## **Lumos’ input on Draft General comment No. 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention**

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### **About Lumos**

Lumos an international NGO founded by author J.K. Rowling, fighting for every child’s right to a family by transforming care systems around the world. 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]](#footnote-2)

### **Comments on Draft General comment No. 5 (2020)**

#### Non-detention of all children

Lumos welcomes the proposed text of General comment No. 5 (2020), especially the strong stance upholding the principle of non-detention of children outlined in Art. IV, section D.

However, paragraph 89 states: *In situations where families with children cannot benefit from immediate alternatives to detention, immigration detention must be as short as possible and States must ensure that families remain united and enjoy their rights during detention.* This appears to contradict paragraph 48, which rightly identifies that *Even a short period of detention can constitute cruel, inhuman or degrading treatment, to their detriment*, and calls on states to *seek the early eradication of deprivation of liberty of migrant children.*

We encourage the Committee to amend paragraph 89 to ensure consistent messaging that detention of children is never acceptable, and alternatives should always be sought for both unaccompanied children and families with children. Children should never be separated from their families for the reason of detaining their parents, and children should never be detained alone or alongside their families.

#### Non-institutional alternatives to detention

Alternatives to detention for children should consider the best interests of the child. Therefore, these alternatives should be provided through family- and community-based care, and not through institutional facilities.

Research from across the world has shown the significant harm caused to children in institutions.[[2]](#footnote-3) 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.[[3]](#footnote-4) 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]](#footnote-5) Institutions are therefore not a suitable care option for any child, including children in migration.[[5]](#footnote-6) Family- and community-based care better meets the best interests of the child and is essential to ensure that children in migration are protected and their rights are upheld.[[6]](#footnote-7)

The UN Global Study on Children Deprived of Liberty highlights family-based care, such as foster care or kinship care, as the preferred option for unaccompanied children in migration.[[7]](#footnote-8) The Study notes that creating a relationship of trust between the carer or guardian and child, as well as a multi-disciplinary approach focused on engagement rather than immigration enforcement, provides the most effective protection from trafficking.[[8]](#footnote-9)

We encourage the Committee to include in this General Comment a statement that all alternatives to detention for unaccompanied children should be through family and community-based alternative care placements, in line with the best interests of the child, and not through institutions. This care should be integrated into national children protection systems, rather than creating a parallel system of care through the migration authorities. Family unity should also be preserved in all alternatives to detention for children who are with their families, unless this is determined to be against the best interests of the child.

### **Contact**

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1. www.wearelumos.org [↑](#footnote-ref-2)
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4. Behal, N., Cusworth, L., Wade, J. et al. (2014). Keeping Children Safe: Allegations Concerning the Abuse or Neglect of

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6. Lumos Foundation (2020) Rethinking Care: Improving Support for Unaccompanied Migrant, Asylum Seeking and Refugee in the European Union <https://www.wearelumos.org/resources/rethinking-care/> [↑](#footnote-ref-7)
7. Nowak, M (2019) The United Nations Global Study on Children Deprived of Liberty <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562> p. 482 [Accessed 9 October 2020] [↑](#footnote-ref-8)
8. Op. cit. p. 481 [↑](#footnote-ref-9)