Lumos’ Recommendations
to the EU Action Plan on Human Rights and Democracy 2020-24

1. About Lumos
Lumos is an international NGO founded by author J.K. Rowling, working to end the institutionalisation of children worldwide by 2050. Lumos is a founding member of the European Expert Group on the Transition from Institutional to Community Based Care (EEG) and a member of the Children’s Rights Action Group (CRAG), and the EU Civil Society Platform against trafficking in human beings.

2. Institutionalisation of children

Millions of children worldwide live in residential institutions and so-called orphanages that deny their human rights and do not meet their needs. One million of these children are believed to live in the wider European region.

There are numerous definitions of what the term ‘institution’ means when referring to children. The Common European Guidelines on the Transition from Institutional to Community-based Care define institutions for children “as residential settings 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, rigidity of routine, block treatment, social distance, dependence, lack of accountability, etc.).”

---

1 Lumos Foundation (Lumos) is a company limited by guarantee registered in England and Wales number: 5611912 | Registered charity number: 1112575
2 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.
Over 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 may consequently suffer lifelong physical and psychological harm.\(^4\) Children who grow up in institutions can experience attachment disorders, cognitive and developmental delays, and a lack of social and life skills leading to multiple disadvantages during adulthood.\(^5\) Long-term effects of living in institutions can include severe developmental delays, disability, irreversible psychological damage, and increased rates of mental health difficulties, involvement in criminal behaviour, and suicide.\(^6\) Research consistently demonstrates that more than 80 per cent of children in institutions are not ‘orphans’,\(^7\) but are placed there due to reasons such as poverty, disability, marginalisation, a lack of family support services in the community and as a result of migration and trafficking. Children in institutions are often victims of trafficking: they are often placed there for profit motives;\(^8\) they are trafficked out of institutions into other forms of exploitations; they are placed in institutions after having been trafficked.\(^9\)

3. Deinstitutionalisation as a human right: International policy and legal framework

A number of international and EU policy and legal instruments declare that institutional settings are a breach of human rights. The United Nations Convention on the Rights of the Child (CRC), ratified by all EU Member States, 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.\(^10\) The CRC and the UN Guidelines for the Alternative Care of Children\(^11\) also call on States to ensure that families have access to services which support them in their caregiving role. The Convention on the Rights of Persons with Disabilities (UNCRPD),\(^12\) to which 27 Member States and the EU itself are signatories, states that children with disabilities should enjoy their human rights on an equal basis with other children (Art. 7.1), that their best interests must be taken into account (Art. 7.2) and that all persons with disabilities have the right to community living (Art. 19).
In addition, the updated “EU Guidelines for the Promotion and Protection of the Rights of the Child (2017)”\textsuperscript{13} highlight the importance of appropriate alternative care for children that allows them to participate in community life, of preventing family and child separation, and of taking into consideration the child’s best interests.\textsuperscript{14} They further recommend the need for greater coherence in the EU’s external action on children, including that carried out by Member States.\textsuperscript{15}

The European Parliament “Resolution on children rights in occasion of the 30th anniversary of the Convention on the Rights of the Child”\textsuperscript{16} (November 2019) calls on the Member States “to ensure that unnecessary family separation is prevented, and that family- and community-based services are strengthened to allow all children to grow up not in institutions but in families and communities” and on the Commission “to use EU funds to support the transition from institutional to community-based services, both inside and outside the EU”.\textsuperscript{17}

The UN Resolution on the Rights of the Child\textsuperscript{18} (December 2019) highlights that “where alternative care is necessary, family and community-based care should be promoted over placement in institutions”.\textsuperscript{19} Furthermore, it recalls “the importance of promoting and protecting the human rights and fundamental freedoms of all migrant children, regardless of their migration status, with the best interests of the child as a primary consideration”.\textsuperscript{20}

### 4. Ceasing the EU funding for institutional care

In 2013, the European Union acknowledged the harm of the practice of 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.\textsuperscript{21} The ex-ante conditionality includes measures which effectively prohibit the use of ESIF to maintain, renovate or construct residential institutions and encourages Member States that have not yet made the transition, to prioritise programmes that support the transition to community-based services.

The commitment to end the institutionalisation of children inside the EU has been reaffirmed in the Commission’s proposal for a Common Provision Regulation (CPR)\textsuperscript{22} and the proposal for an ESF+

\textsuperscript{14} Ibid, p. 21
\textsuperscript{15} Ibid, e.g. p. 13
\textsuperscript{17} P9_TA(2019)0066, para 43
\textsuperscript{19} Ibid, p. 14
\textsuperscript{20} Ibid, p. 10
\textsuperscript{21} Regulation (EU) 1303/2013, Article 9: 9.1
Regulation\textsuperscript{23} for the next programming period. Moreover, this commitment has been extended to the EU external action, by introducing, \textit{for the first time ever}, a reference to the transition from institutional to community-based care for children in the EC proposal for the Neighbourhood, Development and International Cooperation Instrument (NDICI).\textsuperscript{24}

5. \textbf{Lumos’ Recommendations to the EU Action Plan on Human Rights 2020-2024}


Following the EU’s and international acknowledgement of the harm caused by institutionalisation and commitment to supporting the shift from institutional to family- and community-based care, Lumos recommends that the next Action Plan:

1. \textbf{Addresses all children’s right to live with their families or, when this isn’t possible, in family or community-based care.} The EU and international policy and legislation in the past years, including the draft NDICI Regulation and the EP, and UN Resolutions on children rights, along with CRC and CRPD, highlight the importance of family and community-based care for child’s protection and wellbeing. Therefore, we would like to see the \textit{right to family care addressed in the Action Plan together with prioritising actions supporting the transition from institutional to family and community-based care}. This would also be aligned to the Action Plan policy objective of streamlining a coherent EU approach to human rights and democracy in the world.

2. \textbf{Acknowledges that the institutionalisation of children is a serious breach of human rights.} The Action Plan 2015-2019 puts a particular focus on ‘strengthening, child protection systems to protect children from violence, exploitation, abuse and neglect’ to which, in fact, children in institutions are exposed.\textsuperscript{25} Therefore, we would like to see an action, in the 2020-24 Plan, about \textit{supporting partner countries to move away from institutional forms of care and invest in supporting families and family- and community-based alternatives as well as a recommendation to include such measures in Human Rights Country Strategies}.

3. \textbf{Acknowledges the nexus between trafficking and institutionalisation of children.} Contemporary evidence from different country contexts demonstrates how orphanages are central participants in a web of modern slavery and trafficking of children.\textsuperscript{26} The demand for children to fill up orphanages around the world is fuelling the systematic recruitment of children into institutions – a pattern that is increasingly being recognised as trafficking. Therefore, we would like to see an \textit{action point about supporting partner countries to raise awareness of the link between trafficking and institutionalisation of children and to include measures on the shift to family and community-based care}}.

\textsuperscript{26} Lumos (2016) Orphanage Entrepreneurs: The Trafficking of Haiti’s Invisible Children
care in their strategies to fight trafficking in human beings. Furthermore, as unaccompanied migrant, asylum-seeking and refugee children, are often placed in shelters and other forms of institutional settings, we would like to see an action on the development of a long-term vision for family and community-based care for these children in partner countries.

Contact

Irina Papancheva
EU Advocacy and Campaigns Senior Advisor
e-mail: Irina.Papancheva@wearelumos.org
mob.: +32 499 24 74 61

Xheni Dani
EU Advocacy and Campaigns Advisor
e-mail: Xheni.dani@wearelumos.org
mob.: +32 497 41 90 98

http://wearelumos.org/