**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.

South Africa is one of the largest receiver states of migrant children and adolescents on the continent. As one of the most vulnerable segments of the population, their situation is extremely precarious; with many social issues befalling them. These include poor lack of access to basic services, issues in accessing the requisite documentation, discrimination and others.

Despite being a relatively data rich country, there is somewhat of a dearth of statistics concerning migrant children and adolescents. Owing to issues surrounding access to documentation, many migrants remain unaccounted for, meaning that it is impossible to capture data in this regard.

**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)

Structural causes and immediate causes tend to have a “knock-on” effect on one another; with each having the capacity to be a consequence of another. An example of this would be the lack of adequate access to basic services in a country where there is a state of political disarray, or a country faced with the predomination of one particular religious faith leading to people being “driven out” of it. Structurally, the most notable cause of child migration is lack of a concrete system to protect them; or alternatively a system that places them at a systemic disadvantage. Overall, the main immediate causes of children migrating to South Africa are the desire to obtain an education, to seek financial opportunities not available in their country of origin, to escape persecution based on belief systems in their country of origin, to join their parents in South Africa who have already migrated here, or as a consequence of human trafficking

**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 climate for unaccompanied migrant children in South Africa is hostile to say the least. Many children leave their countries of origin in the hope that they will arrive at a destination of security and opportunity. Unfortunately this is not the case. Many enter the country at places other than ports of entry, meaning that there are no structures in place to protect them from coming to harm. Often, they do not have any documentation with them, which leaves them vulnerable to arrest and deportation. There is a great deal of confusion within government as to how to manage the situation of unaccompanied migrant children ie: which part of government should assist them and in what order. On the one hand, it is important for the child in question to obtain documentation. On the other, it is important for the child’s circumstances to be investigated so as to determine whether measures should be taken to protect the child. These competencies are allocated to two separate state departments. Very often, both departments will turn the child away saying that the other should assist them first, leading to the child not being assisted at all. As to living conditions, many unaccompanied migrant children and adolescents face crowded urban conditions, end up living in shelters or on the streets. Since a large proportion of them are unaccounted for, the state does not monitor their living conditions and many fall between the cracks.

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

* Discrimination- South Africa experiences surges of xenophobic violence rooted in systemic patterns of intolerance. This significantly impacts on the rights of children and adolescents to equality, dignity and at times, to their right to life.
* Poor access to basic services- While South Africa is home to a vast number of migrants, it lacks the requisite structure to deal with the influx of persons across its borders. All too often unaccompanied migrant children and adolescents do not have access to even the most basic necessities required for their survival. This includes education, food, social security, a clean and healthy environment and others.
* Poverty- As indicated, unaccompanied migrant children are extremely vulnerable. They generally lack the means to generate an adequate income for themselves, and cannot access social grants. It is also an extreme challenge for them to come into the care and protection system, to find accommodation or to obtain any means of support all.
* Prevalence of crime- South Africa is a prolifically violent society. As a demographic that is vulnerable, unaccompanied migrant children all too frequently have crimes committed against them including being forced into activities surrounding human trafficking and the drug trade, robbery, rape and others. Owing to their financial status, many children are also forced to commit crimes in order to sustain themselves.

**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 structures to facilitate child participation certainly exist in South Africa. As a state that has ratified the Convention on the Rights of the Child, there exists an imperative that the country take measures to ensure that the right of the child to be heard is realised. This is enumerated in our Children’s Act and Child Justice Act. On the ground, however, such children remain largely disenfranchised, with very little control over their circumstances. There have, however been instances in which work has been done in order to ascertain what the views of children are about migration. This has been done by local NGO’s as well as regional and international organisations. Children have been asked to share their stories and contribute to studies, which is a form of empowerment and a means of assisting and representing others.

**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?

This depends largely on the country of origin of the child or adolescent concerned. From most of the countries surrounding South Africa- such as Mozambique and Zimbabwe, children report that they have entered South Africa to obtain an education or to escape poverty and find employment. In other countries, for instance Somalia and the Democratic Republic of Congo, children indicate that they fled from a volatile political situation or some other kind of instability that rendered their subsistence in their country of origin untenable. Children often come to South Africa thinking that their lives will substantially improve, only to be disappointed when they find themselves faced with seemingly insurmountable challenges as described 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?

We have experienced human rights violations exacted on both boys and girls.

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

Our Constitution states that a child is anyone under the age of 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.

The rights of migrant children and adolescents are integrated into South Africa’s legal system and policy matrix to an extent, but their rights are not on the forefront of the political agenda per se. In the main, their rights are protected by legislation and policy surrounding non-discrimination, refugees, immigration and child labour rather than addressing their rights head-on. The rights of such persons are addressed in the Constitution, the Promotion of Equality and Prevention of Unfair Discrimination Act, the Refugees Act, the Immigration Act and the Basic Conditions of Employment Act.

**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?

Unaccompanied migrant children unfortunately remain largely “invisible” as many lack documentation. Many live very difficult lives without detection or intervention. Even if they do come to the attention of the relevant authorities, as indicated there is much confusion as to how such children and adolescents should be treated and protected by government. This goes to administrative, legal and political barriers. As stated above the majority face considerable financial hardship, which again goes to the lack of appropriate response to their plight.

**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?

Our organisation works with other non-governmental organisations, is part of networks and communities of practice and is the implementing partner of an international NGO that has a focus on migration.

**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.

There is certainly the need for a coordinated response between states, particularly to ensure the safe passage of children between one country and the next. There is also the need to ensure, that in the event that such individuals are made to return to their country of origin, that they have a place to which to return and that the process leading up to such return is safe. There is also the need for countries to work together to facilitate family reunification where this is appropriate. Currently this collaboration is lacking which leads to the considerable violation of the rights of such children and adolescents.

**4. Others:**

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

Jo’burg Child Welfare is an organisation providing direct services to orphaned, abused, neglected and abandoned children, including children affected and infected with HIV & AIDS. Many of the children and adolescents we assist are foreign nationals.

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

It is important that children and adolescents are issued with the requisite documentation. This reduces the barriers they may face in accessing basic services. Thorough investigations into the circumstances of a vulnerable child are essential in order to ameliorate the effects of an untenable situation, and to determine whether the child or adolescent is in need of care and protection. This will also go a long way in ensuring that children who can be reunified with their families should be. It is essential for children and adolescents should be permitted safe passage both at ports of entry as well as into and around cities, towns or rural areas. Training of officials such as police or immigration officials is thus key. Cities with a high percentage of migrants should make provision for initiatives to provide for and protect unaccompanied migrant children and adolescents.

**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-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)