**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 India, 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**

**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.

There can be two types of unaccompanied migrant children and adolescent in India. Children who are left behind when their parents migrate to urban cities and children who have been brought to work in the cities unaccompanied by their parents or any relatives. Hence, our response is mainly based on the internal unaccompanied migrant children.

Internal migration in India accounts for a large population: 309 million (census 2001), and by more recent estimates 326 million or 28.5 per cent of the population (NSSO 2007-2008) – as compared to international migration: 11.4 million (The World Bank 2011). About 15 million children are estimated to be internal migrants (Daniel 2011; Smita 2011). There is no real data to how many children are unaccompanied migrant children in India.

There is no data as to how many children migrate in search of better opportunities, for education or employment, but the number is undoubtedly significant and probably growing.

In India, with the world’s largest child population of over 440 million, the migration of children within States and across State boundaries is increasingly prevalent. In all metro cities, child labourers are more than ever visible. It is becoming evident that certain regions are emerging as sending areas for migrant and trafficked child labour while other areas are becoming receiving areas of child labour.

**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)
3. **Structural Causes**: Insufficient or inadequate laws, poor enforcement, corruption and complacency, lack of implementation of government schemes, lack of quality education, lack of livelihood opportunity at the place of origin, failure of government to implement policies, and lack of reasonable and realistic prospects for human development.
4. **Immediate causes:** Poverty, seasonal migration of parents, natural disasters, gender discrimination, demand for girls and women in entertainment and sex industry, domestic work, and in the marriage market, social traditional practices (oppressive practices) for example- child marriage, son preference, girls as burden, caste discrimination, domestic violence and looking for better opportunity in the cities are some of the main causes that force children into situations of unaccompanied migration.

**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?

The exploitation starts from the time they leave home. On their way to the cities they fear the police, what will happen if they are caught up. The agents take them to their agency. They are kept their till they are placed for work. First they are physically and sexually abused by the agents and then by the employers. In Delhi one of cities alone there are 8000 agencies.

Children in factories and domestic work do not have sufficient time to sleep. They are not given comfortable place to take rest. Even employer do not provide enough food to eat.

Example: Panna Lal Mahto, allegedly one of India’s biggest human traffickers, who had brought illegally around 7000 young girls from Jharkhand to Delhi and placed them as domestic workers.

The agent takes from the employer Rs. 30,000 to Rs. 50,000 for providing a domestic worker and girl is placed at the salary of Rs. 3000 to 4000 per month. Every month the salary is collected by the agent.

Children are also placed at the construction site and at the factories where they are denied of all their rights.

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

Children separated from their parents due to migration are vulnerable to a wide range of risks, such as trafficking, child labor, kidnap and ransom by smugglers, forcible recruitment by criminals, homelessness, teen pregnancy, physical deprivation, and violence and trauma. The absence of adult care and protection, in combination with a child’s lack of maturity and inherent dependence, make unaccompanied children among the most vulnerable of migrant populations.

Unaccompanied children most often undertake long, dangerous and exhausting journeys. They have to adapt to unfamiliar locations; they are traumatised from the ordeal they undergo alone, usually suffering the shock of dislocation from their family and environment. They are exposed to abuse, hunger, violence, illness or injury. They have to confront foreign cultures, they do not understand foreign languages that leave them unable to express themselves. They feel the absence of their family, pain and loss. They seldom have a way of finding out the fate of their loved ones. Unaccompanied children are frequently isolated and feel alienated.

They are deprived of Right to freedom, right to life, right to express freely, right to education and right to good environment for growth.

**Example of a child domestic workers in Delhi**- 15 year old girl was reported to one of the organizations in the city in the month of July 2015. She had ran from the employer’s house, having all over her body burnt and beaten up marks. She was working in Delhi in one of the employer’s house. The employer used to beat her every day. She was not given enough food to eat. She did not have proper place to sleep. There was no time to take rest. One day she was beaten very badly that she decided to escape. At night she jumped from the window which was on the third floor to another floor and knocked at the window of another person on the second floor. Initially a man from the second floor did not allow but when she insisted saying that she will jump from the floor and die, then they let her in. After listening to her story and looking at her wounds they called the police.

India is among the receiving and sending countries. Over 20,000 women and young girls (mostly aged between 12 and 25) from Nepal to India are smuggled every year. In recent times, some girls as young as 8 have been rescued from traffickers. The girls are taken from their homes and communities to work as sex slaves in the brothels of Mumbai, Bangalore, Delhi, Siliguri or Kolkata. They are also taken from India to Middle East countries.

Around 200,000 girls from Nepal are now working in Indian brothels (UNICEF report, 2014 Sep).

**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.

Over the years, some progressive government intervention did target the internal migrants and children in India.

* The **Sarva Siksha Abhiyaan (SSA),** Department of School Education and Literacy, GoI, devised guidelines for setting up seasonal hostels, providing special trainings and education for the migrant children both at source and destination.
* The Ministry of Women and Children’s flagship programme on **Integrated Child** **Development Service (ICDS**) has a mandate to cover migrant children in urban locations
* The National Commission for Protection of Child Rights’ (NCPCR) guidelines to make education and child care accessible for migrant children in destination
* Ministry of Labour & Employment has taken initiatives to promote inter-State MOUs, inclusion under the Labour Welfare Board for social security, protection and basic services for migrants workers
* State governments have taken some initiatives to combat trafficking- there is district child protection forces and special juvenile police units

These are some of the welcoming steps taken by the Government to address the issues concerning migrants in India.

**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?

There are few government programs to protect the rights of unaccompanied migrant children but implementation and enforcement is very poor.

**Reasons for migration**: Absolute poverty and hunger, employment, illiteracy, domestic violence, debt bondage, landlessness, social discrimination, repeated natural calamities.

Migrant lack identity card, birth certificate which makes them more vulnerable to access to the education and other facilitates, due to the lack of the implementation of law children are exploited at the hand of employer and agents.

**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?

Yes it is. The one of the main cause for the migration is gender discrimination and low status of women in the society, Child marriage, declining sex ratio (**918 girls per 1000 boys according to census 2011**), the demand for traditional sexual division of labour as well as subsequent growth of reproductive services in the globalised market women and girls are increasingly pulled as service providers to fulfil the demand for a vast array of personalised services in the entertainment and sex industry, domestic work, and in the marriage. Due to declining sex ratio in some states of North India young girls are trafficked to sold for the marriage.

Demand for domestic work has pushed many young girls and minors to migrate to cities as unaccompanied migrants. 5,466 cases of human trafficking were registered in India in 2014. 65 per cent of total trafficking crimes in 2014 were related to procurement of minor girls. 92 per cent rise in number of human trafficking cases in India, between 2009 and 2014 (National Crime Report Bureau) The country do not have law which protects the rights of domestic workers and child domestic workers thus these unaccompanied migrant children are more vulnerable to exploitation. 75 – 80 per cent domestic workers are female.

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

In India different law describes age of the child differently.

**According to Child Labour prohibition Act, 1986** – A child means a person who has not completed **14 years of age.**

**Juvenile Justice (Care and Protection) Act, 2000**- A juvenile or child or juvenile in conflict with law is presumed to be innocent of any malafide or criminal intent up to the age of eighteen years.

**The Bonded Labour System (Abolition) Act, 1976**- A child is of **18 years of age.**

**Right to Education Act, 2010-** child means a male or female child of the age of **six to fourteen years**.

**The Immoral Traffic (Prevention) Act, 1986-** A child means a person who has not completed the age **of 18 years.**

The age of marriage is **18 and 21** for girls and boys respectively.

A person is eligible for voting at **18 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.

**In India there is Inter State Migrant Workmen Act 1979,** which does not cover unaccompanied children. Above said act only protects the rights of children. There is no any specific measures implemented to protect the rights of unaccompanied migrant children.

India has ratified the Convention on the Rights of the Child, but migrant children do not have full right to express their views.

**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 is lack of legal protection. India does not have unified age to define a child.

* Political barriers: Lack of political will, social and economic instability, lack of infra structure in rural areas, lack of access to education.
* Economic barriers: extreme poverty, increasing unemployment, shrinking work spare at rural village,
* Social & cultural barriers: gender discrimination and low status of women in the society, oppressive traditional practices, child marriage, preference for son in the family, lack of education,

**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 India is working closely with other organisations and government to protect the rights of migrant children. We are closely networking with Pratham organisation which is working to protect the rights of children.

We have projects in West Bengal – **moving towards child free society**. Child labours are rescued, repatriated and rehabilitated 43 children. We also do advocacy and lobbying with local government. Through this intervention 3 wards have been declaired child labour free zones.

We are also focusing on unsafe migration. We have project to stop unsafe migration in Assam.

We work with the children of Mushahar (Maha Dalit community) in Bihar (North India). Providing education at the place of origin to stop unsafe migration. Mushahar community is one of the most marginalised communities in Bihar. At the moment we are working with 10 local partners’ son Child rights and protection issues in three state of India. Caritas India also has child policy for the organisation. We have initiated capacity building programme in the last two years and 30 organisations have been covered and 22 organisations have drafted /approved their child protection policies.

**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.

**4. Others:**

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

Caritas India works with the communities to focus on the root cause of unsafe migration.

* We focus on livelihood, which protects the family from migration and thus children are protected.
* We identify the vulnerable children, and perceive that they are back in the school under Right to Education Act.
* Through all our programs we promote education for all children and make sure that all children are going to school.
* Children who are exploited are rescued and reintegrated back to the family and community or rehabilitated/repatriated.

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

**Best Practices:**

**Child Protection Desk:** We have started child protection desk at Gram Panchayat (Local governance level) in Darjeeling, West Bengal, India. If any children are missing or the children who have been migrated and have no news their parents can come and inform at the desk. The desk helps them to identify their children. The children who want to communicate anything are encouraged to come to the desk and express their desire. 3 wards Kalimpong, Darjeeling in West Bengal have been declared child labour free zones.

**Child Friendly Desk:** We have imitated child friendly desk at police station in Kalingpong city. This desk provides help to the children who are migrated to the cities. If any child is exploited she/he can come to the child friendly desk. The children in conflict with the law and children who are arrested are provided first hand help by the desk. Children are taken to the desk for exposure too.

**Hamari Patshala (Our School):** We are running this project in Bihar with the girls of Dalit communities. The groups of young girls who do not go to school are formed. They are given non formal education and once they know to read and write they are put in the main stream education. This is to help to stop unsafe migration of young girls and making them to become literate.

[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)