**Human Rights Council Advisory Committee**

**UNACCOMPANIED MIGRANT CHILDREN AND ADOLESCENTS AND HUMAN RIGHTS**

**Questionnaire**

*This questionnaire forms part of consultations undertaken by the Human Rights Council Advisory Committee with* ***civil society organizations*** *with a view to developing a research-based study on the global issue of unaccompanied migrant children and adolescents and human rights, pursuant to Human Rights Council resolution 29/12.*

**Caritas Austria - October 2015**

**Background**

In its resolution 29/12, the Human Rights Council requested the Advisory Committee to develop a research-based study on the global issue of unaccompanied migrant children and adolescents and human rights, in which it identifies areas, reasons and cases where this issue arises in the world, and the ways in which human rights are threatened and violated, and makes recommendations for the protection of human rights of members of this population, and to submit it to the Council at its thirty-third session for its consideration.

In this context, the Advisory Committee decided, at its fifteenth session held in August 2015, to establish a drafting group in charge of the preparation of this study.[[1]](#footnote-2) The drafting group will present a draft progress report at the sixteenth session of the Committee in February 2016, before its submission to the thirty-third session of the Council.

In its preparation of the study, the drafting group decided to seek the views and inputs of Member States of the United Nations, international and regional organizations (including UNICEF, IOM and OHCHR), relevant special procedures mandate holders and treaty bodies (such as the Special Rapporteur on the human rights of migrants and the Committee on the Rights of the Child), national human rights institutions, civil society organizations and other relevant stakeholders.

The drafting group elaborated the hereunder questionnaire in order to seek the views and inputs from civil society organizations. Respondents are advised to reply only to questions that are applicable to them, on the basis of their country’s situation (source, transit or destination country).

1. **General situation**

As the expertise of Caritas Austria focuses on the situation of unaccompanied minor asylum seeking children in Austria, the responses are driven by the situation of minors in an asylum procedure and do not cover all types of migration.

* 1. What is the situation of unaccompanied migrant children[[2]](#footnote-3) and adolescents in your country? Please provide available statistics and relevant information.

For statistics please see <http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/start.aspx>

The situation of unaccompanied minor asylum seekers in Austria is very difficult. At the moment over 1000 UMAs are stuck in mass-accommodation-centres for initial reception without adequate care and legal representation/guardianship. They are mostly exposed to age determination procedures, their rights in the Austrian asylum system are constantly challenged and the best interest of the child according to the Convention on the Rights of the Child is often not considered by authorities as a primary concern.

For more information on the general situation see also <http://www.emn.at/images/EMN_UAM-Study2014_AT_EMN_NCP_eng.pdf>

**1.2** What are the main causes that force or encourage children and adolescents into situations of unaccompanied migration?

1. Structural causes.
2. Immediate causes. [[3]](#footnote-4)

In 2014 most unaccompanied asylum seeking children originated from Afghanistan, Syria, or Somalia (see <http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/files/2014/Asylstatistik_Dezember_2014.pdf>), thus from countries where internal armed conflicts are going on. Most of the unaccompanied asylum seeking children from these countries fulfil the criteria for international protection (asylum for reasons as defined in the Geneva Convention or subsidiary protection). The causes that force most of the unaccompanied asylum seeking children in Austria are mixed (structural and immediate): For instance, the long-lasting internal armed conflicts which also have interreligious, political and interethnic aspects have in many cases destroyed or installed certain structures that are then, when certain immediate/individual circumstances add up, lacking/responsible for the actual migration.

Besides immediate risks for the children’s life and health a lack of educational opportunities and perspectives in their countries of origin play a role.

Some of the unaccompanied asylum seeking children in Austria have fled with their family but became separated on the way.

In some cases the unaccompanied asylum seeking children report that their families did not have the financial means to finance the escape/secondary migration (e.g. from a neighbouring country to the country of origin) of more family members and therefore become separated.

* 1. Based on your organization’s experience, what are the transit, reception and living conditions of unaccompanied migrant children and adolescents in your country?

Whether reception conditions for unaccompanied asylum seeking children are adequate largely depends on the region in Austria, by whom they are accommodated and cared for, and on the underlying contracts with the responsible authority.

Surely not adequate are the conditions in initial reception centres for dealing with the special needs of minors or fulfilling the obligations under the Recast Reception Conditions Directive (2013/33/EU). Various NGOs have however brought legal actions against the relevant authority (both civil and criminal) and these cases are pending.

Once the minors are allocated a place outside the reception centres the situation mostly improves, although waiting times are long (sometimes up to 3 months) due to waiting lists for age determination in initial reception centres and a lack of places in the regions.

Children are then mostly brought to specific children homes for unaccompanied minors. Here the level of care differs greatly between the individual homes. In the homes run by NGOs they are cared for by a team of social workers and carers. Language lessons are provided and school places organised. Medical or psychological care is initiated.

* 1. What are the main human rights violations faced by unaccompanied migrant children and adolescents in or from your country? Please give examples.

Some of the rights (under the Convention on the Rights of the Child) which are regularly violated in the case of unaccompanied minor asylum seeking children are: Best interest of the child, principle of non-discrimination, right to development, separation from parents/family reunification, respect for the views of the child, right to education. For the reasons please see the answer to question 3.2 below.

**2. Cross-cutting issues**

**2.1** In connection with article 12 of the Convention on the Rights of the Child, in your country or region, are there specific mechanisms or procedures to ensure that migrant children and adolescents’ views are heard and fully taken into account in all matters affecting them? If yes, please describe.

As described under point 3.2, unaccompanied minor asylum seeking children are either represented by a legal representative and/or a guardian during their asylum procedures, and the decision makers in procedures for international protection are mostly not specially trained as to how to question etc. a minor or as to child specific reasons for international protection. There are no specific mechanisms or procedures in place to ensure that the views of unaccompanied minor asylum seeking children are fully taken into account in all matters affecting them. Instead, it ultimately depends on the individual legal representative and/or guardian as well as the individual decision maker whether the child’s views are heard and fully taken into account.

**2.2** If your answer to question 2.1 is positive, what have unaccompanied children or adolescents expressed as their main reasons for migrating? And what did they describe as their reception and living conditions in transit and destination countries?

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**2.3** Based on your organization’s experience, do you think the human rights violations inflicted on unaccompanied migrant children and adolescents are motivated by gender considerations?

No, not deliberately. But inadequate reception conditions and discrimination compared to other children for whom the child and welfare authority are responsible as well as procedural shortcomings (see 3.2) may of course have particularly adverse effects on children in the light of gender considerations.

**2.4** In your country, what is the legal definition of a child / an adolescent?

The legal definition of a child/adolescent varies depending on the legal matter at question.

Generally, under the Austrian law majority is reached at 18. The UN Convention on the Rights of the Child’s definition is applicable (child = under 18), since it has been transposed to national law by the “Bundesverfassungsgesetz über die Rechte von Kindern” (Constitutional Law on the Rights of Children).

Furthermore, the distinction in under full age (under 14) and minor but over 14 (14-18) plays a role (criminal law, civil law, aliens/asylum law). In the aliens law (e.g. when it comes to detention of migrant children) the age of 16 might play a role.

In a civil law context a child is a person under 7 years.

**3. Laws, policies and coordination mechanisms**

**3.1** Do you consider that your country’s migration policies take into account the protection of the rights of migrant children and adolescents in general, and of unaccompanied migrant children and adolescents in particular? Is the migrant child/adolescent considered as a distinct right-holder by policy-makers? Are there any specific measures implemented to protect the rights of unaccompanied migrant children and adolescents? If yes, please provide details.

As far as unaccompanied or accompanied minor asylum seeking children are concerned the answer is No (see also 3.2 and 1.2 as to unaccompanied minor asylum seeking children). Policy makers do not sufficiently and generally consider minor asylum seeking children as distinct right-holders. The rights of unaccompanied minor asylum seeking children are to a certain degree and to a varying extent, often depending on their individual commitment, protected by the different players, e.g. by NGOs in involved in their accommodation/care/legal representation.

**3.2** What are the main challenges and barriers (legal, political, financial, administrative, economic, social and cultural) that impede the effective protection of unaccompanied migrant children and adolescents in your country/from your country?

* *Discrimination against unaccompanied asylum seeking children in comparison to other “unaccompanied” children (e.g. orphans or foster children):*

Although there are big regional differences, especially the reception conditions for unaccompanied asylum seeking children are often less favourable than those for other children for whom the child and welfare authorities are responsible. For instance, the amount of money for the organisations in charge of accommodating and caring for unaccompanied asylum seeking children is considerably lower than the amount provided for e.g. Austrian orphans. Apart from the money available the conditions in the homes for unaccompanied asylum seeking children are often less favourable (esp. at the beginning of the asylum procedure when the Federal Government is in charge), a smaller number of specialised staff, possibilities for leisure time activities etc. are available, access to education is restricted in some cases (esp. at the beginning of the asylum procedure when the Federal Government is in charge).

* *Guardian and legal representative in the asylum procedure:*

Contrary to recommendations by experts and the General Comment No. 6 (2005) by the Committee on the Rights of the Child, no legal guardian is appointed as soon as a child is identified as unaccompanied. During the first part of the asylum procedure (the admissibility procedure) only legal representatives for the asylum procedure are appointed (who are mostly not specialised on how and/or able due to the underlying circumstances to best protect the best interest of the child or other child specific rights). Later on, in the in merits procedure when unaccompanied asylum seeking children are allocated a certain child welfare authority in one of the nine provinces, unaccompanied asylum seeking children normally have a guardian (the competent child welfare authority) but often not a separate (specialised) legal representative for the asylum procedure.

* *Right to education:*

Especially when unaccompanied asylum seeking children reach an age where schooling is not compulsory any more (over 15 and/or 9 years of school completed) practical obstacles to the right to education arise in some case, especially as to apprenticeships (for which getting a working permit can be a problem). Many unaccompanied asylum seeking children in reception centres run by the Federal Government to not have access to education at all or in a very restricted way.

* *Certain aspects of the procedure for international protection itself:*

Decision makers in the Austrian asylum system only rarely conduct interrogations which are appropriate for children and are mostly not specially trained in that respect or child specific reasons for international protection. The best interest of the child is often not respected or only superficially examined within procedures for international protection.

The procedures for age assessment are used too often (instead of alternatives) and the procedure itself is criticised for various reasons (reliability, adverse medical effects, right to an effective remedy/fair trial etc.). At the same time, many minors come from countries with little or no reliable documentation systems and therefore do not have any evidence for the age they put forward. There is no separate legal remedy against the procedural order declaring unaccompanied minor asylum seeking children adult (it can only be challenged much later together with the decision on the application for international protection). Still (besides other drawbacks), they often have to leave the facility for unaccompanied minor asylum seeking children and move to a reception facility for adults and they immediately lose their legal representative as soon as declared 18.

Procedures for international protection are too long especially for unaccompanied asylum seeking children.

* *Family reunification:*

Family reunification is often made impossible: Family reunification under the Asylum Act is only possible as long as under 18 and for beneficiaries of subsidiary protection only after one year when the status has been extended for the first time. In practice, asylum procedures or the procedure to extend the subsidiary protection status are sometimes only finished after the 18th birthday. Some practitioners have reported that the status for of subsidiary protection is withdrawn or “threatened” to do be withdrawn if parents of unaccompanied asylum seeking children apply for family reunification. The definition of family members eligible for reunification (parents of minor children or legal representatives insofar as such legally relevant relationship already existed in the country of origin) is, in some cases, too narrow in the light of the best interest of the child/right to family reunification/both parents/right to family life.

**3.3** As a civil society organization, do you participate and collaborate with governmental and other organizations to elaborate effective measures to protect the rights of migrant children and adolescents, and monitor and evaluate their implementation?

Caritas Austria is actively involved in advocacy with governmental organisations focusing on the rights of migrant children, especially of unaccompanied asylum seeking children. Collaboration as to effective measures to protect the rights of migrant children is in place where a diocese of Caritas (e.g. Caritas Vienna, Caritas Graz, Caritas Vorarlberg) has been mandated by the responsible Provincial (or Federal) Government to accommodate, care and partly legally represent unaccompanied asylum seeking children. In these cases mostly a close cooperation with the competent child and welfare authority is in place. Furthermore Caritas regularly provides decision makers with specific recommendations as to how the protection of the rights of unaccompanied asylum seeking children could be improved.

**3.4** Do you think there is an effective collaboration between countries in your region to guarantee the promotion, protection, respect and fulfilment of the rights of unaccompanied migrant children and adolescents? Please explain your answer.

As to unaccompanied asylum seeking children there are various forms of collaborations with different actors. Especially when it comes to family reunification (under the Dublin III regulation) there is collaboration on a case to case basis. The effectiveness of these collaborations varies and is, in many cases, quiet complicated/time consuming (due to the underlying legal framework).

**4. Others:**

**4.1** What is the role of your organization in the protection of unaccompanied migrant children and adolescents?

See 3.3.

**4.2** Please provide examples of best practices with regard to issues related to unaccompanied migrant children and adolescents.

Special homes for unaccompanied minor asylum seeking children partly linked to a legal representation in the asylum procedure and offering social, education etc. services run i.e. by Caritas Vienna (see <https://www.caritas-wien.at/hilfe-angebote/asyl-integration/wohnen/unbegleitete-minderjaehrige-fluechtlinge/>) or Caritas Graz (see <https://www.caritas-steiermark.at/hilfe-angebote/migrantinnen-fluechtlinge/unterbringung/quartiere-fuer-unbegleitete-minderjaehrige-fluechtlinge-welcome/> and <https://www.caritas-steiermark.at/hilfe-angebote/migrantinnen-fluechtlinge/beratung-betreuung/rechtsberatung/fuer-unbegleitete-minderjaehrige-asylwerberinnen/>).

[Subject line: HRC AC unaccompanied migrant children and adolescents]

Thank you in advance for your contribution.

For more information about the Advisory Committee, please visit <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

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1. A/HRC/AC/15/L.2 [↑](#footnote-ref-2)
2. According to CRC General Comment No.6 (2005), “Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. [↑](#footnote-ref-3)
3. Structural and immediate causes are defined as follows: The structural causes are those depending on a system already installed. In the case of migration, this could be the control of production and distribution of national resources, social norms or social organization.

   The immediate causes or direct causes are actions, events, flaw, or forces that are the immediate, initiating, or primary agent which leads to, or allows an action, event, or state to happen. One can refer to: beliefs, behaviours, practices, access to services and people's capabilities. [↑](#footnote-ref-4)