



November 2020

Lumos' recommendations to the Portuguese Presidency of the Council of the EU:

Support children to live in families globally

Introduction

Millions of children worldwide live in residential institutions – including so-called orphanages, residential special schools and migrant reception centres¹ – that expose them to a catalogue of human rights abuses and enhanced risk of violence, and which cannot meet their needs.²

Research consistently demonstrates that on average more than 80 per cent of children living in institutions are not 'orphans',³ but are placed there due to reasons such as poverty, disability, discrimination, a lack of family support services in the community and as a result of trafficking⁴ or migration.⁵

In addition, the COVID-19 pandemic and its socio-economic consequences are having a dramatic impact on vulnerable children in general as well as on their families and communities. Responses to the pandemic are compounding structural weaknesses in child protection and welfare systems and testing the capacity of vulnerable families to care for their children.⁶ Ultimately the number of children at risk of separation from their families, in need of additional support, or in alternative care is likely to increase.

Lumos welcomes the forthcoming Portuguese Presidency of the Council of the EU as an opportunity to build on the EU's leading role in supporting vulnerable children and driving the transition from institutional to family- and community-based care to further drive care reform for children globally, which is needed now more than ever.

¹ Desmond, C., et al. (2020) Prevalence and number of children living in institutional care: global, regional, and country estimates. *Lancet Child Adolescent Health*. VOLUME 4, ISSUE 5, P370-377. [https://doi.org/10.1016/S2352-4642\(20\)30022-5](https://doi.org/10.1016/S2352-4642(20)30022-5) [Accessed 24 June 2020]; Marinus H van Ijzendoorn, Bakermans-Kranenburg, J., et al. (2020) "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development", *The Lancet Psychiatry*, DOI: [https://doi.org/10.1016/S2215-0366\(19\)30399-2](https://doi.org/10.1016/S2215-0366(19)30399-2).

² Pinheiro, P., (2006) World Report on Violence against Children, UNICEF, New York, 2006.

³ Csáky, C. (2009) Keeping children out of harmful institutions: why we should be investing in family-based care, *Save the Children*, p. vii

⁴ Ibidem; Chiwaula, L. et al. (2014). Drumming together for change: A child's right to quality care in Sub-Saharan Africa. The Centre for Excellence for looked after children in Scotland (CELCIS).

⁵ Interagency Working Group on Unaccompanied and Separated Children (2017) Field Handbook on Unaccompanied and Separated Children <https://reliefweb.int/report/world/field-handbook-unaccompanied-and-separated-children> [Accessed 11 April 2019]

⁶ See: Covid-19: Call to action to protect vulnerable families and children in alternative care across Europe, https://lumos.contentfiles.net/media/documents/document/2020/08/Covid-19_European_CTA_v7.pdf.

The role of the Portuguese Presidency in promoting deinstitutionalisation of children

The priorities set by the trio of the Presidencies for the period 1 July 2020 – 31 December 2021 (Germany, Portugal and Slovenia) include a wide range of activities which could positively impact the EU's role in promoting deinstitutionalisation around the world. Lumos calls on the Portuguese EU Presidency to make the best use of these opportunities and build on the momentum that has been created, including by the Romanian Presidency, which has kept deinstitutionalisation high on the EU political agenda.

In the wake of the challenges brought by the COVID-19 pandemic focusing on the most vulnerable children, such as children in institutions and children deprived of parental care, becomes an even greater necessity. It is key that major steps undertaken by Member States and partner countries be supported strategically by the EU to avoid any risk of backtracking.

Throughout the next funding period, the EU has an opportunity to become a global leader in driving deinstitutionalisation by building on its internal achievements and promoting care reform in all its strategic actions and partnerships.

Hence, the Portuguese EU Presidency could play a key role in highlighting that institutionalisation of children is a human rights issue across all countries in Europe and beyond without exception, to be addressed through the transformation of economic and social policies. Below, Lumos proposes a series of recommendations for the Portuguese Presidency.

Recommendation 1: Ensure the full implementation of enabling condition 4.3 of the Common Provisions Regulation 2021-2027

The proposal for a Common Provisions Regulation (CPR) 2021-2027 contains an enabling condition 4.3 that requires the creation of a national strategic framework for poverty reduction and social inclusion, with one fulfilment criterion being that it includes “measures for the shift from institutional to community-based care”.

This criterion of fulfilment should not only be included in all national strategic frameworks aimed at improving social services, but a mechanism should be established to closely monitor the effective implementation of the measures. In particular, national progress in care reform and in the shift to community-based care should be monitored following specific criteria that take into consideration factors such as adequate funding and the creation of sufficient community-based services.

In order to successfully monitor the implementation of these conditions, civil society must remain a key partner and be continuously consulted and involved in the process.

Lumos calls on the Portuguese EU Presidency:

- To support effective monitoring and the full implementation of enabling conditions 4.3. of the Common Provisions Regulation 2021-2027 with a fulfilment criterion including “measures for the shift from institutional to community-based care”. This means that the Cohesion policy funds should not be used for activities that may lead to social exclusion or

segregation, including investments for the refurbishing, building, renovating, or extending of residential institutions for children. Instead, the funding should be repurposed to build a new childcare and child protection system and the retraining of staff. The Presidency should also encourage Member States to introduce indicators tracking the transition process, with relevant measures of success that include a focus on improvements in quality of life and outcomes for beneficiaries, not only the number of people included in programmes;

- To encourage Member States to develop comprehensive national deinstitutionalisation strategies, in line with the enabling condition 4.3. The strategies should focus on preventing unnecessary family separation, facilitating family reunification, ensuring the closure of institutions, and developing family- and community-based care and services;
- To promote partnership with civil society organisations to inform about cooperation in partner countries and to increase CSO capacity to perform their watchdog role and contributing with knowledge and expertise to the process of child protection and care reform.

Recommendation 2: Ensure the effective implementation of commitments towards deinstitutionalisation in the EU's external action

In order to ensure a consistent promotion of its values and a coherent approach towards the rights of the child, the EU must ensure that children's rights are also protected and promoted in external partner countries.

In particular, the starting point should be the Regulation establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI) 2021-2027, where the EU commitment to promoting the transition from institutions to family- and community-based services for children has been for the first time extended to its external action, as an area of cooperation both for the geographic instruments⁷ and the thematic programmes.⁸ Building on this important development, the EU should increase its efforts to transforming systems of care across the world and to ensure that all children can realise their right to live in a family.

The inclusion of the shift towards family and community-based care in the priorities of the EU Action Plan for Human rights and Democracy 2020-24 represents another concrete base for an enhanced action towards deinstitutionalisation of children globally.

⁷ European Commission (2018) Proposal for a Regulation COM (2018) 375 final of the European Parliament and the Council of 29.5.2018, 2018/0196 (COD), ANNEX IV: Thematic enabling conditions applicable to ERDF, ESF+ and the Cohesion Fund – Article 11(1), p. 28

⁸ European Commission (2018) Annexes to the Proposal for a Regulation COM (2018) 460 final of the European Parliament and of the Council of 14.6.2018, p. 12

Lumos calls on the Portuguese EU Presidency:

- To ensure that the commitments made towards the deinstitutionalisation of children globally, through instruments such as the NDICI 2021-2027 be implemented through the promotion of national care reform plans, enhanced child protection and social protection systems. Member States should be encouraged to assist partner countries in building and strengthening child protection systems;
- To ensure that funds allocated to promote deinstitutionalisation globally be used to promote the development of quality alternative care for children without parental care as outlined in the EU Action Plan on Human Rights and Democracy for the period of 2020-2024;
- To promote the elaboration of a set of Guidelines on the transition from institutional to family and community-based care to be used in the EU's external action.

Recommendation 3: Support a Council Recommendation on a European Child Guarantee and ensure that an adequate budget is linked to it

Almost 25 million children live in poverty or social exclusion across the European Union.⁹ At particularly higher risk of social exclusion, are children in vulnerable situations and disadvantaged groups such as children living in institutional care, children in migration, children with disabilities or Roma children.

As reported in the feasibility study on a Child Guarantee, “in Portugal, even though there was a clear decrease in the number of children in alternative care (by around 8% in 2017), the number of children placed in foster care fell in favour of residential care. The relative weight of family-based care decreased from 28.3% in 2006 to 3.1% in 2017 (Perista, 2019)”.¹⁰

Poverty is also a significant underlying factor that causes children to end up in institutions across the world.¹¹ Many parents struggle to provide food, housing, medicine and access to education for their children, and are led to believe that placing them in institutions is a positive choice that will provide them with a better future.

The EU has committed to supporting the eradication of child poverty by developing a Child Guarantee that ensures children in the most vulnerable situations have access to key social rights and social services. Lumos welcomes the prioritisation for a European Child Guarantee from the European Commission as announced by its President Ursula von der Leyen, the European Parliament and the interest from the Council of the EU.

⁹ European Agency for Fundamental Rights: Combating child poverty: an issue of fundamental rights (2018), p.3 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-combating-child-poverty_en.pdf

¹⁰ Lerch Véronique and Nordenmark Severinsson, Anna (2019), Feasibility Study for a Child Guarantee Target Group Discussion Paper on Children in Alternative Care, p. 24 https://www.fresnoconsulting.es/upload/24/59/FSCG_-_TG_paper_alternative_care_-_Final.pdf [accessed 1 September 2020]

¹¹ Williamson, J., and Greenberg, A. (2010), Families, not orphanages, Better Care Network working paper, p. 8.

Lumos calls on the Portuguese EU Presidency:

- To support a Council Recommendation on an EU framework for a European Child Guarantee that sets minimum targets for the EU in universal access to healthcare, education, housing, nutrition and childcare. It should include a particular focus on reducing social and territorial inequalities, such as segregated and deprived areas, and ensure equal access to non-segregated, quality and affordable services to vulnerable children, such as children in institutions or at risk of institutionalisation. Moreover, the Council Recommendation on a Child Guarantee should have a clear evidenced-based implementation plan which can be monitored. The robust monitoring mechanism should be linked to the European Semester process, the European Pillar of Social Rights and the social scoreboard poverty indicator;
- To ensure that the Council Recommendation on the Child Guarantee is properly financed by allocating both national and EU funds.

Recommendation 4: Protect migrant and refugee children from institutionalisation and ensure that they receive the same level of care as national children

Portugal will be leading the Council of the EU through a critical period and migration will remain high on the EU agenda in the years to come. The European Commission will start the implementation of the Action Plan on Integration and Inclusion, which is linked to the New Pact on Migration and Asylum. The main aim of the Action Plan is to protect the most vulnerable members of our society, including children. It is of utmost importance that the measures of the Action Plan deliver on the inclusion and integration of unaccompanied migrant, asylum-seeking and refugee children. Similarly, the reform of the Common European Asylum System legislative package should include specific provisions related to family- and community-based care ensuring that these solutions are granted as rights to all new arrivals.

Children on the move are particularly vulnerable to abuse, trafficking and institutionalisation.¹² Migrant and refugee children should be treated as children first, with their rights protected by the UNCR. This has already been acknowledged by the EU. The European Commission Toolkit on the use of EU funds for the integration of people with a migrant background (including AMIF) encourages Member States to place “unaccompanied children in family-based care, such as foster care, and according to the child’s individual needs”. Moreover, the recently adopted EP Resolution on the Rights of the Child calls on the EU and the Member States to step up action to end the detention of children in the context of migration across the EU, and to work out community-based alternatives to detention. While migrant and refugee children arriving on European soil should have their rights protected in the same way as European children, the reality has been very different. Children should not be detained for immigration related purposes, yet, unfortunately, many children are placed in detention facilities on arrival.¹³

¹² Missing Children Europe (n.d.) *Missing Children in Migration*, missingchildreneurope.eu/missingchildreninmigration [accessed 14 October 2020].

¹³ European Union Fundamental Rights Agency (2018) *Migration to the EU: five persistent challenges*. February 2018. <https://fra.europa.eu/en/publication/2018/five-persistent-migration-challenges> [accessed 07 Jan 2019]

Despite the EU's recognition of the harms of institutionalisation, it is alarming to observe institutional care facilities, which includes reception facilities, used for unaccompanied children in many EU Member States. Lumos' research, conducted in partnership with UNICEF, UNHCR and IOM, which assessed the forms of care provided to unaccompanied migrant, asylum-seeking and refugee children in six EU Member States, found that there is an over-reliance on institutional care provision.¹⁴ In addition, research points to unaccompanied children who go missing after having been placed in institutions before they have been registered by authorities, making them easy prey for traffickers.¹⁵ In many countries, children with a migrant background are over-represented in residential care.¹⁶ **Family- and community-based care has the potential to better meet unaccompanied migrant and refugee children's needs**, to help them integrate into the community and to help young people settle, thrive and explore life within and beyond the placement.¹⁷ Responses to children in migration should be integrated into national child protection systems, and provided in line with the UN Guidelines on Alternative Care. **The rights and care standards applied to unaccompanied and separated children in migration should be the same as those applied to all European children who live outside families.** While indeed "the external dimension should be approached by means of reinforcing partnerships with the countries of origin and transit"¹⁸, these partnerships should also include clauses for the adoption of national strategies for the reform of the alternative care systems, which prioritise family and community-based solutions.

Lumos calls on the Portuguese EU Presidency:

- To ensure that future EU funds directed towards unaccompanied migrant, asylum-seeking, refugee children be spent on the provision of family- and community-based care and not on segregated residential settings;
- To support measures addressing the situation of unaccompanied migrant and refugee children in the EU, making sure that their rights, including the right to family unity (i.e. family reunification), the right to education and the right to representation and participation, are safeguarded. They should be provided with the same access to alternative family and community-based care arrangements as national children, by integrating their care into national child protection systems.

Recommendation 5: Ensure that the EU does not promote volunteering placements in institutions for children

¹⁴ Lumos (2020) Rethinking Care: Improving Support for Unaccompanied Migrant, Asylum Seeking and Refugee in the European Union, www.wearelumos.org/resources/rethinking-care/ [accessed 09 April 2020]

¹⁵ Missing Children Europe (n.d.) "Missing unaccompanied migrant children" <http://missingchildreneurope.eu/Missingunaccompaniedchildren> [accessed 27 Jun 2017]

¹⁶ Lumos Foundation (2020), *Rethinking Care: Improving Support for Unaccompanied Migrant, Asylum-Seeking and Refugee Children in the European Union*, p. 66, https://lumos.contentfiles.net/media/documents/document/2020/08/UMRC_Report_2020_v3_NEW_BRAND_WEB.pdf [accessed 14 October 2020].

¹⁷ Nidos, SALAR, CHTB, (2015) Reception and Living in Families-Overview of family-based reception for unaccompanied minors in EU Member States. Available at: <http://www.scepnetwork.org/images/21/276.pdf> [accessed 04 Mar 2019]

¹⁸ General Secretariat of the Council (2020), Taking forward the Strategic Agenda 18-month Programme of the Council (1 July 2020 - 31 December 2021), p. 9, <https://data.consilium.europa.eu/doc/document/ST-8086-2020-INIT/en/pdf> [accessed 1 September 2020]

Evidence gathered over recent years shows that the practice of volunteering in institutions for short-term placements is harmful for children on a number of levels. Children need continuity of sensitive care. The constant turnover of volunteers, offering affection and care for a short period of time, means that children only receive pockets of affection, without consistent and stable support. This harms their ability to form secure attachments, essential to healthy development.¹⁹ Institutions may not undertake background checks on volunteers, nor have strong child protection systems in place to prevent, recognise and respond to abuse. As a result, some child sex abusers have used residential institutions to gain access to vulnerable children.²⁰ Even well-intentioned volunteers rarely have the specific skills, experience or qualifications needed to work with vulnerable children.²¹

In addition, the large sums of money associated with volunteering and the demand for volunteer placements in “orphanages” are also a driver of the above-mentioned phenomenon of trafficking children into institutions, unnecessarily removing them from their families and placing them in situations of potential harm, abuse and exploitation.²²

The recently established European Solidarity Corps, for which the new Regulation for the 2021-2027 period is currently being negotiated, provides an opportunity for raising awareness among young people about human rights, social inclusion and how to best achieve them in practice. Instead, encouraging young people to volunteer in institutions would effectively validate this harmful practice and normalise it in the eyes of the volunteers. As such, **placements in orphanages and other residential institutions for children should be ruled out from the scope of the European Solidarity Corps.**

It is also crucial to ensure that, in any placements where volunteers will be working with children, the appropriate safeguarding policies and procedures are in place, and volunteers do not have direct contact with children unless they have completed adequate child protection training and vetting procedures.

Lumos calls on the Portuguese EU Presidency:

- To ensure that during the implementation phase of European Solidarity Corps 2021-2027, placements of participants in orphanages or other residential institutions for children are not allowed, and that child protection and safeguarding measures are put in place for all placements involving children;
- To raise awareness of the harm and the risks linked to volunteering in institutions for children.

¹⁹ Better Care Network (2016) Orphanage Volunteering – Why to say no.

<http://bettercarenetwork.org/sites/default/files/Orphanage%20Volunteering%20%20Why%20to%20say%20no.pdf> [accessed 5 July 2017]. See also Lumos (2016) *Orphanage Entrepreneurs*. *Op. Cit.*

²⁰ Van Doore, K, Martin, F & McKeon, A (2016) *Expert Paper: International Volunteering and Child Sexual Abuse*, Better Care Network; Better Volunteering Better Care (2014) *Collected Viewpoints on International Volunteering in Residential Care Centres*

²¹ Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti’s Invisible Children*. *op. cit.* pp 17 – 25

²² Punaks, M & Feit, K (2014) *The Paradox of Orphanage Volunteering* *op. cit.* See also Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti’s Invisible Children*, *op. cit.*

Recommendation 6: Protect children from being trafficked

Global research and evidence consistently identify the linkages between trafficking and institutions for children – also referred to as “institution-related trafficking”. There are four key ways that this is realised²³:

- Children are recruited and trafficked into institutions, solely for the purpose of financial profit (“orphanage trafficking”²⁴), and other forms of exploitation;
- Children are trafficked from orphanages/institutions into other forms of exploitation;
- Child trafficking victims and unaccompanied children are often placed in institutions for “protection”, which can put them at risk of trafficking and re-trafficking;
- Care-leavers are more vulnerable to exploitation and trafficking.

In recent years, the phenomenon of ‘orphanage trafficking’ has become more widely recognised. Orphanage trafficking is generally defined as the trafficking of children from vulnerable families into residential institutions for the purpose of financial exploitation. In some cases, children are actively ‘recruited’ into orphanages, often using false promises of education and food.²⁵ Once inside the orphanages and other institutions, children can be further exploited, whether sexually or by being forced into labour such as begging on the streets and dancing for tourists to earn money, or through illegal adoption. Additionally, a lack of basic child protection procedures in many residential institutions creates an environment that can be taken advantage of by those with harmful intentions. Some ‘orphanages’ are profit-making ventures and exist to attract the lucrative international flows of volunteers, donations and other funding.

Furthermore, children in institutions 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 cycle for trafficked children and additional risks to their peers in institutions.²⁶

Lumos calls on the Portuguese EU Presidency:

- To recognise the risk of trafficking for children that are in institutional care, including the role of the EU and the Member States in preventing ‘orphanage trafficking’, and to ensure that this issue remains high on the agenda of discussions to combat trafficking of human beings, particularly children;
- To push for improved collaboration and information-sharing between child protection actors, law enforcement and the courts across EU Member States for children deprived of parental care, particularly for child victims of cross-border trafficking, unaccompanied children and those children found in need of protection in an EU Member State other than their own.

²³ Lumos (2020), Cracks in the system – Child trafficking in the context of institutional care in Europe, https://lumos.contentfiles.net/media/documents/document/2020/06/Lumos_Cracks_in_the_system_Report_Web_vlA1rq.pdf [accessed 13.07.2020]

²⁴ Joint Standing Committee on Foreign Affairs, Defence and Trade (2017). *Hidden in Plain Sight An inquiry into establishing a Modern Slavery Act in Australia*. Parliament of the Commonwealth of Australia. See also Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti’s Invisible Children* https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report_ENG_WEB_NOV16.pdf [accessed 31 March 2017]

²⁵ Doore, K.E.V. (2016). Paper orphans: Exploring child trafficking for the purposes of orphanages. *The International Journal of Children’s Rights*. Volume 24, Issue 2.

²⁶ European Commission: Report on the progress made in the fight against trafficking in human beings (2016) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52016SC0159>

Recommendation 7: Invest in and enhance quality, inclusive education and early childhood intervention strategies.

Across the world, a significant proportion of children live in residential special schools. Labelled as having special educational needs, children are arbitrarily separated from their families and sent to residential special schools which operate as institutions, and which are often far from their home, due to a lack of inclusive schools in the local community.²⁷ Research has shown that students with disabilities perform better when studying in a mainstream school than in a segregated or specialised environment.²⁸ The development of inclusive education, therefore, represents a key pillar of the deinstitutionalisation process, both in terms of policies and practices.

However, it is often the case that inclusive education strategies and deinstitutionalisation strategies are developed and implemented separately.²⁹ This results in fragmented and at times chaotic or inefficient reforms. A residential institution situated in a remote area can be kept open simply to ensure personnel remain employed. Lumos has seen examples of such buildings being transformed into ‘resource centres for inclusive education’ that are completely impractical because of their distance from any community that might need to access such a centre. Moreover, poorer countries might believe they do not have sufficient funds to provide inclusive education, while at the same time investing in expensive residential special schools.

Instead, where deinstitutionalisation and inclusive education are planned together, as numbers of children in institutions reduce, savings from residential institutions can be transferred across to fund community-based services, such as inclusive schools.³⁰

Lumos calls on the Portuguese EU Presidency:

- To support initiatives aimed at promoting and investing in inclusive education, taking into consideration the new challenges brought by COVID-19 and distance learning, which particularly affect the most vulnerable children. Member States should be encouraged to develop and promote new strategies and actions for the inclusion of students with disabilities and special educational needs and the hard-to-reach;
- To recognise and promote the need for early childhood intervention strategies and early childhood inclusive education as these can be effective measures to prevent institutionalisation and combat inequalities that may begin at birth.

Recommendation 8: Ensure that all children are counted in the data underpinning policy

A cornerstone principle of the 2030 Agenda is to *leave no one behind*. To ensure that this principle is implemented, it is crucial that the global monitoring framework includes mechanisms to assess the

²⁷ Georgette Mulheir (2012), op. cit., p. 130.

²⁸ Alquraini, T., & Dianne Gut, D. (2012), “Critical Components of Successful Inclusion of Students with Severe Disabilities: Literature Review”, *International Journal of Special Education* 27, 42-59.

²⁹ Lumos (2020), Transforming Care Systems Through EU External Action, <https://www.wearelumos.org/resources/transforming-care-systems-through-eu-external-action/> [accessed 19 August 2020].

³⁰ For an example of a successful programme of planning and implementing deinstitutionalisation and inclusive education together, please see: https://lumos.contentfiles.net/media/documents/document/2017/03/Ending_Institutionalisation_of_Children.pdf, pp4-8.

most vulnerable and hard to reach populations. There is very limited data about the world's most vulnerable children including those living in institutions, on the street, trafficked or separated from their families as a result of conflict, disaster, forced labour, or disability. The most recent global study published earlier this year estimated that around 5.4 million children live in institutions worldwide. However, one of the study's principal findings was the uncertainty regarding the number of children living in institutions in many countries, and the pressing need for improving data collection systems to ensure these children are not left behind.³¹

This kind of invisibility has real life repercussions for millions of children and can effectively hinder the achievement of the Sustainable Development Goals (SDGs).³² If these children are not included in the data, they are statistically invisible and at serious risk of being left behind. It is therefore crucial that the global monitoring framework includes mechanisms to assess the most vulnerable and hard-to-reach populations.³³

Furthermore, data disaggregation by care-giving setting/living arrangement is key to tracking progress for all children, particularly regarding SDGs 1, 3, 4, 8, 10 and 16. This is critical to a) analyse how trends differ between children living outside households and/or without family care and the general child population; and b) ensure that programmes and policies prioritise the most vulnerable children. To monitor governments' effectiveness in delivering on children's rights, 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.

When children are counted, they are more likely to be included in government programs which help to ensure they grow up healthy, safe, and better-prepared to contribute positively to their societies. This is recognised in the EU Guidelines for the Promotion and Protection of the Rights of the Child (2017) which underscore the importance of disaggregated data for effective policy making.³⁴ The need to address the data gap surrounding children outside families was highlighted in the 2019 UNGA Resolution on the Rights of the Child, sponsored by the European Union, which urges States to improve data collection, information management and reporting systems related to children without parental care in order to close existing data gaps and ensure that quality data guides policymaking.³⁵

³¹ Desmond C, Watt K, Saha A, Huang J, Lu C. Prevalence and number of children living in institutional care: global, regional, and country estimates. *Lancet Child Adolesc Health* 2020; published online March 6. [https://doi.org/10.1016/S2352-4642\(20\)30022-5](https://doi.org/10.1016/S2352-4642(20)30022-5)

³² 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."

³³ In 2017, UNHCR began to report on the number of unaccompanied and separated children in the refugee population from UNHCR refugee registers and in 2018 requested governments to do the same. In response, 53 countries reported a total of 111,000 unaccompanied and separated child refugees in 2018. This number increased to 153,300 in 2019. However, similar to UASC seeking asylum, many countries with large registered refugee populations do not report on unaccompanied and separated children in the population. [...] This finding shows how essential it is that data are collected to identify these children, protect and assist them.

³⁴ European Union (2017), Guidelines on the Promotion and Protection of the Rights of the Child, op. cit., p. 24

³⁵ United Nations (2019), Resolution adopted by the General Assembly on 18 December 2019. Rights of the Child, A/RES/74/133, p. 11

This is echoed in almost all concluding observations of states parties to the UNCRC, that there should be clearly disaggregated data specifically on children in alternative care.³⁶

Lumos calls on the Portuguese EU Presidency:

- To lead the European Union in making sure that children living outside households and/or without family care are represented in disaggregated data;
- To support the improvement of data collection methodologies internationally to ensure all children are represented. At EU level, it is crucial that Eurostat includes an indicator on children temporarily or permanently living outside households and families.

Background

Institutionalisation of children

There are numerous definitions of what the term ‘institution’³⁷ means when referring to children. The Common European Guidelines on the Transition from Institutional to Community-based Care define institutions as any residential setting where an ‘institutional culture’ prevails. Children living in an ‘institutional culture’ are isolated from the broader community and are compelled to live with children to whom they are not related. These children, and their families, do not have control over their lives, or decisions that affect them. Crucially, the requirements of the organisation tend to take precedence over the children’s individual needs.³⁸

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 life-long physical and psychological harm.³⁹ The greatest effects of institutionalisation on children are delayed physical growth (height and weight for age) and delayed brain and cognitive development.⁴⁰ Children growing up in institutions can also experience socioemotional development delays and mental health problems.⁴¹

³⁶ Lerch V., and Nordenmark Severinsson, A., (2019), *ibid*.

³⁷ 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.

³⁸ 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*, <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf> [accessed 14 October 2020].

³⁹ Berens & Nelson (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 16 September 2016]

⁴⁰ Marinus H van Ijzendoorn, Bakermans-Kranenburg, J., et al. (2020) “Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development”, *The Lancet Psychiatry*, DOI: [https://doi.org/10.1016/S2215-0366\(19\)30399-2](https://doi.org/10.1016/S2215-0366(19)30399-2).

⁴¹ *Ibidem*.

‘Deinstitutionalisation’ involves the transformation of services to ensure that children are able to live with their families, or in family-based or family-like care in the community. It typically entails strengthening child protection and care systems and ensuring universal access to education and healthcare. Fundamentally, it is about inclusion—making sure that the right support services are in place to enable all children to live with their families, in their communities.

International and EU policy and legal framework supporting deinstitutionalisation

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 (UNCRC)**, 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 (Art. 18). The **Convention on the Rights of Persons with Disabilities (UNCRPD)** and the **UN Guidelines for the Alternative Care of Children**⁴² also call on States to ensure that families have access to services which support them in their caregiving role.

The **UNCRPD**,⁴³ 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). Furthermore, the **UN Resolution on the Rights of the Child**, adopted in December 2019 and co-drafted by the EU, expresses a concern that millions of children continue to grow up deprived of parental care, states that family- and community-based care should be promoted over placement in institutions and urges States to take effective action to provide support to families and to *prevent the unnecessary separation of children from their parents, including through investment in social protection services and social services* (para 34). A global coalition of 256 organisations, networks, and agencies working at national, regional and international levels on children's care worked together to propose to Member States a set of Key Recommendations to be included in this resolution, to address key challenges and opportunities in implementing the rights of children without parental care.⁴⁴

The EU has recognised the harm caused by institutionalisation by introducing an ex-ante conditionality on social inclusion in the **European Structural and Investment Funds (ESIF) Regulations in the 2014-2020 programming period** with a dedicated investment priority on the transition from institutional to community-based care. By doing this, the EU has played a leading role in supporting vulnerable children and driving the transition from institutional to family- and community-based systems of care in a number of countries across Europe. This commitment has been further reaffirmed with the introduction of enabling condition 4.3. in the **draft Cohesion Policy Regulations for the 2021-2027 programming period**, and by identifying in the 2019 country reports deinstitutionalisation among the priorities for investments in Cohesion Policy Funding 2021–2027 (annex D). Moreover, the European Commission showed high political commitment for deinstitutionalisation globally by introducing a

⁴² United Nations (2009) Guidelines for the Alternative Care of Children (2009) A/RES/64/142 http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf [accessed 27 Jul 2017].

⁴³ 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).

⁴⁴ Key Recommendations for the 2019 UNGA Resolution on the Rights of the Child with a focus on children without parental care, <https://bettercarenetwork.org/library/social-welfare-systems/child-care-and-protection-policies/key-recommendations-for-the-2019-unga-resolution-on-the-rights-of-the-child-with-a-focus-on-children>

reference to the transition from institutional to community-based care for children **in its proposal for the Neighbourhood, Development and International Cooperation Instrument (NDICI)**.⁴⁵ This proposal is supported by the European Parliament and the Council and is therefore likely to be maintained in the final text.⁴⁶

In addition, the updated **EU Guidelines for the Promotion and Protection of the Rights of the Child (2017)** highlight the importance of appropriate alternative care for children that allows them to participate in community life, of preventing family and child separation,⁴⁷ and of taking into consideration the child's best interests.⁴⁸ They further recommend the need for greater coherence in the EU's external action on children, including that carried out by Member States.⁴⁹ Additionally, the **European Parliament Resolution on the Rights of the Child**, adopted in November 2019, also *highlights the importance of strengthening family- and community-based services* to allow all children to grow up not in institutions but in families and communities and of using EU funds to support the transition from institutional to community-based services, both inside and outside the EU.⁵⁰ Furthermore, the recently adopted **EU Action Plan on Human Rights and Democracy 2020-2024** prioritises the development of quality alternative care and the transition from institution-based to quality family- and community-based care for children without parental care.⁵¹

About Lumos

Lumos is an international NGO, founded by the author J.K. Rowling, fighting to tackle the causes of family separation and transform systems of care that take children away from their families and communities. We're committed to ending the institutionalisation of children, so every child enjoys the right to grow up in a loving family where they can thrive. Lumos is a founding member of the European Expert Group on the Transition from Institutional to Community Based Care (EEG), sits on the EU Civil Society Platform against trafficking in human beings, is a member of the Child Rights Action Group (CRAG) and of the EU Alliance for Investing in Children.

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⁴⁵ [Proposal for a regulation on the Neighbourhood, Development and International Cooperation Instrument, COM\(2018\) 460 final](#), Annex II and III

⁴⁶ [European Parliament Resolution on the proposal for a regulation on the Neighbourhood, Development and International Cooperation Instrument, T8-0298/2019](#), Amendment 337 and 481; [Council Partial mandate for negotiations 10305/19](#), Annex II and III

⁴⁷ European Union (2017), Guidelines on the Promotion and Protection of the Rights of the Child p.19. [accessed 06 Mar 2018]

⁴⁸ Ibid, p. 21

⁴⁹ Ibid, e.g. p. 13

⁵⁰ [P9_TA\(2019\)0066](#), para 43

⁵¹ Annex to the joint communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020-2024. JOIN(2020) 5final, p. 3.