

Lumos' recommendations to the European Commission's proposed New Pact on Migration and Asylum

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Millions of children around the world live in institutions that expose them to a catalogue of human rights abuses and enhanced risk of violence and cannot meet their needs. A number of international policy and legal instruments declare that institutional settings are a breach of human rights, including the Convention on the Rights of Persons with Disabilities (UNCRPD), to which all Member States and the European Union (EU) itself, are parties.

The EU has recognised the harm caused by institutionalisation and played a leading role in supporting vulnerable children by promoting the transition from institutional to family- and community-based systems of care (known also as deinstitutionalisation). For instance, European Structural and Investment Fund (ESIF) Regulations in the 2014-2020 period supported deinstitutionalisation. This commitment has been reaffirmed for the 2021-2027 period in the draft Cohesion Policy Regulations, but also the Neighborhood, Development and International Cooperation Instrument (NDICI). Furthermore, 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".

Unaccompanied migrant, asylum-seeking and refugee children

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.¹ Also in many Member States children with a migrant background are over-represented in residential care. For example, in Germany, out of the 95,582 children living in residential care, 46,088 are children with at least one parent of foreign origin. This accounts for almost half of the children in residential care.²

While positive examples of quality care were identified, the majority of unaccompanied children have been accommodated at some point within an institutional setting, and many remain in institutional care for extended periods of time. Institutions fail to meet many of the benchmarks of good alternative care; their structure and size prohibits individualised support, the centres are designed around the

¹ Lumos Foundation forthcoming report (2020) Rethinking Care: Improving Support for Unaccompanied Migrant, Asylum Seeking and Refugee in the European Union <https://www.wearelumos.org/resources/rethinking-care/>

² Véronique Lerch and Anna Nordenmark Severinsson: Feasibility Study for a Child Guarantee Target Group Discussion Paper on Children in Alternative Care, 2019, p. 23 file:///C:/Users/CharlotteBoetticher/Downloads/FSCG%20-%20TG%20paper%20alternative%20care%20-%20%20Final.pdf [accessed 16 Mar 2020]

needs of the institution, rather than the child, while inadequate supervision and overcrowding expose children to risk of harm or abuse and negatively impact their development and well-being.

Research points at unaccompanied children who go missing after having been placed in institutions before they have been registered by authorities, making them easy prey for traffickers.³

In contrast, family-based care and supported independent living are considered to be the most appropriate care arrangements for children, but they are under-utilised in response to unaccompanied migrant, asylum-seeking and refugee children.

It is also concerning that many migrant and asylum-seeking children are left to live on the streets outside any formal system of care, often due to a lack of capacity or adequate support in care facilities. Informal care options, which are unregulated and unsupervised, expose children to greater risk of abuse and harm. The prevalence of cases where children are not in suitable care arrangements shows a failure to fulfil the EU Reception Conditions Directive.⁴ The new Pact on Asylum and Migration must ensure that all children on the move are protected and provided with care which is regulated and monitored, with access to suitable complaints mechanisms.

The new Pact on Asylum and Migration is an opportunity for the European Commission to develop a new approach to care, ensuring that children on the move are integrated into national child protection systems from the moment of arrival in the EU, through the asylum process, and until they reach independence. The New Pact is also an opportunity for the EU to continue its leadership in the promotion of human rights, by using its external influence to ensure that children on the move globally are provided with care and protection which is appropriate to their needs and meets their best interests.

Recommendations

Lumos makes the following recommendations for the European Commission's proposed New Pact on Migration and Asylum:

- Ensure that the New Pact on Migration and Asylum considers the needs and best interests of unaccompanied migrant, asylum-seeking and refugee children, in line with the UN Convention on the Rights of the Child.
- Call on Member States to ensure that migrant and refugee children can exercise their right to family life and receive the same level of care as national children. This can be achieved by supporting measures that promote the integration of care for children on the move into

³ Missing Children Europe (n.d.) "Missing children in migration"

<https://missingchildreneurope.eu/Missingchildreninmigration> [accessed 27 Jun 2017]

⁴ The recast Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN> Art. 24(2): "unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed: (a) with adult relatives; (b) with a foster family; (c) in accommodation centres with special provisions for minors; (d) in other accommodation suitable for minors."

mainstream child protection systems, with the provision of family- and community-based alternative care.

- Encourage Member States to ensure a continuum of non-discriminatory care and protection along the journey, by providing the same quality of childcare and child protection procedures at national and cross-border levels and by working towards faster transposition and implementation of the child protection standards included in EU law, including the Common European Asylum System.
- Include measures in the New Pact to ensure that EU funds directed towards children on the move are spent on the provision of family- and community-based care and not on residential institutions. This includes funds for both EU internal and external action. EU funds should be used to strengthen the overall system of care and access to justice, avoiding the establishment of parallel systems and leading to the development of sustainable, long-term childcare systems that have the capacity to absorb newly arrived refugee and migrant children.
- Support measures and encourage Member States to end child detention for both unaccompanied children and migrant families with children. Keeping families apart for immigration reasons is indefensible – as is keeping children in detention.
- Support measures and encourage Member States to prevent the separation of all children with a migrant background from their families and facilitate family reunification as a priority when this is considered in the best interests of the child.
- Support the establishment of standardised migration-sensitive child protection indicators to allow for comparable data and regional monitoring of alternative care arrangements. Data collection and research on outcomes for children should also be considered to help identify, promote and scale up best practice models.
- Facilitate the identification, costing, sharing and learning from emerging promising practices across Member States, encouraging the scaling-up of successful models of quality alternative care systems for unaccompanied migrant, asylum-seeking and refugee children.

Background section

About Lumos

Lumos 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), sits on the EU Civil Society Platform against trafficking in human beings and is a member of the Child Rights Action Group (CRAG). You can find more information about our work on our website.⁵

⁵ www.wearelumos.org

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.⁶ One million of these children are believed to live in the wider European region.⁷

There are numerous definitions of what the term ‘institution’⁸ means when referring to children. A group of experts working on this issue for the European Commission determined that an institution is 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.⁹ Under this definition, many migrant reception centres and accommodation facilities can be regarded as institutions.

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.¹⁰ 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.¹¹ 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.¹²

Research consistently demonstrates that more than 80 per cent of children in institutions are not ‘orphans’,¹³ but are placed there due to reasons such as migration, poverty, disability, discrimination, a lack of family support services in the community and as a result of trafficking.¹⁴

⁶ 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.

⁷ Ceecis, U. (2011). End placing children under three years in institutions. UNICEF

⁸ 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.

⁹ European Commission (2009) Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care.

¹⁰ 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]

¹¹ Nelson, C., Zeanah, C., et al. (2007) “Cognitive recovery in socially deprived young children: The Bucharest early intervention project”. Science 318 (no.5858); 1937–1940 (21st December 2007)

¹² Mulheir, G. et al. (2012). Deinstitutionalisation – A Human Rights Priority for Children with Disabilities.

¹³ Csáky, C. (2009) Keeping children out of harmful institutions: why we should be investing in family-based care, Save the Children, p. vii

¹⁴ 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).

Finally, the ongoing COVID-19 pandemic is bringing particular challenges for people in institutional settings, which are often overcrowded and increase the risk to contract the virus and highlighting issues of unequal access to health services.¹⁵

International and EU 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.¹⁶ The CRC and the UN Guidelines for the Alternative Care of Children¹⁷ 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),¹⁸ 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).¹⁹

The EU has recognised the harm caused by institutionalisation by introducing an ex-ante conditionality 9.1 on social inclusion in the European Structural and Investment Funds 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 conditions in the draft Cohesion Policy Regulations for the 2021-2027 programming period, but also the Commission's proposal for a Regulation establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI) contains explicit reference to the transition from institutional to community-based care. Moreover, the recently

¹⁵ Coronavirus pandemic in the EU - Fundamental Rights Implications - Bulletin 1, p. 26 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin-1_en.pdf [accessed on 9 April 2020]; Better Care Network, The Alliance for Child Protection in Humanitarian Action, UNICEF & Inter-agency Task Force (2020) Technical Note on the Protection of Children during the COVID-19 Pandemic: Children and Alternative Care <https://bettercarenetwork.org/library/particular-threats-to-childrens-care-and-protection/covid-19/alternative-care-and-covid-19/technical-note-on-the-protection-of-children-during-the-covid-19-pandemic-children-and-alternative> [accessed 16 April 2020]

¹⁶ United Nations (1989) Convention on the Rights of the Child (Adopted 20 November 1989, entered into force 2 September 1990) Vol.1577, p.3.

¹⁷ 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].

¹⁸ 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).

¹⁹ 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>



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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.²⁰

Furthermore, 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”. This is in line with 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.

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²⁰ Annex to the joint communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020-2024. JOIN (2020) 5 final, p. 3.