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Lumos position on the European Pillar on Social Rights

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.

This document contains Lumos' contribution to the recent Public consultation on the European Pillar of Social Rights together with some more context of the process of transition from institutional settings to family and community-based services for children.

Institutionalisation of children

An estimated eight million children worldwide live in residential institutions and so-called orphanages that deny them their human rights and that cannot meet their needs.² One million of these children are believed to live in the European region. More than 80% of these children are not orphans and have at least one living parent.³ Around the world, children are placed in institutional care because their parents face extreme poverty; because the children have physical and intellectual disabilities; or because they are from socially excluded groups.⁴ Over 80 years of research from across the world has demonstrated the significant harm caused to children in institutions, who are deprived of loving

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

² The number of residential institutions and the number of children living in them is unknown. Estimates range from 'more than 2 million' (UNICEF, *Progress for Children: A Report Card on Child Protection Number 8, 2009*) to 8 million (Cited in: Pinheiro, P., *World Report on Violence against Children*, UNICEF, New York, 2006). These figures are often reported as underestimates, due to lack of data from many countries and the large proportion of unregistered institutions.

³ Csáky, C. (2009) Keeping Children out of Harmful Institutions: Why we should be investing in family-based care. London, UK: Save the Children. p7; *Better Care Network. (2009). Global facts about orphanages.*

⁴ Faith to Action Initiative. (2014). *Children, Orphanages, and Families: A summary of research to help guide faith-based action.* <http://faithtoaction.org/wp-content/uploads/2014/03/Summary-of-Research4.pdf>. [accessed 9 July 2016] pp6-7.

parental care and who suffer life-long physical and psychological harm as a consequence.⁵ These studies highlight issues for children in relation to their ability to form secure attachments conducive to healthy development, due to a lack of emotional and physical contact and a lack of stimulation and interaction in institutional environment. Babies in particular fail to develop as they should without one-to-one parental interaction, and research demonstrates the severe impact of institutionalisation on early brain development. According to numerous studies, children who remain in institutions after the age of six months often face severe developmental impairment, including mental and physical delays.⁶ Children living in institutions often do not develop social networks or skills that are essential in adulthood. It is harder for them to find employment and they are more likely to have behavioural, physical and mental health problems, including high risk behaviours, sexually transmitted infections, alcohol or drug misuse and violence. They are also more likely to be dependent on the state. Survey data in Russia showed outcomes for children who grew up in institutions: 1 in 3 became homeless, 1 in 5 had a criminal record, 1 in 7 became involved in prostitution and 1 in 10 committed suicide.⁷

For children with disabilities the situation is even worse. They require close, sustained adult engagement to help them develop – including such skills as learning to eat properly. One study of children under three years of age who were discharged from institutions found that 28% of disabled children were in fact ‘discharged’ because they had died.⁸ This mortality rate was 100 times higher than for children without disabilities.⁹

What is a children’s institution?

There are numerous definitions of what the term ‘institution’¹⁰ means when referring to children. The Common European Guidelines on the Transition from Institutional to Community-based Care define institutions for children “as residential setting that are not built around the needs of the child nor close to a family situation, and display the characteristics typical of institutional culture (depersonalisation,

⁵ Berens, A. & Nelson, C. (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) [accessed 8 July 2016].

⁶ Michael Rutter. (1998). *Development catch-up, and Deficit, Following Adoption after Severe Global Early Privation*, *Journal of Child Psychology and Psychiatry*, 39 (4).

⁷ Pashkina, N. (2001). *Sotsial'noe obespechenie*, 11: 42-45. As cited in: Fedulova, A.B. & Firsov, M.V. (2003). *Orphans in Russia*. Norwegian Institute for Urban and Regional Research, p83.

⁸ Browne, Kevin, C. E. & Hamilton-Giachritsis, R. (2005). *Mapping the number and characteristics of children under three in institutions across Europe at risk of harm*. Birmingham: Birmingham University Press (in collaboration with EU/WHO), p22.

⁹ For more information, please also see Lumos Factsheet Children in institutions: The Risks:

https://wearelumos.org/sites/default/files/2.Risks_.pdf [accessed 11 July 2016].

¹⁰ See for example Eurochild’s definition extracted from the UN Guidelines for the Alternative Care of Children: “a residential setting that is not built around the needs of the child nor close to a family situation and display the characteristics typical of institutional culture (depersonalisation, rigidity of routine, block treatment, social distance, dependence, lack of accountability, etc.). Cited in the Common European Guidelines on the Transition from Institutional to Community-based Care. European Expert Group on the Transition from Institutional to Community-based Care, November 2012, <http://www.deinstitutionalisationguide.eu/>. In addition, UNICEF when defining an institution considers “whether the children have regular contact and enjoy the protection of their parents or other family or primary caregivers, and whether the majority of children in such facilities are likely to remain there for an indefinite period of time”. Cited in the UNICEF Consultation on Definitions of Formal Care for Children, pp.12–13.

rigidity of routine, block treatment, social distance, dependence, lack of accountability, etc.)”.¹¹ An organised routine, an impersonal structure and a low care-giver to child ratio are additional characteristics mentioned.

A clear distinction is needed between an institution and high quality residential care. However, an institution would include at least one (often more) of the following key factors that research evidence shows result in harm to children, including:

- The child is arbitrarily separated from their parents (and often their siblings) and raised by personnel who are paid to care for them and who usually work shifts
- Large numbers of unrelated children live together in the same building or compound
- The child does not have the opportunity to form a healthy emotional attachment to one or two primary care givers
- The setting is isolated from the broader community and is distinctly identifiable as being outside the broader community (by the use of high walls or fences, barbed wire, guards on the gate, provision of school on site, inter alia)
- Contact with the birth and extended family are not actively encouraged or supported and are at times discouraged
- Care is generally impersonal and the needs of the organisation come before the individual needs of the child
- This often leads to a range of neglectful behaviours on the part of personnel (eg. children are not fed sufficiently, babies are left in soiled nappies for long periods) and the use of restrictive or dangerous measures to control children’s behaviour (such as severe physical punishment, tying up children or the use of psychotropic drugs, inter alia).

Institutions for children include, but are not restricted to:

- Orphanages
- Any residential settings for babies and very young children
- Residential special schools
- Large children’s homes
- Centres for unaccompanied migrant/refugee children
- Social care homes (adults and children with disabilities housed together)
- Secure units
- Psychiatric wards
- Paediatric wards (long stay)
- Prisons.

¹¹ European Expert Group on the Transition from Institutional to Community-based Care. (2012). *Common European Guidelines on the Transition from Institutional to Community-based Care*. <http://www.deinstitutionalisationguide.eu/> [accessed 11 July 2016].

Ceasing EU funding for institutional care

In 2013, the European Union took a major step towards ending the institutionalisation of children with the introduction of an ex-ante conditionality on social inclusion (9: 9.1.) in the Regulation 1303/2013 on the European Structural and Investment Funds. The Investment priorities under this ex-ante conditionality include “...the transition from institutional to community-based services”. In effect with the adoption of the Regulation it is forbidden for the European Structural and Investment Funds to be used for the maintenance or renovation of existing and the construction of new large residential institutional settings.

Lumos contribution to the European Pillar on Social Rights

Lumos welcomes President Juncker’s decision to establish a European Pillar of Social Rights, announced in his State of the Union address in the European Parliament on 9 September 2015.¹² Lumos agrees with President Juncker, that the changing realities in Europe indeed need an instrument which to address them and to provide direction for the exercising of the social rights.

While Lumos entirely agrees that, “Modern social policy should rely on investment in human capital based on equal opportunities, the prevention of and protection against social risks, the existence of effective safety nets and incentives to access the labour market, so as to enable people to live a decent life, change personal and professional statuses over the lifetime and make the most of their talent”, we are convinced that the “investment in human capital”¹³ and the “social rights” should have wider scope than providing employment and training opportunities. Therefore Lumos particularly welcomes the suggested heading “Adequate and sustainable social protection, as well as access to high quality essential services, including childcare, healthcare and long-term care, to ensure dignified living and protection against risks, and to enable individuals to participate fully in employment and more generally in society.”¹⁴ Our position is that the incentives to access the labour employment should be combined with measures addressing the vulnerabilities in our societies and responding to them. Flexicurity could be the answer for parents of disabled children or of more than two children who struggle to combine employment with childcare. Flexible employment on its own right however will not be enough for enabling individuals to participate “more generally in society”. There should be a wide range of accessible, affordable, family and community-based, sustainable services to really enable equality and make societies truly inclusive.

Finally, while Lumos appreciates the inclusion of a section on Childcare, we consider the wording “quality and affordable childcare services” and “specific measures to encourage attendance of children with disadvantages backgrounds” too general and vague. We would appreciate more specific language, addressing the vulnerabilities a child could face (i.e. disabilities, being placed in an

¹² Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions (2016). *Launching a consultation on a European Pillar of Social Rights*. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0127&from=EN> [accessed 11 July 2016].

¹³ *Ibid.*

¹⁴ *Ibid.*

institution, poverty) and suggesting sufficient solutions (i.e. family and community-based services, inclusive education, accessibility).

We are providing more details in the below answers to the EC consultation on the European Pillar on Social Rights.

On reasons for different employment and social situations across Europe

Poverty, disabilities and lack of family support services are the main reasons for children being placed in institutions. Lack of awareness raising of the harm, caused by institutional care, in societies, lack of training among medical practitioners, who often advise mothers to leave their new born child with disabilities in institutional care, lack of understanding, that there are no “good” institutions and that their life-threatening impact is not related only to the material conditions but mainly to the so called institutional culture, concerns about the future of the buildings in which the institutions are placed are other major reasons for children being kept in large institutional settings. There might be a difference between the conditions in the institutional settings in different regions in Europe but the outcome is similar no matter the material base.

On scope for further EU action

The adoption of the ex-ante conditionality on social inclusion and its investment priority on the transition from institutional to community-based services in the Regulation 1303/2013 was a significant step towards securing better care and outcomes for children in Europe. The EU action now should focus on *ensuring that this existing legislation is implemented in a quality way*, which really leads to a meaningful change. These provisions found in the Regulations should be *maintained in the next programming period* to ensure sustainable impact and outcomes. It is our position that in the interest of achieving policy coherence and assuring that the EU meets its international human rights commitments, the same criteria should be applied to all the European Union funding sources worldwide, with connected goals and priorities, including the EU Neighbourhood Instrument (ENI), the European Development Fund (EDF), the Instrument for Pre-accession Assistance (IPA), humanitarian aid 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 by institutionalisation; they only thrive in a family environment, irrespective of where they live.

On the most transformative trends

Among the transformative trends highlighted by the Commission in the consultation, Lumos would highlight the following trends to be the most transformative for our modern societies:

- Demographic trends

- New ways of work
- Inequalities

Demographic trends

98,400 unaccompanied minors applied for asylum worldwide in 2015. This was the highest number on record since UNHCR started collecting such data in 2006. This was compared to 34,300 in 2014 and 25,300 in 2013.¹⁵ In border countries such as Bulgaria and Greece, the number of unaccompanied and separated children entering Europe is increasing. Many of these children end up in detention or in residential institutions, both of which are harmful to the child's wellbeing and which violate their rights. In January 2016, Europol estimated that at least 10,000 unaccompanied child refugees have disappeared after arriving in Europe. Many of these children are feared to have become victims of exploitation by organised trafficking syndicates and other criminal gangs.¹⁶ However, it is expected that this number is a vast underestimate.

The Social pillar should address this and support the provision of appropriate legal custody or guardianship for all unaccompanied minors, securing humane care conditions and avoiding detention at all cost. It should promote the development of foster care, while actively pursuing timely family reunification by investing in reunification programmes and responding rapidly when family members have been identified. It should provide all necessary aid to ensure that they are treated equally and fairly and have unconditional and non-derogatory access to all rights provided under the UN Convention on the Rights of the Child. The EU should ensure that its and the international legislation in this area are duly implemented and the institutional care is non-existent as an option.

New ways of working

Skills, education and lifelong learning are essential for transforming a system of care from an institutional to a community and family based one. Staff working in existing institutions can be retrained so that they can take the opportunity to work in these new services. The provision of flexible and secure labour contracts would enable parents of children with disabilities to be employed in a flexible manner which allows them to provide the necessary support to their child and prevent the child from being institutionalised. Poverty is among the main reasons for placing children with disabilities in institutions. Thus this would be a way of prevention of institutionalisation but also securing equal treatment and access to employment to parents.

¹⁵ The UN Refugee Agency (2015) *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 July 2016].

¹⁶ Townsend, M. (30th January 2016). 10,000 Refugee Children Are Missing, says Europol. *The Guardian*.

<https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees> [accessed 12 July 2016].

Levy Gale, S. (3rd May 2016). Refugee crisis: Nearly 90,000 unaccompanied children sought asylum in Europe in 2015. *The Independent*. <http://www.independent.co.uk/news/world/nearly-90000-unaccompanied-minors-sought-asylum-in-eu-in-2015-a7010976.html> [accessed 12 July 2016].

Inequalities

Access to healthcare and adequate sickness benefits is crucial for anyone but particularly for children with disabilities and their parents. Often parents place their children with multiple disabilities in institutions because they don't have access to or cannot afford the necessary treatment and rehabilitation. All children should be provided family or community-based care services. Services should be designed and provided in a way which supports families to keep or reintegrate their children (when left behind), while enjoying their right to employment and active social inclusion. This links to the access to essential services which provides for living standard, allowing families to stay together. Only then inequalities can be adequately addressed and resolved.

On existing good practices

The Common European Guidelines on the Transition from Institutional to Community Based Care,¹⁷ created by the European Expert Group on the Transition from Institutional to Family Based Care (EEG), of which Lumos is a founding member, explain the human rights, policy and legislative grounds of the process of deinstitutionalisation as well as its key elements. The EEG Toolkit on the Use of European Union Funds for the Transition from Institutional to Community Based Care¹⁸ advises on how the ESIF could be best used to support this process.

Detailed comments by domain

Childcare

The text should contain a reference to children in institutions, including the harm, caused by it, and the associated child protection concerns. We suggest the following to be added: "Measures shall be taken for all children in institutional care to be placed in family and community-based care in line with their best interest. It is an obligation of States to ensure no child is placed in institutional care" and "Special attention should be given to ensure that the right to family life of children with disabilities and those of different ethnic origin is respected. The legislative references should mention Article 23 of the UNCRC and the investment priority on "the transition from institutional to community-based services" under the ex-ante conditionality on social inclusion (9: 9.1.) in Regulation 1303/2013 on the ESIF. The EU should monitor better the implementation of the ex-ante conditionality on social inclusion in the Member States and strongly encourage them for the creation of deinstitutionalisation strategies and action plans. The EU should secure that none of its funding, including the external one and the loans, given by the European Investment Bank, go for institutional care for respecting the human rights and providing for coherence between its policies and legislation. The EU should add references and measures, linked to children in institutional settings and their transition to family and

¹⁷ European Expert Group on the Transition from Institutional to Community-based Care. (2012). *Common European Guidelines on the Transition from Institutional to Community-based Care*. <http://www.deinstitutionalisationguide.eu/> [accessed 11 July 2016].

¹⁸ *Ibid.*

community-based care in all relevant policy and legislative instruments, while raising awareness of their situation.

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