistered and most countries lack systems to routinely collect and monitor data on institutionalised children.

- ✓ **The Partnership can therefore provide a strong framework to build the capacity at the national level to establish strong indicators which monitor marginalised children, children in institutions, children with disabilities etc. and ensure that children living outside households and/or without parental care are represented in disaggregated data.**
- ✓ **The Partnership has a key role to play in the data revolution and in the recently launched Global Partnership for Sustainable Development Data. It could support the development of mechanisms to integrate household-based data with additional information on children temporarily or permanently living outside households. In some countries, such data already exists, although to date this data has not been routinely collected or analysed.**

¹³ P S Pinheiro (2006) World Report on Violence against Children. New York: UNICEF. [https://www.unicef.org/lac/full_tex\(3\).pdf](https://www.unicef.org/lac/full_tex(3).pdf) [accessed 27th Jan 2017].



Protecting Children. Providing Solutions.

- ✓ **The Partnership would also be well placed to provide a forum for sharing good practice related to innovation in data collection and pilot programmes linked to ensuring that no child is left behind.**

On trafficking

The CPA mentions “giving particular emphasis to...addressing...illegal trafficking”. This could be further strengthened and detailed, by directly addressing trafficking of children and the reasons for it. Research demonstrates an increased risk of all forms of child abuse for disabled children and a higher risk of sexual violence for children with intellectual disabilities¹⁴; many of these children are placed in residential facilities. Furthermore, studies show that children in institutions are highly vulnerable to being trafficked¹⁵, and studies also show an increased risk for children from residential care backgrounds being involved in trafficking.¹⁶This needs to be addressed in the Agreement.

The future Partnership should provide for more effective joint action on tackling transnational security challenges. It should specifically address groups who are particularly vulnerable to trafficking, including institutionalised children.

There is a strong connection between trafficking and institutionalisation of children which manifests itself in two ways: institutionalised children are at high risk of becoming victims of trafficking and often when child victims are recovered from traffickers, they are placed (back) in institutions by the responsible authorities. This creates a vicious circle for trafficked children and additional risks to their peers in institutions. This response also effectively penalises the child for their victimisation and does not provide solutions that address the problems or protect children. There is a higher prevalence of children going missing from residential care,¹⁷ and limited responses to tackling this problem effectively.¹⁸ The significant relationship between

¹⁴ UNICEF, Survey on child abuse in residential care institutions in Romania, 2000. For a similar study in Serbia, see Mental Disability Rights International, Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with disabilities, 2007.; CEOP Thematic Assessment, Out of Mind, Out of Sight – Breaking down the barriers to understanding child sexual exploitation, 2011.; Stuart M., and Baines C., “Progress on safeguards for children living away from home – A review of actions since the People Like Us report”, JRF, 2004.

¹⁵ Kane, J., 'Child Trafficking – The People Involved: A synthesis of findings from Albania, Moldova, Romania and Ukraine' International Labour Organisation, 2005.

¹⁶ International Organisation for Migration, Protecting Vulnerable Children in Moldova, 2007.

¹⁷ EC, Missing Children in the European Union – Mapping, Data Collection and Statistics, 2013 http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf

¹⁸ Information collected by FRANET. Hungary, Hungarian Central Statistical Office (2013): Yearbook of welfare and statistics, 2011 (Szociális Statisztikai Évkönyv), Budapest, KSH, table 5.24. See also: Hungary, Commissioner for Fundamental Rights (2012) Report No. AJB-2731/2012, p. 2, available in Hungarian at: www.ajbh.hu/documents/10180/143247/201202731.rtf/06c12e69-536a-4b7a-a09b-b3847334ee18.

Hungary, Commissioner for Fundamental Rights (2012) Report No. AJB 1140/2012, p. 8, available in Hungarian at: <https://www.ajbh.hu/documents/10180/143994/201201140.rtf/7add4e8-1df1-4c31-a31f-ddb399d59d29>.



Protecting Children. Providing Solutions.

missing children and trafficking¹⁹ means that many missing children are likely to be victims of trafficking and other forms of exploitation. In addition, the specific institutions where trafficked children are placed, are often known to the traffickers, who will target them there. Often, trafficked children are placed in detention centres, together with adults, with extremely poor conditions and where the risk of abuse and harm is considerably higher than in traditional institutional care.²⁰ The nexus of children fleeing conflict, systems for 'processing' migrants and asylum-seekers, and trafficking in children needs further exploration and specific responses that are led by child protection experts, rather than being solely a matter for the judiciary.

- ✓ **The new Partnership should make sure that the connection between trafficking and institutionalisation of children is addressed in all the relevant instruments and that adequate measures are put in place.**
- ✓ **It should also make sure that international development takes full account of child protection good practice to prevent vulnerable children from being exploited, neglected or harmed. Particular attention must be paid to the protection needs of children with disabilities and those with care histories / outside of family care.**
- ✓ **The Partnership needs to prioritise exploration of the nexus between children fleeing conflict zones, holding them in detention centres and trafficking.**
- ✓ **The ACP and EU should cooperate in identifying the roots of child trafficking, conducting research on this topic and focus on prevention, including transition from institutional to community-based care as well as in providing training for police officers and judicial officials.**
- ✓ **The EU Anti-trafficking coordinator and the EU Civil Society Platform against Trafficking in Human Beings should be engaged with this work too. The provisions in the EU Anti-trafficking Strategy should be reflected and integrated in the agreement and in the funding and actions, planned for its implementation.**

Survey available at: <http://sosparentsabusesfrance.wordpress.com/2014/03/02/sondage-sur-les-fugues-des-enfants-places/>

¹⁹ Ibid; See also: House of Commons, Home Affairs Committee (2009) *The Trade in Human Beings: Human Trafficking in the UK Sixth Report of Session 2008–09, Volume 1* London: House of Commons.

²⁰ The recent example of the death of an adult in a Greek migrant detention centre demonstrated the often deplorable conditions in these centres, as well as highlighted the fact that the country is insufficiently prepared to deal with the needs of highly vulnerable and traumatised children being trafficked from conflict zones. For more information, see: <http://www.tovima.gr/society/article/?aid=668780>



Protecting Children. Providing Solutions.

On poverty reduction

The 2030 Agenda declares the State 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". The ACP partnership has been centred on "the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development" and provides for support "given to the respect of the rights of the individual and meeting basic needs, the promotion of social development and the conditions of an equitable distribution of the fruits of growth".

The future Partnership should address families at risk of leaving their children in institutional care (economically disadvantaged families; families with disabled children and/or many children; single parents etc.) as well as families willing to reintegrate their children, who have already been left in institutional care, and to propose measures for supporting them. Such measures should include flexible employment schemes, individualised budgets and a range of social services.

On allocation of development resources

It is important for the most marginalised in all societies to be addressed when allocating development resources. It would be unfair on extremely marginalised children and other disadvantaged groups in one country, if only those in a similar situation are prioritised as they live in a poorer country. Keeping this in mind and applying it to the way resources are allocated would be in line with the principles of the 2030 Agenda to address poverty and exclusion wherever it occurs.

On stakeholder engagement

The involvement of civil society in the Partnership is essential to a democratic and transparent process based on equality and solidarity. A new tool - the European Code of Conduct on Partnership - has been put in place in the current cycle of the ESIF. According to the Code, civil society must be involved at every stage of planning, implementation and monitoring of the Partnership Agreements between the EU and its Member States and the country Operational Programmes for spending the funds. A similar mechanism could be integrated in the EU-ACP partnership, making sure that civil society organisations are involved in the decision-making process on how funds are spent, in the implementation and in the monitoring.

- ✓ **A similar mechanism to the European Code of Conduct on Partnership, as found in the Commission delegated Regulation (EU) of 7.1.2014 on the European Code of Conduct on partnership in the framework of the European Structural and Investment Funds, could be introduced. It would oblige**



Protecting Children. Providing Solutions.

governments to involve civil society in the design and implementation of all the actions linked to the partnership, including the spending of the European Development Fund.

- ✓ **It is also essential to have a tool ensuring that self-advocates and children, including those with intellectual disabilities, are consulted on actions which have impact on their lives. The target groups of the envisaged actions should be part of the decision-making processes linked to them and of a large consultation process, aiming to identify their needs.**

On international and domestic private sector involvement

Where NGOs, private trusts, foundations, or other private actors are given a formal role to implement (part of) an agreement linked to targeting children, either through financial or technical support, it is key that any resources should be used to support the transition from institutional to family and community-based care.

All parties involved in the Cotonou agreement should be restricted from using any resources for the construction, maintenance or refurbishment of institutions or orphanages or for any measures which might hinder the prevention of the institutionalisation of children.

On having a dedicated finance instrument supporting the partnership

Lumos recommends that a special instrument, uniting the purposes of the development and humanitarian aid, is put in place, as often what is initially seen as a development issue becomes even more acute in times of humanitarian crises. Likewise, the measures taken during a humanitarian crises could lead or contribute to existing human rights breaches such as the institutionalisation of children. Placing orphans in institutions after a crisis situation is a common response.

A special instrument could address this inter-relation between development and the humanitarian aid in these countries, and provide for continuity, flexibility and sustainability. Such a tool should be in line with international human rights legislation and lay down principles/criteria to best achieve inclusion and leave no one behind.



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