**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.*

**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-1) 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**

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

Unaccompanied minors in Germany are received first of all as minors not as refugees. Since a change of legislation that came into force in 2004 there are received in the general German Youth Welfare System. In 2014 the official federal statistic counted around 12.000 taken into care.

Since in 2015 more refugees came to Germany than expected due to the world wide situation an emergency care was installed in a lot of federal states/ districts of federal states. Therefore, the unaccompanied minors weren’t counted anymore and the standards of accommodation are declining.

There is currently a questionnaire given to the federal state to provide new data – deadline Oct. 30 2015.

Right now there are only approximates given. The approximate numbers of unaccompanied minor refugees is considered to around 25.000 in total.

**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-3)

The main countries of origin are Eritrea, Syria, Afghanistan and Somalia. In Eritrea the main reason known in Germany for minors to flee without parents is the situation of the forced military service in Eritrea.

As for the other countries there are several reasons known. Partly the family was separated during the flight. Partly there was not enough money for the entire family to flee and the minors are considered to be at risk, so they are send to safety. Other reasons are fleeing from the family itself being part of the recruiting system for the military (i .e. .Afghan minors living in Iran are “sold” by their families to serve in the Iranian military).

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

Unaccompanied minors are received and cared for by the Youth Welfare System. This is provided by law. Therefore there should be a difference in treatment to non – migrant children without parents. However the implementation of youth welfare standards have differed in the past depending mainly on the financial as well as personal resources of the local youth welfare office. Not all youth welfare office in all federal states did have unaccompanied minors. There were mainly received either by youth welfare offices in the border areas or close to airports and harbours, reducing the reception to some federal states (“Bundesländer”).

Some youth welfare offices have been very concerned to have an equal protection systems, other weren’t. It was not a legal but a factual difference in treatment.

But due to a change of law coming into force November 1 2015 there will be a special provision on reception of unaccompanied minor refugees provided by law.

By November 1 2015 unaccompanied minors will not be staying and cared for by the local youth welfare office of arrival, but will be distributed nationwide to other Youth Welfare Office in other federal states. The intention is to create a system of “burden sharing” between the federal states.

The distribution system is part of a youth welfare proceeding and is meant to keep up the youth welfare standards for unaccompanied minor refugees. But due to the federal system in Germany every federal state will have its own implementation of the new law. There are no common standards on child welfare within the so called distribution proceeding.

Some federal states such as Bavaria already proclaimed to create a secondary/ lower standard for unaccompanied minor refugees.

Furthermore the new law does not provide for a legal representative for the concerned minors within the distribution proceeding, so participation and interest representation is not guaranteed.

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

Unaccompanied minors are not always provided with a guardian therefore they can neither participate through a legal representatives in important legal proceedings, I .e. applying for asylum, nor do they have a person representing their interests towards authorities i. e. the youth welfare authority in case of wrong or insufficient assistance . The problem has existed in the past but due to the new law coming into force November 1 2015 it will increase – see above

**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.

The Youth Welfare Law does have certain legal norms on how to secure minors participation within the youth housing/ accomodation, see § 8 SGB VIII.

Since unaccompanied minor refugees are supposed to receive the same treatment as all other minors, this does also apply to them.

This is however with the exception of the new distribution system coming into force November 1 2015.

**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?

See answer to question 1.2.

**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 experience. But only very few (8%) girls are arriving unaccompanied in Germany.

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

See § 7 SGB VIII:

A child is a person under the age of 14 years

An adolescence is a person between 14 and 18

A young adult is a person between 18 and 27

Age of majority: 18 years

Age where the law provides special legal norms of protection even so the person is an adult:

18 – 21 is considered as a possible “age of transit” – so special legal norms in I .e. criminal law apply.

Within this transit age person may receive special assistance to “grow up” depending on their stage of “development”.

**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.

See answer to question 1.3

**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?

There are no common nationwide standards on child protection and participation for unaccompanied minor refugees. Every state sometime even every district creates its own system.

**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?

Yes – we do

**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.

To our knowledge there is cooperation much more on the regional and not on the country level that highly depends on the actors on both sides of the borders (police, youth welfare authorities, alien authorities)

**4. Others:**

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

Lobbying, training and advising the actors especially within the youth welfare system and political stakeholders dealing with unaccompanied minor

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

In the federal state Bavaria all refugees up to the age of 25 have the right to go to school – but depending from the country they are coming from.

**Deadline for submission of responses to the questionnaire:**

All parties are encouraged to submit their responses via email or fax as soon as possible but no later than **30 october 2015** to:

[**hrcadvisorycommittee@ohchr.org**](mailto:hrcadvisorycommittee@ohchr.org)[Subject line: HRC AC unaccompanied migrant children and adolescents]

or

Secretariat of the Human Rights Council Advisory Committee

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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-1)
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-2)
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-3)