**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 Nepal, 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.

*Traditionally, there is high trend of internal migration within country as well as to India due to the poor living standards of Nepalese people living in remote areas. A poor living standard is mainly due to the poor geo-economic situation and lack of opportunities. In other hand, prevalence of domestic violence and social discriminations has become push factor. Regular natural disasters [such as earthquake, flood and landslide…] and social problem like, child marriage, school dropouts, and polygamy are common, resulting situation of broken families. Children from such broken families are migrating to cities or in India in search domestic works, unskilled casual labour which are often risky and involuntarily servitude, victim of trafficking, right to education,* ***[HRV]*** *in nature.*

*But there are no official records keeping system of unaccompanied migrants.*

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

1. Structural causes.- *Poor geo-economic situation and lack of opportunities. In other hand, prevalence of domestic violence and social discriminations.*
2. Immediate causes. [[3]](#footnote-4) *Earthquake, landslide, floods etc.*

**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?

*Over two million Nepalese men and women work abroad other than India, with the help of recruitment agencies, brokers and in some cases on their own capacity to work as domestic workers, construction workers, or in other low-skill labor jobs. The remittances sent by the migrant workers contribute 21 per cent of GDP of Nepal and has been a backbone to support the national economy.*

*Nepal is not generating sufficient levels of economic and employment opportunities to satisfy the overwhelming demand due to limited economic growth. The country diagnostic study, Nepal: Critical Development Constraints – attempts to identify the causes for slow growth. Only one-sixth of Nepal’s total workforce of some 11 million people are in paid employment. Nepal currently has in excess of 300,000 new job seekers annually, mostly rural young women and men in the 15-29 age groups which account for over 50% of Nepal’s workforce*.

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

*RIsky and involuntarily servitude, victim of trafficking, right to education, child marriage , gender discrimination etc.*

**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.

*NA*

**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?

*NA*

***To some extend***

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

*The “Children’s Act, 1992” defines, “Child" means every human being below the age of 16 years.*

*But, the Labour Act, 1992 puts the age limit of the child at 14 years whereas the Nepal Citizenship*

*Act, 1963 considers a person below 16 years of age as minor. Similarly, the Civil Code (Muluki Ain),*

*1963 consider the legal age of marriage for boys at 18 years and for girls at 16 years with parents*

*Consent and 21 years for boys and 18 years for girls respectively with no consent of parents.*

*Control of the human trafficking act 2007 considers a person below 18 years of age as Minor.*

**Nepal Constitution 2015:**

*39. Right of children: (1) Each child shall have the right to his/her identity with*

*the family name and birth registration.*

*(2) Every child shall have the right to education, health care nurturing,*

*appropriate upbringing, sports, recreation and overall personality*

*development from family and the State.*

*(3) Every child shall have the right to formative child development, and child*

*participation.*

*(4) No child shall be employed in factories, mines, or in any other hazardous*

*works.*

*(5) No child shall be subjected to child marriage, illegal trafficking,*

*Kidnapping, or being held hostage.*

*(6) No child shall be subjected to recruitment or any kind of use in the army,*

*police or armed groups, neglected, or used immorally, or abused*

*Physically, mentally, or sexually, or exploited through any other means,*

*in the name of religious or cultural practices.*

*(7) No child shall be subjected to physical, mental, or any other forms of*

*torture at home, in school, or in any other places or situations.*

*(8) Every child shall have the right to child friendly justice.*

*(9) Children who are helpless, orphaned, physically impaired, victims of*

*conflict and vulnerable, shall have the right to special protection and*

*facilities from the State.*

*(10) Any act contrary to Clause (4), (5), (6) and (7) shall be punishable by law,*

*and children who have suffered from such an act shall have the right to*

*be compensated by the perpetrator as provided for in law.*

**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.

No

**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?

*Nepal is not generating sufficient levels of economic and employment opportunities to satisfy the overwhelming demand due to limited economic growth. The country diagnostic study, Nepal: Critical Development Constraints – attempts to identify the causes for slow growth. Only one-sixth of Nepal’s total workforce of some 11 million people are in paid employment. Nepal currently has in excess of 300,000 new job seekers annually, mostly rural young women and men in the 15-29 age groups which account for over 50% of Nepal’s workforce.*

*Over two million Nepalese men and women work abroad other than India, with the help of recruitment agencies, brokers and in some cases on their own capacity to work as domestic workers, construction workers, or in other low-skill labor jobs. The remittances sent by the migrant workers contribute 21 per cent of GDP of Nepal and has been a backbone to support the national economy.*

*The increase in labour migration, however, has been accompanied by various problems, including human trafficking. Many Nepalese migrant workers pay high amount of fees to the recruitment agencies, which they take on loan from families and friends which place them in a state of indebtedness, which in turn compel them to perform work in abusive, exploitative and unsafe working environment. Many of them face severely exploitative conditions that sometimes amount to forced labour such as withholding of passports, restriction on movements and non-payment of wages.*

*The ILO Office in Nepal is working with its tripartite constituents, including the Ministry of Labour and Transport Management (MOLTM), the institutional members of the Foreign Employment Promotion and Management Board, Workers’ Organizations, particularly the trade unions with a track record in assisting Nepali migrant workers overseas, the Nepal Association of Foreign Employment Agencies (NAFEA), and representatives of civil society organizations to protect the Nepalese migrant workers from human trafficking and forced labor and to create decent employment for migrant workers by enhancing the self regulation and functioning of private employment agencies in Nepal, strengthening the capacity of employers’ and workers’ organizations, supporting the government of Nepal to ensure effective enforcement of legislation and raising awareness among potential migrants of the risks of trafficking and how to avoid them.*

**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?

No

**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.

NO

**4. Others:**

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

Till now we have not worked on the particular issues.

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

N.A

 [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>

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)