**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-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.

Good Shepherd Malaysia do not have any official statistics. Below are numbers that Good Shepherd have encountered in our own shelter and during a recent project with UNHCR, Malaysia. In Kuala Lumpur, Good Shepherd started working with refugees in 2010, through a project MOU with International Catholic Migration Commission (ICMC). Through the MOU, a relationship was built with UNHCR who recognised us as a preferred service provider for shelter. This culminated into a Terms of Reference signed in 2012 with UNHCR with an objective to shelter unaccompanied refugee minors (URMs) who had been trafficked in Malaysia. Good Shepherd started with a small number of 4 minors.

2014 - Good Shepherd sheltered 11 URMs who were smuggled into Malaysia to be child brides.

2015 - Good Shepherd sheltered 29 URMs of which 8 were boys.

2015 - Good Shepherd entered into a 5-month contract with UNHCR to be an Implementing Partner for shelter placements for cases that encompassed SGBV, URMs and persons requiring medical attention in nursing homes. During this period (Aug - Dec, 2015), Good Shepherd placed 32 URMs in various shelters (other than our own). All were boys.

The URMs that were placed in shelter were categorised as high risk persons of concern as there were elements of trafficking in their narration. These figures do not include URMs that were placed in communities after release from immigration detention camps.

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

Note : Malaysia is a destination country for migrants and asylum seekers mainly from Myanmar, Afghanistan, Somalia, Pakistan, Iran and to some extent, Syria. Good Shepherd experiences with URMs are mainly from the category of asylum seekers and refugees.

1. Structural causes.

 The URMs are mainly victims of war, political discrimination and poverty.

1. Immediate causes. [[3]](#footnote-4)
2. The children are sent by well meaning parents but are exploited the moment they leave their country of origin.
3. URMs from minority groups face discrimination in country of origin.
4. URMs are targeted by traffickers due to their vulnerability.

**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?

Most of the URMs from the Rakhine state in Myanmar have reported of longer transit on boats if the smugglers do not receive enough money. The boats are cramped and the URMs are subjected to deprivation and abuses by the smugglers. Upon arrival at shore, they are made to walk through jungle path to cross the borders of Thailand-Malaysia.

If they are caught during the crossing, they are sent into Malaysian detention camps where URMs are put together with adults. The conditions in the camps are said to be deplorable. Almost all of the URMs that Good Shepherd have sheltered and who have come directly from these camps have had skin diseases such as scabies, bites from bugs/mosquitoes and head lice.

Good Shepherd had one instance of a 14 year old girl who was pregnant when she was caught. During her stay in detention, she was kicked in the stomach by a warden and miscarried.

Good Shepherd have also sheltered URMs who had been sold by the smugglers to traffickers within Malaysia. The URMs were forced to beg and submit their earnings to their “keepers”, failing which they would be beaten and deprived of food.

Living conditions for these children are poor and there is little access to basic protection, health facilities and education. They are constantly harassed by enforcement officers and many have been caught and placed in immigration detention camps. These camps do not separated minors from adults.

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

1. URMs do not have access to basic amenities and protection.

2. The state does not recognise refugees and asylum seekers as it is not a signatory to the Convention on Refugees. URMs of Rohingya origins are stateless.

3. URMs do not have access to state-provided education. Most of the basic "learning centres" for refugees children are run by non state entities or the refugee communities.

4. URMS are subject to harassment from enforcement officers during immigration raids

5. Access to health facilities are limited and if they are available, URMs are charged exorbitant rates.

6. URMs are subject to punishment by traffickers.

7. URMs are sexually abused, many girls being sold as brides within their own communities.

8. URMs have very little access to the legal system and have no redress for the harm caused to them.

9. URMs are placed in immigration detention camps.

**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.

URMs in Malaysia are not recognised and unless they are identified as victims of trafficking, are seldom given opportunities to be heard. The only mechanism available to the URMs are via UNHCR which tries to find a durable solution based on the Best Interest Determination of each child.

**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?

Within our own shelters, Good Shepherd have heard of URMs being sent by their parents for better opportunities. Unfortunately, there are also URMs who have been sold to traffickers by their own parents.

The reasons for migrating are stated in 1.2 and the living conditions are stated in 1.3 above.

**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?

Both boys and girls are subjected to the same violations. Girls face more challenges because they fetch a prize when sold as child brides. To date, there was one case of a minor who was trafficked for sex by her "husband".

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

Malaysia Child Act, 2001

"child"— *(a)* means a person under 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 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 Good Shepherd observe, the state has limited empathy for migrant children and adolescents. The country's laws do not discriminate against any children. However, the policies do not reflect legislature.

**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?

1. Malaysia is not a signatory to the Convention on Refugees
2. Malaysia lacks a national legal framework that regulates status and rights of refugees and asylum seekers which impacts on their enjoyment of rights. There is also a tendency to treat them as irregular economic migrants or illegal migrants, subjecting them to immigration laws that do not provide special protection or rights for unaccompanied migrant children. Increasingly harsh and restrictive immigration policies also subject them to detention, deportation, expulsion, etc.
3. The number of undocumented persons in the country is currently circa four to five million people vis-à-vis documented migrants of two million persons. This makes it almost impossible for the government to track or pay attention to unaccompanied migrant children and adolescents.
4. Lack of updated and accurate data – the government is not making any effort to systematically collect data and there is a general reluctance of some agencies to share data.
5. Street children (mostly caused by decades of irregular migration) in Sabah lack documentation that deprive them of the right to identity, making them invisible and vulnerable to the worst forms of labour and abuse. They do not appear in any official register and their lack of legal status leave them at risk of statelessness. Hence they live in constant fear of arrest and are forced to engage in a variety of economic activities working at the markets, loading/unloading, begging, vending and petty street trade. We also note that substance abuse is rife, particularly glue sniffing to alleviate their hunger.

**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?

Good Shepherd are actively involved in advocating the rights of all children in Malaysia. Good Shepherd are part of a coalition of NGOs called the Migration Working Group that tries to engage the government to put in effective measures to protect the rights of all children.

In Sabah, Good Shepherd has a project which facilitates the attainment of birth registration documents for migrant children who are in the oil palm plantations. These migrant children are born to Indonesian parents (documented and undocumented) who have worked for some years in the plantations. Good Shepherd works in collaboration with the plantation owners in this project.

**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.

In spite of the agreements between states within ASEAN, there is little political will to promote and protect the rights of the URMs and unaccompanied migrant children.

**4. Others:**

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

Good Shepherd is an NGO committed to the safety and protection of children, whether they are Malaysians or non-citizens. Good Shepherd works in collaboration with other organisations to advocate for ALL children in the country to be treated equally and in line with the Malaysian Child Act, 2001 and the Convention of the Rights of the Child.

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

Use CRC as the basis of all actions pertaining to unaccompanied children and adolescent where they are viewed first as a child (and not as a migrant) and accorded immediate care and protection. I would also like to add that due to the overwhelming number of asylum seekers and refugees compare to the low quota for resettlement, many children remain here in a state of statelessness.

**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

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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)