**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* ***States*** *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-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 of States. 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-3) and adolescents in your country? Please provide available statistics and relevant information.

In 2012, a total of 1,574 asylum applications were made by unaccompanied minors, 84 of which were made by unaccompanied minors below the age of 14 years. In 2013, **999 asylum applications** were made altogether by **unaccompanied minors**, 67 of which were made by unaccompanied minors below the age of 14 years, which is a **decline of** **37% compared with 2012**.

In **2014,** until the end of December**, 1,976 unaccompanied minors** applied for asylum, 119 of them minors below the age of 14 years. From **January to September 2015,** **6,171 unaccompanied minors** applied for asylum, 404 of them minors below the age of 14 years.

Asylum applications of unaccompanied minors from 2004 until 30.09.2015



**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 response, reference is made to the statistical composition of unaccompanied minors by nationality, according to which situational causes seem to be relevant (war, political instability).

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| --- | --- | --- | --- | --- | --- |
| **Rank** | **01.01. – 30.09.2015** | **below 14 years** | **below 18 years** | **Total:** | **% of total** |
| **1** | **Afghanistan** | 211 | 3,801 | 4,012 | 65.01% |
| **2** | **Syria** | 110 | 724 | 834 | 13.51% |
| **3** | **Iraq** | 47 | 237 | 284 | 4.60% |
| **4** | **Somalia** | 2 | 206 | 208 | 3.37% |
| **5** | **Pakistan** | 2 | 201 | 203 | 3.29% |
|   | *Top 5 Total:* | *372* | *5,169* | *5,541* | 89.79% |
|  | **Total:** | **404** | **5,767** | **6,171** | **100.00%** |

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

Unaccompanied minors who apply for asylum in Austria are admitted to the basic services programme [“Grundversorgung”] and immediately receive legal representation, which is first performed by the legal advisor at the Initial Reception Centre and, subsequently, by the Province Youth Offices.

At the beginning of October 2015, about **4,400 unaccompanied minors were supported and taken care of within the framework of the basic services programme**, 97% of them in organised accommodations and 3% in private homes. Only 4.3% of all unaccompanied minors in care are female.

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

There are no reports about human rights violations of unaccompanied minors in Austria.

**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.

Pursuant to section 10 (3) BFA-VG[[4]](#footnote-5), a minor aged between 14 and 18 years whose interests cannot be protected by a legal representative can make an asylum application and perform procedural acts in his/her interest.

Up to admission to the asylum procedure the legal advisor (section 49 BFA-VG) acts as legal representative and after admission and assignment to a Province Support Centre the Youth Office having local jurisdiction will take over. Asylum procedures of unaccompanied minors, however, require special accurateness in terms of conducting the procedure appropriately to the age and safeguarding the procedural guarantees. For example, the interview must always take place in the presence of the legal representative. Generally, when dealing with minors, the procedure needs to be conducted in a way that is suitable to the minor’s age and questions shall be adapted to reflect the minor’s intellectual development and maturity; also, breaks shall be made more frequently. In addition, depending on the circumstances, further procedural steps may be required, such as age assessment.

**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?

No statistics are kept in this regard. In general, the descriptions of the unaccompanied minors refer to the living conditions in their countries of origin.

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

See above 1.4.

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

Pursuant to section 9 Allgemeines Verwaltungsverfahrensgesetz (AVG = General Administrative Procedures Act), the authority shall assess this question according to the provisions of civil law that differentiates between minors below the age of 14 years and minors aged between 14 and 18 years pursuant to section 21 (2) ABGB (= General Civil Code). This classification also applies to asylum and immigration procedures pursuant to section 10 BFA-VG.

In Article 1 of the UN Convention on the Rights of the Child ratified in Austria a child is assumed to be below the age of eighteen 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? Are there any specific measures implemented to protect the rights of unaccompanied migrant children and adolescents? If yes, please provide details.

See above. In addition, in compliance with the directive on reception of asylum seekers, **pursuant to Article 7 of the Basic Provision Agreement (GVV)** between the State and the Provinces, provision is made for unaccompanied minors in special support facilities to an extent exceeding the basic services programme (e.g. special accommodations, measures for initial evaluation and stabilisation, socio-pedagogical and psychological support if needed, etc.).

**3.2** In your country, are there specialized authorities/personnel/services trained to specifically deal with migrant children and adolescents (such as migration or border officers, psychosocial support, etc.)?

Yes. The case owners of the Federal Office for Immigration and Asylum (BFA) rely on special directives and work instructions that contain binding standards for dealing with minors during the initial interview and further interviews, for tracing the families of unaccompanied minors in the country of origin as well as for age assessment and care and control. They are trained in specific training modules for decision makers by internal and external trainers (experts from child and youth psychology and/or forensic psychology).

In this respect, it is possible to say that the asylum procedures of unaccompanied minors are “prioritised”. In 2011, the UBAUM I project (UBAUM = support of the authority in asylum procedures of unaccompanied minors) was carried out together with UNHCR to develop **comprehensive, uniform, binding standards for** **procedures involving unaccompanied minors** in order to be able to consider the particular needs of minors. The results become part of the training system, which is to enhance decision security. In 2012, the UBAUM II project followed, expanding the standards developed in the course of UBAUM I. A child-oriented information brochure was compiled, which does not only give legal information about the asylum procedure in child-friendly language and layout but also about other offerings, such as return counselling, Dublin counselling and family tracing, etc.

**3.3** 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?

Currently, the biggest challenge is the greatly increased number of unaccompanied minors seeking asylum, which has led to resource and capacity constraints.

**3.4** Are there in your country coordination mechanisms to ensure that all relevant stakeholders effectively collaborate to elaborate effective measures to protect the rights of migrant children and adolescents, and monitor and evaluate their implementation?

For this purpose a State-Province Coordination Council pursuant to Article 5 GVV exists, which meets several times a year.

**3.5** How do you collaborate with other countries in your region to guarantee the promotion, protection, respect and fulfilment of the rights of unaccompanied migrant children and adolescents during the various phases of their migration processes (departure, journey, stay in transit and reception countries, return to country of origin)? Please explain your answer.

**4. Others:**

**4.1** In your opinion, what is the role of civil society organizations in the protection of unaccompanied migrant children and adolescents?

NGOs play an important role in taking care of and providing for unaccompanied minors. Many accommodation facilities are provided and run by NGOs.

In cooperation with the Red Cross and NGOs “family tracing”, i.e. the search for family members of unaccompanied minors, is performed so that reunification of families can take place as soon as possible.

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

The State Support Centres that serve as first contact points also for unaccompanied minors have special accommodation capacities solely for unaccompanied minors. They are accommodated separately from other asylum seekers and special support is ensured.

ORS, a support organisation, is also responsible for taking care of unaccompanied minors. The support and care standards for unaccompanied minors are as follows:

* The **support team** consists of day, night and weekend carers. To ensure smooth operation and best support there is **24-hour assistance**.
* The **personal carer system** provides for appropriate support and safeguarding of the interests of unaccompanied minors and assists them in personal matters. In the process, the personal carer acts as “**contact point**” for any and all problems. **In dealing with unaccompanied minors** the **best interests of the child** are specifically considered.

For this reason, in composing a support team, great emphasis is placed on the social workers’ social competence, communicative and language skills, assertiveness, natural authority and high commitment. The social workers attend **advanced training courses,** for example in the field of violence prevention & conflict solution and intercultural communication, with the aim of enhancing the skills of the staff members.

* Focal points of the **support plan for unaccompanied minors**:
* Psychological support, conveying social competence, conflict prevention and comprehensive structuring of the day;
* In **structuring the day** the special needs of the target group are taken into account.
* In particular, the following topics and contents are offered:
* German-language and integration courses
* Learning support (e.g. conversation training, pronunciation, everyday situations)
* Education programmes (e.g. music courses, handicraft courses, first-aid courses)
* Community work in refugee quarters (simple craftsman’s activities, kitchen and cleaning service and garden work)
* Leisure activities (sports, games and excursions)
* **Preparation for an independent way of living** (e.g. housekeeping, handling money, structuring daily routines) is another objective of the support plan.
* **Initial reception scheme:** Written record of the admission interview with a focus on the support needs to be expected (assistance), based on the identification of traumatised unaccompanied minors and victims of child trafficking, abuse or violence, etc.
* **Continuous documentation** of the support measures taken, e.g. in the case of psychological counselling and support, medical counselling including informative talks regarding access to reproductive medical and HIV/AIDS treatment, with reference to topics like, for example, genital mutilation and contraception, in the case of assistance regarding reunification of families and tracing of family members or in planning the day’s structure and leisure activities, etc.

**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**[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-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)
4. BFA-Verfahrensgesetz – BFA-VG: Act Governing the General Provisions on the Procedure before the Federal Office for Immigration and Asylum for the Granting of International Protection, the Granting of Residence Permits for Eligible Grounds, Deportation, Toleration and the Issuing of Residence Terminating Measures as well as for the Issuing of Austrian Documents for Aliens. [↑](#footnote-ref-5)