**Submission for comments on DRAFT Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

*Written Submission by Lumos Foundation***

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1. **INTRODUCTION**
2. This submission to the Committee on the Rights of the Child (“CRC” or “The Committee”) has been prepared by the Lumos Foundation.
3. The Lumos Foundation (“Lumos”) is an international children’s charity, founded by J.K. Rowling, to end the institutionalisation of children around the world by 2050. Lumos works with international donors, governments and other partners, helping them to change policies, practice and redirect funds from orphanages to provide health, education and social services, so children can be raised in loving families in the community.
4. There are at least eight million children living in orphanages and other institutions across the world. More than 80% have at least one living parent. Children are commonly separated from their families because of poverty, discrimination, a lack of access to health and education services, or because of war, disaster and migration. Eighty years of research evidence proves that separating children from families and raising them in orphanages seriously harms their health, development and future life chances. Under international and regional human rights treaties, every child has the right to a family. This is explicit in the UN Convention on the Rights of the Child (1989): “The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Put simply, children need families to flourish, grow and develop.
5. Orphanages are unsafe and unfit for children and young people: violence, abuse, exploitation and neglect are widespread and commonplace.[[1]](#footnote-1) This includes extreme violence such as torture and rape, rates of abuse can be as high as 63%.[[2]](#footnote-2) There are a growing number of incidences of proactive and systematic exploitation of vulnerable children within the global institutional care sector that fit the definition of modern slavery. There are four key ways in which the issue of modern slavery interacts with institutionalisation:

	* Children are recruited and trafficked *into* orphanages / institutions, for the purposes of financial profit (‘orphanage trafficking’) and other forms of exploitation;
	* Children are trafficked *from* orphanages / institutions into other forms of exploitation and modern slavery (including sexual exploitation and forced labour, among others);
	* Child trafficking victims are placed in orphanages / institutions through ill-informed reintegration efforts that create a vicious cycle of re-trafficking;
	* Care-leavers are more vulnerable to exploitation and trafficking.
6. Institutions can leave children who are separated from their parents, other family members and communities prey to modern slavery because of the lack of care, attention, monitoring and government oversight. Given that children in institutions are often untracked and uncounted, they are more susceptible to exploitation. Unaccompanied and separated children, who are often placed in institutions, are particularly vulnerable to trafficking. The very existence of institutions therefore helps create the conditions within which modern slavery, in all its forms, can continue to thrive.
7. **KEY RECOMMENDATIONS**
8. The Committee should include the transfer of children from families into institutions for the purpose of profit and / or other forms of exploitation (including child sexual exploitation), as an offence covered by the OPSC. Lumos note that in this regard, whether the removal of the child is at the ‘agreement’ of caregivers or is forced, is legally irrelevant.
9. The Committee should recognise the specific vulnerability of children in institutions, in relation to their heightened risk of falling victim to the offences covered by the OPSC.
10. Attention should be given in the Guidelines to the prohibition of the ‘sale’ of children for the purpose of exploitation in orphanages – herein after referred to as ‘orphanage trafficking’.
11. The Committee should give special attention to ensuring that protection responses to children who are identified as victims of the offences covered by the OSPC do not include placements – temporary or otherwise – in orphanages or other institutions, in recognition that this is harmful to their health and wellbeing and renders them particularly vulnerable to (re)trafficking.
12. **GENERAL MEASURES OF IMPLEMENTATION**
13. Lumos notes the paramount importance of ensuring that the voices and experiences of young people are included in the drafting process of legislative and policy measures that affect them. We are encouraged that The Committee has highlighted this in paragraph 15 of the draft guidelines. Lumos would encourage the committee to ensure that institutional care leavers, and those who may have experience of ‘orphanage trafficking’, are included within the provision for those who are “vulnerable or in marginalised situations”.
14. **DATA COLLECTION**
15. Lumos supports The Committee’s call for States parties to develop and implement a comprehensive and systematic mechanism for data collection, analysis, monitoring and impact assessment, outlined in section III(B).
16. However, Lumos urges the Committee to include specific reference to the importance of gathering data on children who have been separated from their families, such as those living in institutions. This is in recognition that common data collection methods use ‘household based’ surveys, such as Demographic and Health Surveys (DHS) and Multiple Indicator Cluster Surveys (MICS) exclude by design those who live outside of households, which will include many children who have been separated from their families and are living in institutions.
17. It is vital that the obligation under the Sustainable Development Goals (SDGs) to “leave no one behind”[[3]](#footnote-3) is met by joining efforts cross-governmentally at national levels, and internationally, to enhance data collection methodologies so that children living outside family care are systematically included. If these children continue to go ‘uncounted’ their vulnerability to modern slavery practices will continue to grow, which includes offences covered by the OPSC.
18. **CHILD PROTECTION IN THE PRIVATE SECTOR**
19. Lumos highly supports the Committee’s encouragement that States parties pay increased attention to the role that the private sector can play in enhancing child protection policies and strategies, and to include these actors properly in the drafting and in the execution of such policies and strategies (Section III C, 24).
20. Lumos therefore recommends that the Committee encourages all States parties to implement specific guidance material to inform private sector entities of the issue of orphanage trafficking, child exploitation in orphanages and the harms of orphanage tourism / voluntourism. This should include indicators for understanding the potential impact of support for institutions – that it perpetuates an outdated model of care that is not in children’s best interests but that it can also render children more vulnerable to exploitation. It is important for this to stress that it is possible to redirect money, time and resources towards alternatives that create a better future for children and a more sustainable care system, and that child protection experts should always support and guide this process.
21. **TRAVEL AND TOURISM**
22. Lumos is supporting of the specific reference made by the Committee to the travel and tourism industry in relation to child protection (Section III C, 24). There is a growing understanding that the flow of international volunteers and tourists into orphanages compounds the issue of child institutionalisation and acts as a driver to the unnecessary and deceptive separation of children from their families – an opportunity for traffickers to *supply* children to feed the business model. Research demonstrates that this practice is more prolific in countries where there is a significant tourist or volunteering industry, with orphanages generally being set up in the main tourist areas.[[4]](#footnote-4)
23. There is also evidence of foreign nationals travelling to orphanages overseas with the specific intention of committing child sexual abuse. Lumos therefore supports section V(59) on sexual exploitation of children in travel and tourism, and the inclusion of this in offences covered by the OPSC, but recommend that the specific vulnerability of children in institutions is highlighted.
24. **SALE OF CHILDREN**
25. The Guidelines state that the “renumeration or any other consideration” is the core element of the sale of a child (V, 47). Lumos highly supports the inclusion of “the promise by the other person that the child will receive education or vocational training, or other kinds of offers for a better future”, as a form of ‘consideration’ under the OPSC. There is growing evidence that orphanages solicit ‘child finders’ to travel to local villages or communities – often those affected by war, natural disaster, poverty, or societal discrimination — who promise parents education, food security, safety, and healthcare for their children. This disturbing trend was recognised in the 2018 US Trafficking in Persons Report.[[5]](#footnote-5) Children can also be sold onwards or recruited from orphanages into various forms of exploitation, such as illegal adoption, sexual exploitation, child labour, servitude or organ harvesting.
26. The Guidelines state that the sale of children as defined in article 2 should be criminalised if a child is offered, delivered or accepted for the purposes of sexual exploitation and/or engaging a child in forced labour, amongst other factors. Lumos would like to highlight again that there is mounting evidence of orphanages either being central mechanisms or recruitment grounds in these types of child exploitation. Orphanages may be purposefully established to exploit vulnerable children in such ways, or can be established with good intentions but are unable to provide adequate protection to children against such forms of exploitation from staff, visitors or volunteers.
27. As highlighted in the introduction, both children living in orphanages and other institutions, and those who have left these forms of care for independent living, are especially vulnerable to being (re)trafficked into forms of exploitation that include sexual exploitation and forced labour.
28. Lumos therefore recommends that the Guidelines consider reference to orphanages and other institutions as central sites in the sale and exploitation of children – and the need for greater oversight and protection for children living outside of family care.
29. **DISSEMINATION AND AWARENESS RAISING**
30. Lumos supports the focus that the CRC places on the importance of dissemination and awareness-raising of the risk of sexual exploitation and abuse, and means of protection (Section III,F(d)). We agree that the education system is a key mechanism by which to disseminate age-appropriate material on such topics.
31. Lumos believes this goal could be bolstered by including the production of awareness-raising materials that enables the public – including young people in education but also businesses, faith-based groups and beyond – to be informed about the potential harms that well-intentioned action can have on vulnerable groups. This should be formulated in light of two misinformed actions below (paragraph 24), that inadvertently fuel child trafficking and exploitation of children.
32. Orphanage volunteering / tourism.The industry of volunteer tourism – or voluntourism - has seen rapid growth in recent years, with reports predicting an annual worth of $2 billion generated from the 10 million tourists seeking this type of experience.[[6]](#footnote-6) As outlined in indicator 1 of the Slavery Risk Factors above, there is a growing understanding that the flow of international volunteers and tourists into orphanages compounds the issue of child institutionalisation and acts as a driver to the unnecessary and deceptive separation of children from their families – an opportunity for traffickers to *supply* children to feed the business model. Research demonstrates that this practice is more prolific in countries where there is a significant tourist industry, with orphanages generally being set up in the main tourist areas.[[7]](#footnote-7) If the industry continues to grow with poor oversight and an acute lack of child protection measures, so too does the risk of the continued proliferation of orphanage trafficking on a global scale.

Philanthropic giving to orphanages.When individuals, private trusts and foundations, faith-groups and NGOs financially support orphanages, they inadvertently prop up a system which runs counter to efforts to develop services to support vulnerable children and families in the community and prevent family separation. For example, Lumos research traced philanthropic support to orphanages in Haiti exceeding $100 million in one year, which is more than 130 times the reported Haitian child protection agency’s annual budget.[[8]](#footnote-8) If this type of pattern continues in countries in the absence of effective ring-fencing of resources and re-direction of funds, then care reform becomes increasingly difficult to achieve.

1. If the public are made aware of these harms through effective educational materials and awareness raising campaigns, then their good intentions can be harnessed and redirected towards more sustainable community alternatives that will keep families together and protect vulnerable children from the many forms of exploitation, trafficking and abuse associated with orphanages and other institutions.
2. Lumos also supports the provisions outlined in Section F,29(C), which states that all persons, especially those caring for children, “have adequate knowledge of the different forms of sexual exploitation and abuse of children and of the means to detect them and identify victims, as well as of existing reporting mechanisms and how to use them whenever there is reasonable ground to believe that a child is a victim”. Lumos would like to highlight the importance of this in relation to the exploitation of children in orphanages. Orphanage personnel, law enforcement officials, social workers, and all others who come into contact with children in orphanages and other institutions, must be made aware of children’s heightened risk of experiencing all forms of violence and abuse, including sexual exploitation. Further, they must be equipped to recognise signs that a child has been trafficked into the facility, and be aware of children’s vulnerability to being trafficked from the facility. Lumos suggest that the CRC include this provision in the Guidelines, to ensure that those who are in the best position to protect this group of especially vulnerable children from exploitation and trafficking, are adequately trained to do so.
3. **CONCLUDING REMARKS**
4. The way that children are treated by national and local legal, social welfare, and justice systems is integral to the achievement of rule of law. If the systemic exploitation of children in orphanages, and the relationship between orphanages and trafficking, continues to go largely unrecognised and unaddressed legislatively on the global scale, then it will be impossible to achieve the global eradication of modern slavery and to create equal and inclusive societies.
5. Lumos recognises that the scope of the Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography is such that it should include children in orphanages and other institutions within its remit. In not doing so, this group of particular vulnerable children face the risk of being ignored in legislative measures that have the ability to protect them.
6. Lumos are ready and willing to support in any changes to the Draft Guidelines in relation to the recommendations made in this submission.
7. Further contact: Chloe Setter, Senior Advisor: Anti-Trafficking: chloe.setter@wearelumos.org

1. See for example Save the Children (2009), *Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care.* Available at [*https://www.savethechildren.org.uk/sites/default/files/docs/Keeping\_Children\_Out\_of\_Harmful\_Institutions\_Final\_20.11.09\_1.pdf*](https://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf)[accessed 12 July 2016]. [↑](#footnote-ref-1)
2. Alternative Report of Non-Governmental Organisations of Kazakhstan (2002). Available at www.crin.org/docs/resources/treaties/crc.33/ kazakhstan\_ngo\_report.pdf [accessed 12 July 2016]. [↑](#footnote-ref-2)
3. <https://sustainabledevelopment.un.org/index.php?page=view&type=20000&nr=576&menu=2993> [↑](#footnote-ref-3)
4. Punaks and Feit (2014). The Paradox of Orphanage Volunteering. <https://nextgenerationnepal.org/wp-content/uploads/2017/08/The-Paradox-of-Orphanage-Volunteering.pdf> [↑](#footnote-ref-4)
5. https://www.state.gov/documents/organization/282803.pdf, page 6. [↑](#footnote-ref-5)
6. Popham, G (2015) Boom in ‘Voluntourism’ Sparks Concerns Over Whether Industry is Doing Good, Reuters, 29 June 2015 <http://www.reuters.com/article/ustravel-volunteers-charities-idUSKCN0P91AX20150629> [↑](#footnote-ref-6)
7. Punaks and Feit (2014). The Paradox of Orphanage Volunteering. <https://nextgenerationnepal.org/wp-content/uploads/2017/08/The-Paradox-of-Orphanage-Volunteering.pdf> [↑](#footnote-ref-7)
8. Lumos (2017) Funding Haitian Orphanages at the Cost of Children’s Rights <https://lumos.contentfiles.net/media/documents/document/2018/01/Funding_Haiti_Orphanages_Report.pdf> [↑](#footnote-ref-8)