

Lumos' submission to OHCHR for the thematic report on "ending immigration detention of children and seeking adequate reception and care for them".

April 2020

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.¹

Legislation or policies that prohibit or restrict the use of immigration detention of children and their families.

The Convention on the Rights of the Child (UNCRC), which is the most widely ratified international human rights treaty, states that "No child shall be deprived of his or her liberty unlawfully or arbitrarily."

Where children are accompanied, the UNCRC also establishes a basis for the use for alternatives to detention which promote family unity, with article 9.1 calling on state parties to ensure that a child is not separated from his or her parents against their will, except when such separation is necessary for the best interests of the child.

The Committee on the Rights of the Child, which monitors implementation of the UNCRC, clarified specifically that the use of immigration detention of children, both accompanied and unaccompanied, is prohibited. The Committee stated that; "The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status."²

Existing non-custodial alternatives to immigration detention of children (e.g. community-based reception solutions) and their effect on the protection of the rights of migrant children and their families.

Alternatives to detention which utilise institutional settings, such as large-scale reception and migration centres, also have a negative impact on children's health and wellbeing. Positive alternatives should aim to match, to the best extent possible, the child's needs, life situation and original social environment. This can only be done in the form of family- and community-based care which is centred around the needs and best interests of the child.

¹ www.wearelumos.org

² UN Committee on the Rights of the Child (CRC), *Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration*, 28 September 2012, available at: <https://www.refworld.org/docid/51efb6fa4.html>, paragraph 78

Over 80 years of research from across the world has demonstrated the significant harm caused to children in institutions.³ The prevalence of physical and sexual abuse in institutional care is higher than in other forms of care, even in countries where institutional care is better resourced with smaller facilities.⁴ Institutionalisation can lead to attachment disorders, cognitive and developmental delays, and a lack of social and life skills, limiting the life chances of children who grow up in institutions and leading to multiple disadvantages during adulthood.⁵ A study of children in immigration detention in the United Kingdom found that all children in the cohort self-reported symptoms of depression and anxiety and 40 percent had lost weight, whilst sleep problems and behavioural difficulties attributed to the experience of detention were also widespread.⁶ Institutions are not a suitable care option for any child, including unaccompanied migrant, asylum-seeking and refugee children.

In addition, attention must be paid to the risk of trafficking as unaccompanied children are more vulnerable to exploitation⁷. According to the US State Department Trafficking in Person report 2018: “The physical and psychological effects of staying in residential institutions, combined with societal isolation and often subpar regulatory oversight by governments, place these children in situations of heightened vulnerability to human trafficking.” It states: “Children in institutional care, including government-run facilities, can be easy targets for traffickers. Even at their best, residential institutions are unable to meet a child’s need for emotional support that is typically received from family members or consistent caretakers with whom the child can develop an attachment. Children are especially vulnerable when traffickers recognize and take advantage of this need for emotional bonding stemming from the absence of stable parental figures. In addition, the rigid schedules and social isolation of residential institutions offer traffickers a tactical advantage, as they can coerce children to leave and find ways to exploit them.”⁸

Concern for the individual needs of the child is especially pertinent in cases of children who have been identified as victims or are potential victims of trafficking. Large scale centres cannot provide sufficient individualised attention to recognise the risks of trafficking for each individual. Specialised care services, such as specialist foster care⁹, are recommended as a better protective environment for these children.

³ Berens, A.E. & Nelson, C.A. (2015). The science of early adversity: is there a role for large institutions in the care of vulnerable children? *The Lancet*. [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)61131-4/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)61131-4/abstract), p.2

⁴ Behal, N., Cusworth, L., Wade, J. et al. (2014). Keeping Children Safe: Allegations Concerning the Abuse or Neglect of Children in Care. www.york.ac.uk/inst/spru/research/pdf/Abuseincare.pdf; Euser, S., Alink, LR., Tharner, A., et al. (2014). The prevalence of child sexual abuse in out-of-home care: a comparison between abuse in residential and in foster care. *Child Maltreatment*.

⁵ 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) ; Csáky, C. (2009). Keeping children out of harmful institutions. London: Save the Children, available at www.resourcecentre.savethechildren.net/library/keeping-children-out-harmful-institutions-why-we-should-be-investing-family-based-care p7.; Delap, E. (2011). *Scaling Down: Reducing, Reshaping and Improving Residential Care Around the World. Positive Care Choices* cited in: Csáky, C. (2014) *Why Care Matters: The impact of care on children and on society*. Family for Every Child: London

⁶ Lorek, A., Ehntholt, K., Nesbitt, A., Wey, E., Githinji, C., Rossor, E. and Wickramasinghe, R. (2009). The mental and physical health difficulties of children held within a British immigration detention center: A pilot study. *Child Abuse & Neglect*, 33(9), pp.573-585.

⁷ UNODC 2019, Children on the move, smuggling and trafficking. www.unodc.org/e4j/en/tip-and-som/module-12/key-issues/children-on-the-move--smuggling-and-trafficking.html

⁸ US State Department, Trafficking in Persons report 2018. www.bettercarenetwork.org/sites/default/files/282798.pdf

⁹ ECPAT UK, www.ecpat.org.uk/news/dfc-training-for-foster-carers



Protecting Children. Providing Solutions.

Family and community-based care has the potential to better meet unaccompanied migrant, asylum-seeking and refugee children's needs based on individual considerations including age, gender and background, and to help them integrate into the community.¹⁰

For children in families, the efficacy of alternatives to detention (ATDs) for family units has been well documented, particularly in the US, where a number of case-management-based programmes have registered rates of compliance with immigration proceedings between 99-100%.¹¹ Such programmes have also proven cost effective, with daily per family costs equating to as little as 4% of the cost of family detention. Critically, community-based ATDs can offer better outcomes for at-risk children by avoiding the deleterious effects of prolonged detention and providing improved access to vital services, such as paediatric healthcare and schooling.¹²

Good practices or measures taken to protect the human rights of migrant children and their families while their migration status is being resolved.

A good practice example can be seen in Lumos' pilot project in the Shire camps in Tigray, Ethiopia (2018-2020). Working with the Ethiopian Administration for Refugee and Returnee Affairs (ARRA), UNHCR and implemented by Norwegian Refugee Council (NRC) and Innovative Humanitarian Solutions (IHS), this project placed unaccompanied children in temporary and long term foster families in the refugee camps, as an alternative to prolonged stays in the overcrowded Endabaguna Reception Centre or placement in a group care arrangement for unaccompanied children in the camps. Through 2019, 50 children were placed in temporary foster care, while family tracing and reunification or assessments for long term foster care were undertaken. A total of 224 children were placed in long term foster care through this initiative. This project is still early on in its implementation and as yet child outcomes have not been captured. However, the programme demonstrates that it is possible to provide alternatives to institutional care in refugee camp settings.

Examples of family-based alternative care within the community can also be seen in many European countries such as the UK, the Netherlands and Greece.

In Greece, Law 4538/2018 strengthened the legal provisions for the implementation of foster care for all children, including migrant, asylum-seeking and refugee children, with the introduction of professional foster carers. However, this model has not been widely operationalised. The non-governmental organisation METAdrasi has piloted a foster care programme specifically for unaccompanied refugee and migrant children, with funding from UNHCR and in close collaboration with the government authorities and the public prosecutor. Between 2015 and August 2018, they

¹⁰ Nidos, SALAR, CHTB, (2015) *Reception and Living in Families-Overview of family-based reception for unaccompanied minors in EU Member States*. www.scepnetwork.org/images/21/276.pdf

¹¹ See Women's Refugee Commission. (n.d.) "Backgrounder: Family Case Management Program." www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program [Accessed 13 Sept. 2018.]; Lutheran Immigration and Refugee Service (n.d.). Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services. [online] www.lirs.org/wp-content/uploads/2018/11/Family-Placement-Alternatives-Final-Report.pdf [Accessed 13 Dec. 2018].

¹² American Academy of Pediatrics, n.d. *Family Separation & Detention*. Available at: <<https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Pages/family-separation-and-detention.aspx>> [Accessed 14 April 2020]; American Immigration Lawyers Association (AILA), et al. (2015). *The Real Alternatives to Family Detention*. Available at: <https://www.womensrefugeecommission.org/images/zdocs/Real-Alternatives-to-Family-Detention.pdf> [Accessed 14 Apr 2020]; and Council of Europe Steering Committee for Human Rights (2018). *Legal and practical aspects of effective alternatives to detention in the context of migration*. P.48-50. Available at: <https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f> [Accessed 14 Apr 2020]

placed 63 children in foster care.¹³ METAdrasi conducts initial assessments of potential foster carers, social services then conducts a further psychosocial assessment of the carer before the public prosecutor approves the carer. METAdrasi's foster care team, comprising of social workers, psychologists and a lawyer, then conducts matching process to ensure the best match between the child and the carer. This is a positive example of foster care which is centred around the child's needs and best interests.

Supported Independent Living (SIL) is another good practice example which responds to the demographic of unaccompanied migrant and refugee children, who are often older adolescents. SIL is a form of small group care, which could be considered in the section above, but presents essential differences as related to the level of supervision. Specialised support is given to young people in SIL depending on their needs, but there is no 24-hour live-in supervision as in small-group homes. SIL can be a beneficial care option, in line with the best interests of older adolescents, where they can develop their independent living skills. Examples of SIL can be found in a number of European countries, including Italy¹⁴ and the Netherlands¹⁵.

However, while for many older children SIL may be the better option, some children may still benefit from the enhanced support and supervision provided in family-based care or small group homes. For this reason, it is important to ensure that comprehensive best interests' assessments are carried out to provide the right form of care and services for each individual child.

Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.

Challenges around monitoring of children and ensuring their compliance with immigration regulations are often used as justification for detention. However, with proper guardianship provision these obstacles can be overcome. Guardianship provision is essential to ensure children are provided with support through their asylum application process, amongst other processes, and means they are able to comply with requirements around reporting to authorities, and supported through a returns process without the use of immigration detention.

Guardians play a vital role in the protection of unaccompanied children, ensuring that their rights and needs are upheld and met, assuming legal capacity in the absence of a parent. The importance of guardianship is recognised in the UN Guidelines for Alternative Care of Children and by the Committee on the Rights of the Child.¹⁶ These frameworks highlight the obligation on states to appoint a guardian as soon as possible after the unaccompanied child is identified. Article 16 of the Anti-Trafficking Directive (2011/36/EU) prescribes that Member States must take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking.

¹³ <https://metadrasi.org/en/metadrasi/>

¹⁴ Forthcoming report (in 2019): *At A Crossroads: Unaccompanied And Separated Children In Their Transition To Adulthood In Italy*. Author: ISMU Foundation. Funders and Publishers: UNHCR, UNICEF and IOM; Joint Conference (2017) *Accordo tra il Governo, le Regioni e le Province autonome di Trento e Bolzano e gli enti locali sul documento recante Linee di indirizzo per l'accoglienza nei servizi residenziali per minori*, in Italian: [www.statoregioni.it/Documenti/DOC_061739_172%20\(P.%202%20ODG\)%2014dic2017.pdf](http://www.statoregioni.it/Documenti/DOC_061739_172%20(P.%202%20ODG)%2014dic2017.pdf)

¹⁵ Nidos Foundation www.nidos.nl/en/

¹⁶ UN Alternative Care Guidelines, paragraph 145; CRC (2005) *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, www.undocs.org/CRC/GC/2005/6; see also Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, www.refworld.org/docid/5a1293a24.html



Protecting Children. Providing Solutions.

According to the Fundamental Rights Agency: “Guardians are one of the most important features of a protection system for children who are deprived of their family environment or who cannot have their interests represented by their parents, as may be the case in situations of parental abuse or neglect.”¹⁷

Care and accommodation services for children in migration, especially unaccompanied children, should be integrated into national child protection services. Provision of alternative care, education and vocational services, health, etc should be integrated to ensure equal access for migrant and refugee children. At the same time, provisions such as translation and cultural mediation, should be made to ensure children are able to benefit from these services. Access to services is also one of the factors which will decrease the likelihood of children pursuing or being coerced into irregular onward movement.

Regular check in visits or contact from social workers and guardians is another method to keep track of children’s wellbeing. In the Shire camps pilot project, child protection officers from NRC and IHS conduct best interests’ assessments to determine a suitable placement for each individual. Social workers, who are also members of the refugee community, then monitor children’s placement in foster families, reporting and managing any safeguarding concerns and ensuring children’s needs are being met.

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¹⁷ Fundamental Rights Agency (2015) www.fra.europa.eu/sites/default/files/fra_uploads/fra-2014-guardianship-children_en.pdf