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Asylum

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ABSTRACT This chapter examines whether Norway's law, policies and practice in the field of asylum are in compliance with the UN Convention on the Rights of the Child (CRC). It begins with a discussion of Norway's asylum legislation and interpretation of child-sensitive legislation. This is followed by analysis of migration-and-refugee policies and regulations and the implications of new regulations in the Immigration Act after increase in the migration flow in 2015–2016. Two contested regulations and their implications are especially analysed given increasingly frequent refusal decisions, and the forced return of young asylum seekers and families, usually following a stay at a holding or detention centre. The author finds worrying tendencies with the reversal of various children's rights in the area of immigration. The analysis of the current state of children's rights in the area of asylum has shown that the CRC is still far from being fully implemented in Norway.

KEYWORDS asylum | children's rights | child-specific forms of persecution | immigration law | unaccompanied minors

11.1 INTRODUCTION

Migration and asylum have been at the centre of multiple debates concerning Norway's respect for children seeking asylum. The numbers are not insignificant. Over the past six years in the European Union, there has been a six-fold increase in the total number of child asylum applicants.¹ Norway has partly witnessed a similar phenomenon.² The number of applicants increased markedly in 2015

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1. See <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. In 2015 and 2016, around 30 per cent of asylum applicants in the EU were children.
 2. About 85 per cent of the UM applicants were boys. Over the past ten years, the largest numbers of UMs in Norway came from Afghanistan, Eritrea and Somalia. In 2015, ten per cent of the UMs came from Syria.

(from 2,400 to 31,145), which included a contemporaneous leap in the numbers of unaccompanied minors (UM) (from 1,200 to 10,300). However, there was a substantial decrease in such applications in the period 2016 to 2018, due to the EU-Turkey Readmission Agreement,³ stricter border controls in many European countries and new, stricter regulations in Norway. In this context, a substantial discussion continues on whether Norway is ensuring the rights of children seeking asylum, both unaccompanied minors (UMs) and those arriving with their families (accompanied minors).

Existing assessments of Norway's implementation of human rights in the field of asylum highlight the contested status of the asylum-seeking child as primarily either a child or an asylum seeker (see, for example, Vitus and Lidén 2010, Parusel 2017). The political marker of *children* refers to an inclusive childhood discourse and policy framework based on children's indiscriminate rights. Further, refugee children are seen as vulnerable when exposed to various dangers in conflicts and wars that affect their lives, survival and development. They may suffer due to child-specific forms of persecution, as well as other forms of persecution as individuals and members of families. By contrast, the concept of *asylum-seeker* activates discourses of border control based on politicized suspicion, welfare restrictions and the expansion of an asylum system.

The ambivalent positions of asylum-seeking children are embedded in the legislation. On one hand, the Norwegian Immigration Act of 2008 includes provisions and formulations intended to strengthen the legal position and rights of asylum-seeking children as children. The intention was to ensure that national regulations on immigration were in accordance with the Convention on the Rights of the Child (CRC)⁴ and in line with the Human Rights Act 1999⁵ as well as the Norwegian Constitution.⁶ On the other hand, migration and asylum are highly politicized areas, and the legislation is frequently adapted to new political dis-

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3. EU-Turkey Readmission Agreement came into force in 20 March 2016. The intention of the Agreement is to end the irregular migration from Turkey to the EU. Turkey will take any necessary measures to prevent new sea or land routes for irregular migration opening from Turkey to the EU. For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU. http://europa.eu/rapid/press-release_MEMO-16-963_en.htm
 4. G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.
 5. Lov om menneskerettighetenes stilling i norsk rett, LOV-1999-05-21-30.
 6. Grunnloven 1814. In 2002, the entire CRC text was incorporated into national legislation through the Menneskerettsloven [Human Rights Act] of 1999. In 2014, the Grunnloven [Norwegian Constitution] of 17 May 1814 was revised, with the addition of a chapter on human rights. The four main CRC principles were included, in Articles 104, 93 and 98.

courses and public attitudes towards asylum seekers. In recent national law and policy reforms, the rights of the child have been at the forefront of concerns and negotiations.

This chapter assesses whether Norway's law, policies and practice in the field of asylum are in compliance with the CRC. I begin by discussing the extent to which children's rights have been implemented in Norway's asylum legislation and how the content of child-sensitive legislation can be interpreted. This is followed by the identification of core areas in the discussions on the extent to which children's human rights have been implemented in migration-and-refugee policies and regulations. The discussion then moves on to the implications of new regulations in the Immigration Act after increase in the migration flow in 2015–2016. I examine two contested regulations and their implications in terms of increasingly frequent refusal decisions. A rejection may lead to the forced return of young asylum seekers and families, usually following a stay at a holding or detention centre. The conditions for children in such centres are therefore discussed, with reference to CRC Article 37 (see also chapter 6). Finally, I discuss how the principle of non-discrimination relates to unaccompanied minors in reception centres.

This study combines and synthesizes two main types of data, both of which have been collected and analysed in recent research projects:⁷ firstly, *documentary analysis* of legislation, regulations, proposed amendments and asylum-case assessments; secondly, *interviews* with accompanied minors, UMs, legal guardians (representatives) of UMs, and case workers in the immigration administration (i.e. the Norwegian Directorate of Immigration [UDI] and Immigration Appeals Board [UNE]). Analysis of statistics provided by the immigration authorities is also included.

11.2 LEGAL COMMITMENT TO CHILDREN'S RIGHTS IN THE AREA OF ASYLUM

Article 22 of the UN Convention on the Rights of the Child (CRC) lays out state authorities' responsibilities concerning asylum children:

State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable

7. See Lidén et al., 2008, Lidén 2011, Lidén et al., 2011, Lidén 2012, Lidén et al., 2013, Stang and Lidén 2014, Tyldum et al., 2015, Lidén and Salvesen 2016, Lidén 2017. Most of the research has been commissioned by the Ministry of Justice, Ministry of Children and Equality and Immigration Authorities.

international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. (CRC Article 22.1)

The 2016 New York Declaration for Refugees and Migrants expresses the political will of world leaders to ensure children fundamental rights and legal standards in the area of asylum.⁸ Moreover, the Council of the European Union has issued directives on asylum issues⁹ and action plans including effective protection of children in migration, with a focus on strengthening cross-border cooperation.¹⁰

In accordance with CRC Article 3, ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.¹¹ The principle of non-discrimination as defined by CRC Article 2 is also central to discussion of the standards of asylum procedure, protection and humanitarian assistance given to asylum-seeking children. CRC Article 6 recognizes state parties’ responsibility to ensure every child’s inherent rights to life and development. CRC Article 12 obligates state parties to ensure that children can freely express their views in matters that affect them and that their views shall be given due weight. Further, several other CRC articles are relevant for asylum children: the right to care and provision, to health, education and to social reintegration of the child victims of any form of exploitation, torture and armed conflicts.

11.2.1 THE CHILD’S PERSPECTIVE IN THE NORWEGIAN IMMIGRATION ACT

In light of these legal provisions, the goal of a child-sensitive asylum procedure will be attained when *every* asylum-seeking child has his/her *own assessment* that takes into consideration his/her individual situation. The non-refoulement principle includes *child-specific* assessment of vulnerability to ill-treatment, abuse and possible future persecution. Furthermore, a child-sensitive perspective should include adequate options for the *child’s development*, such as sufficient provision of basic needs, care arrangements and access to education. Also important is the

8. See <http://refugeesmigrants.un.org/print/declaration>

9. Council Directive 2004/83/EC on the minimum standards for qualification and status and the Reception Conditions Directive of 2013.

10. In line with the ‘ten principles for integrated child protection systems’ – https://ec.europa.eu/info/sites/info/files/10_principles_for_integrated_child_protection_systems_en.pdf

11. CRC Article 3:1 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

child's health status, including the possibilities of recovering from traumatic experiences such as abuse and violence and reintegrating into society. Children's short references of *time* makes it more vital for them than for adults to reduce short-term uncertainties, normalize their lives and ensure that they develop fundamental skills for the future.

The preparatory work for the Immigration Act, Ot.prp.nr.75 (2006–2007) justifies the child's independent legal position:

The need for a child's perspective in refugee law is particularly relevant in relation to evidence assessment and in relation to providing protection. Children do not have the same conditions to substantiate that they have a need for protection as adults or to convey the individual circumstances of importance. (Ot.prp.nr.75 (2006–2007) p. 92)

The Norwegian Immigration Act of 2008 included certain provisions and formulations that strengthen the legal position and rights of asylum-seeking children. The assessments, made under Section 28 of the legislation, which regulates refugee and asylum status, must take into account whether the applicant is a child, and the legal criteria are to be interpreted in a child-sensitive manner. The legal threshold to obtaining asylum based on refugee status is thus lower for children than for adults. Circumstances that for adults may not qualify as 'well-founded fear', 'persecution', 'torture' and 'inhuman and degrading treatment' may do so for children. Consequently, children may be granted asylum based on exposure to human-rights violations that would not necessarily qualify adults for asylum.

11.2.2 CHILD CONVERSATIONS AND UM ASYLUM INTERVIEWS

The starting point of my evaluation of realization of children's rights in Norway is the asylum procedure, the core of which is the asylum interview and assessment of the asylum application. The child hearing in the asylum procedure is essential to determining the child's need for protection and to ensure child-sensitive asylum claims.

Any person who wishes to apply for asylum in Norway is directed to the offices of the Police Immigration Service (PU) in Oslo. For unaccompanied minors (UM) a legal guardian, referred to as a representative,¹² supports the minor during the

12. The regulations regarding guardianship for UMs were recently reformed, and Chapter 11A concerning representatives for UMs was added to the Immigration Act in 2012. The regulations came into force on 1 July 2013. The term *representative* replaced *legal guardian* for those in the asylum system.

application process.¹³ Since 1 June 2011, the Immigration Service has offered an on-call legal guardian service, so that UMs can register asylum claims with representatives present at any time.¹⁴ After the consultation at the PU, the applicant is transported to a transit reception centre and stays there until the asylum interview is completed. The applicant subsequently stays at a reception centre until the application has been processed;¹⁵ although UMs younger than 15 years old stay in care centres, while those 15–18 years old stay in reception centres for minors. The time it takes to assess a case depends on the number of applicants, the country of origin and the case details. Within the UDI, a special unit with competence in processing children (*Barnefaglig enhet*) was created for UMs in 2009.¹⁶ In most cases, assessment takes about three to five months. If an application is rejected by the UDI, the applicant can appeal the decision to the Immigration Appeals Board (UNE). A very small number of appeals alter the UDI's decision.¹⁷ In 2014, 90 per cent of the UMs were granted asylum but this fell dramatically to 29 per cent in 2017; although 40 per cent obtained temporary permission to stay until they reach the age of 18 years, mainly applicants from Afghanistan.¹⁸

To discover children's experience of human rights violations, they must be sufficiently heard. The child's right to be heard (CRC Article 12) is expressed in the Immigration Act Section 81 and regulated in more detail by government regulations under the Immigration Act Sections 17-2 and 17-3.¹⁹ As we shall see, Norwegian immigration authorities have made some efforts to adjust the asylum procedure to serve children, but questions remain.

13. The Immigration Act Section 98a states that the provisions regarding guardianship 'apply to persons under 18 years of age (minors) who are applying for protection and who are in the country without parents or other persons with parental responsibility'. Guardianship is a voluntary mandate organised by the local county governor (*fylkesmann*). A mandatory course is needed to become a guardian.

14. Any person who wishes to apply for asylum in Norway is directed to the offices of the Police Immigration Service (PU) in Oslo.

15. A lawyer is appointed to each applicant early in the application procedure, but this service is limited to three hours free of charge (Section 92 of the Immigration Act).

16. Ideally, UM cases are given priority to ensure the fastest possible processing and settlement of such applicants.

17. Each year, only 6–10 per cent of the appeals are considered at board hearings. If the board chair believes there is no doubt about which outcome the case should have (the UDI's rejection is maintained), the case is decided by the board chair or a case officer.

18. See: <https://www.udi.no/statistikk-og-analyse/statistikk/asylvedtak-etter-statsborgerskap-og-utfall-for-enslige-mindrearige-asylosokere-2017/>

19. *Forskrift om utlendingers adgang til riket og deres opphold her [immigration regulations]*, FOR-2009-10-15-1286. Administrative regulations of immigration 2009 (made by the Directorate of Immigration).

Asylum procedures differ from other evidence procedures in that the evidence and witness statements that can confirm the applicant's claims are limited. In addition to evidence, documentation on identity, incarceration, torture and abuse may be lacking. The case assessment then depends on the chronology, consistency and reasonability of the personal testimony given in the interview. Critical to the credibility of the oral information and assessment of the case are also supporting expert opinions and country reports from Landinfo (Bollingmoe 2014). In a study on UDI case workers' exercise of judgement, Liodden (2017) found that an additional challenge in unusual issues is that the discourses circulating among case workers lead to perceptions of low credibility in assessing most cases.

Asylum-seeking children make up a highly-differentiated group, in terms not only of age but also social background, education and experience and involvement in conflicts. The children's previous experiences with state authorities and police and their respect for, or fear of, authorities are significant to the hearings. Forms of communication are also culture-specific, including what words, concepts and formulations are appropriate to use when communicating with authorities. Case workers, therefore, must adapt their use of concepts and language to each child.

Accompanied minors are entitled to a conversation with the Immigration Administration (*Barnesamtalen*). For families, the conversation is voluntary, but every child in the family is encouraged to participate. Studies on children's conversations indicate that children must be adequately informed in advance about the conversation so that they can understand its purpose, prepare for it and comprehend what is at stake (Langballe et al. 2010, Lidén et al. 2008, Stang and Lidén 2014).

The conversation is one of several possible forms of hearings. Alternatively, the child may express themselves in writing. In addition, the parents are expected to provide information about their children during their asylum interviews.²⁰ The parents, however, cannot fully represent children and their experiences. The parents are not necessarily aware of the children's experiences because they may have not revealed them in order to spare their parents or family members, who may even have been the perpetrators of violence or abuse (e.g. forced marriage and sexual exploitation). The parents may also be unable to take in or understand the child's experiences. This inability can be exacerbated by chaotic situations.

Similarly to adult asylum seekers, UMs are entitled to asylum interviews. According to Section 17-2 of the Immigration Act, these interviews are to be conducted in a way that sheds as much light as possible on the asylum cases. Executive officers from a dedicated unit (*Barnefaglig Enhet*) conduct the asylum inter-

20. Administrative regulations: RS 2010-075 identifies issues concerning children to be covered in asylum interviews with parents.

views with UMs. The unit must ensure that the officers are competent in child cases and in interviewing minors.

The child conversations and asylum interviews are subject to specific guidelines on structuring, including how the questions are posed and followed up. Although the conversations have a fixed structure, they are expected to allow open communication to reveal the child's subjective descriptions and interpretations of events and experiences. These requirements for the child conversations are well-established principles from child hearings in court cases and child welfare services (Langballe, Gamst and Jacobsen 2010).

Before the child conversations and the UM interviews are conducted, each child needs to be informed about their purpose and consequences and the main legal sections regulating asylum. The Norwegian Association of Asylum Seekers (NOAS), UMs' representatives and the UDI are all responsible for informing children.

The use of competent interpreters is essential to conveying the information. Regardless of the child's commitment to participation, disclosing difficult and traumatic events, possibly including violent assault and/or torture, in an interview can be difficult. Information may be disclosed later in the asylum process, and it is therefore important to establish the credibility of any new information revealed in the course of the asylum process.

As the above review shows, some key steps have been taken to ensure the child's right to be heard in the asylum procedure. However, some aspects that are important to ensure procedural rights and child-sensitive perspectives are not in place, including ensuring a more inclusive age assessment of UMs (see below), and case workers' attention to and competence in child-specific forms of persecution.

11.2.3 ASSESSING CHILD-SPECIFIC FORMS OF PERSECUTION

Children may need protection for the same reasons as adults or family members who have been exposed to persecution. In this context, CRC Article 6 on the child's rights to life and development is highly relevant. International measures also identify child-specific forms of persecution. The UNHCR guidelines mention three specific threats to which children may be exposed: recruitment into armed conflicts, female genital mutilation (FGM) and human trafficking, including forced labour and sexual exploitation.²¹ Recruitment into armed conflicts includes

21. Jf. UNHCR 2009: guidelines on international protection. Child asylum claims. HCR/GIP/09/08. See also CRC Articles 38, and Articles 3 and 4 in the Protocol on the Rights of the Child on the involvement of children in armed conflict under the CRC.

not only participation in armed forces but also forced labour and sexual exploitation by armed groups (Committee on the Rights of the Child, General Comments No. 6). Children are also afforded protection, as they belong to a social group with common characteristics that make them especially vulnerable to persecution or inhumane treatment. The UNHCR guidelines refer to street children, children experiencing domestic violence and neglect, and children affected by HIV/AIDS. Furthermore, children belong to a social group that is vulnerable to gender-related persecution. Gender-related persecution includes the risk of abuse and human-rights violations related to gender relations. Much gender-related persecution is committed against girls and includes threats, sexual assault, honour-based violence, forced marriages, forced prostitution and FGM. Gender-related persecution can also affect boys. Examples include forced marriage and homosexual orientation and acts. For children who have been exposed to persecution, the threshold for granting protection should be lower than for adults.

Now it is important to consider the routines employed and the expertise available in the field of immigration to identify child-specific forms of persecution. UDI case workers state that they gain knowledge of child-specific forms of persecution mostly through case proceedings and information from UDI's Landinfo section, which is expected to be a professional, independent body that gathers and considers the relevant country information needed by Norwegian immigration management (Liødden 2017, Lidén 2017). Landinfo's focus on children has increased in recent years; however, attention to this issue remains limited, and the body is dependent on the awareness of case workers investigating child-related issues and their requests for relevant information (Lidén et al., 2008, Lidén 2012, Stang and Lidén 2014).

Previous research has found that factors that may limit the inclusion of adequate information about children's situations are numerous: for example, the assessment is focused on the parents' case, or there are insufficient requests for substantive knowledge on children (*ibid*). Organizational factors are also significant, including high staff turnover and limited resources allocated to children's asylum cases. Research also indicates that there is limited knowledge of and incomplete research on child-related topics. Among case workers, there seems to be a rather superficial understanding of the multiple ways that children participate in and experience armed conflicts (Lidén 2012, Stang 2008, see also Boyden and Berry 2004, UNHCR 2010). This lack of knowledge extends to health personnel and legal professionals, such as lawyers and UMs' representatives. Oxford Research (2012), for example, raised the concern that lawyers may lack knowledge of and training on child protection issues. Studies have emphasized the need for screening of vul-

nerable asylum seekers to supplement information and awareness about their experiences of abuse, torture and human trafficking. However, such screenings have not been prioritized in the asylum procedure.

11.2.4 AGE ASSESSMENT

Most asylum seekers lack credible identification when applying for asylum. Difficulties in estimating the age of young unaccompanied asylum seekers without identity documents have long been a problem for immigration authorities. In an evaluation of the age-assessment methods used by EU member states, the European Asylum Support Office (EASO) concluded that no methods currently available can establish with certainty the age of an individual. Therefore, age assessment should only be undertaken if there are doubts about the claimed age. Before resorting to medical examination, consideration should first be given to documents and other forms of documentation. The child's best interests should be the primary consideration, and assessments should be performed with full respect for the individual's dignity (EASO 2014, pp 6–7). Uncertainty regarding the child's age has significant implications for his/her identity and well-being, as well as the possibility of exercising his/her rights.

The decision to conduct an age assessment is taken as part of the initial procedure at the Police Immigration Service (PU). The PU estimates the age of young unaccompanied asylum seekers. If the minor is clearly underage, PU may decide to exempt the minor from the age assessment.²² Although the age of not all minors is disputed, unaccompanied asylum seekers whose declared age is 16 to 18 years are frequently referred for age assessment. In some cases, the immigration authorities may also initiate procedures to assess whether a child is younger than 15 years, as children aged 14 years and younger are placed in special child-care facilities administered by the child welfare services. If, during the consultation, the PU concludes that an apparent UM is most likely an adult, it may decide to start adult asylum proceedings. The age assessment involves a dental examination and hand X-ray, in addition to a medical observation and statement.

The PU obtains consent from the UM to conduct an age assessment, which is voluntary and requires the minor's consent. However, if the asylum applicant does not wish to complete the assessment or does not show up for it, this may be taken as an indication that the applicant is not a minor (Immigration Act Section 88) and negatively influence the applicant's perceived credibility and the outcome of the

22. Circular RS 2010-183: Guidelines for age assessments of UM asylum seekers.

asylum claim assessment (Staver and Lidén 2014). The final decision concerning an individual's age is made by UDI case workers as part of the asylum decision. Any documentary evidence and assessment of the individual's maturity and age made by professionals (e.g. a representative of the UM, law enforcement officers and professional staff at the child's reception centre) may also be considered, although this is not routinely done. These written documents can be examined during the child hearing, although the child is not routinely expected to discuss the age issue in the asylum interview.

Medical methods of age assessment have been criticized on several grounds (Crawly 2007; NOAS 2016). The main criticism is that they are not accurate; the margin of error is especially large in this age group. The immigration authorities acknowledge these limits. Medical examination is only to be used in case of doubt (Immigration Act Section 88). However, in some periods the age assessment has been used extensively. In 2015, for example, most UMs underwent age assessments. A substantial percentage were assessed as overaged or 17 years old, which led either to rejection or only temporary residence permission. Although immigration authorities acknowledge the limitations of age assessment, the discrepancy between the age assessment and the age information given by asylum-seeking children may also negatively affect their credibility.

In 2016, NOAS and Save the Children Norway (NOAS 2016) evaluated age assessment practices and concluded that they do not comply with the Immigration Act and United Nations (UN) guidelines. The report also found that more asylum seekers go through medical age assessment than is provided for under the Immigration Act and the UN guidelines. Medical age assessments are given too much weight. There is also a need for a holistic age assessment method examining both physical and psychosocial development.

In January 2017, UDI handed over responsibility for the dental and hand X-ray examinations to the University of Oslo. In March 2017, the university withdrew from the agreement with the immigration authorities due to the ethical implications and challenges of the measures. The situation remains unresolved.

11.3 CHILDREN'S RIGHTS WEIGHED AGAINST THE NEED FOR IMMIGRATION CONTROL

This subsection discusses how recent legislative amendments and practice have made the rights situation for asylum-seeking children more restricted. Due to a political commitment to stricter immigration policy, the Immigration Act was amended in 2015 and 2016 to include new regulations (Prop. 90L 2015–2016).

One of the new regulations removed the reasonability assessment from Section 28 (on granting asylum) of the Immigration Act, making forced return to the country of origin more likely, also when the applicant will be facing internal displacement upon returning (Vevstad 2017). This has implication also in relation to another clause on the granting of temporary residence permission to UMs aged 16 to 18 years. These two examples illustrate how human rights is an area subject to negotiations over changing political and rights interests. Children's rights tend to be made conditional on protective immigration policy and interpreted in a more restrictive way.²³

11.3.1 ELIMINATION OF ASSESSMENT OF REASONABILITY FROM THE IMMIGRATION ACT SECTION 28

A new regulation in the Immigrant Act, which came into effect in October 2016, removes the principle of assessing the reasonableness of forcibly returning a refugee to his/her country of origin. The removal of the reasonability assessment also implies the removal of thorough assessment of the child's best interests under Section 28 in the Immigration Act (on granting asylum). If a case is rejected under Section 28, it is then assessed to identify conditions that support granting of a residence permit on humanitarian grounds. In such cases, the reasonability assessment is then assessed under Section 38, evaluated against immigration regulation concerns. This amendment is not intended to expand the content of the grounds assessed in Section 38 (Prop. 90 L (2015–2016), 51–52).

In the granting of residence permits on humanitarian grounds the child's best interests is a primary consideration.²⁴ The Immigration Act expresses the best-interests principle in Section 38, but unlike Section 28 on asylum, the assessment under Section 38 also provides for consideration of other factors in order to control and/or limit immigration, prevent illegal actions and safeguard society at large. In such cases, the child's best interests are a primary but not the exclusive nor the decisive consideration. The principle of the child's best interests should be balanced with the need for immigration control.²⁵

23. See HR-2015-2524-P - Rt-2015-1388.

24. This principle similarly follows from the Norwegian Constitution Article 104 and CRC Article 3 No 1.

25. In Norway, the Immigration Appeals Board (UNE) holds the authority of statutory legal interpretation in the area of immigration. UNE (2016) has clarified how to balance the principle of the child's best interest with the need for immigration control.

This issue of weighing the child's best interests against the need for immigration control has been much debated. The wording of CRC Article 3(1) permits flexibility and gives preference to other strong interests in special situations.²⁶ Nevertheless, the child's best interests must be identified, specified and taken as 'the paramount consideration' when in conflict with other interests or rights (Committee on the Rights of the Child, General Comment 14, Sandberg 2016). Children's rights experts emphasize that the more confident one is what the child's best interests in a case are, and the greater the importance a decision has for the child, the higher priority that the child's best interests should be given. According to e.g. Sandberg (2017), Stang (2012), Stang and Lidén (2014), the practice to, as a rule, prioritize immigration control over the child's best interests is hardly in accordance with the CRC's interpretations of the term 'basic' in Article 3 No 1.

International rights provisions on return to country of origin

Regarding the returning of child asylum seekers to their country of origin, the Committee's General Comment No. 6 states that this is not an option if it would lead to a 'reasonable risk' of violating the child's fundamental human rights and, in particular, if the principle of non-refoulement applies under the UN Convention of 1951 Relating to the Status of Refugees, Article 33. The Committee stresses that, in principle, return to the country of origin shall occur only if it is in the child's best interests, taking into account safety, security, available care arrangements and the child's views on and level of integration into the host country.²⁷

The UNHCR requires the primary option to be the return of refugees to a safe part of their country of origin. However, in 2002, the UNHCR added the principle of measuring the reasonability of such returns (UNHCR/GIP/03/04). The assessment must consider:

[...] age, sex, health, disability, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, educational, professional and work background and opportunities, and any past persecution and its psychological effects. (UNHCR/GIP/03/04)

26. In accordance with the Committee's (2013) General Comment 14, it does not violate the CRC, in some cases, to set aside consideration of the child's best interests in favour of other matters.

See discussion of Norwegian Supreme Court jurisprudence on this topic in Søvig's chapter.

27. Committee on the Rights of the Child (2005) General comment no 6, para. 84.

In 2012, the UNE (2012) made this standard the main principle of its return practice. This is in line with the European Union (EU) Council Directive (2004/83/EC) on minimum standards for the qualifications and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection. The directive regards return as an option as long as it is deemed to be ‘accessible’, ‘safe’ and ‘reasonable’.

In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. (Article 8.1–2)

The CRC Committee states that an administrative examination must include an overall assessment of the child’s best interests. An asylum request cannot be refused simply on the grounds that the return is justifiable; rather, refusal must be based on relevant and sufficient weighty considerations, which must be specified in the decision (Sandberg 2017).

In the Ministry of Justice’s tender on the new regulations (Prop. 90L 2015–2016), most legal experts criticized the alterations in regulations concerning UMs and regulations that would have negative implications for children in families because of the extended use of the paragraph in the legislation to *not* grant protection to refugees with protection needs, with reference to the option for return to internal displacement in their home country.

The proposed new regulations in the Norwegian Immigrant Act were criticized for violating international law. Key hearing bodies considered in their statements that Norway should follow the UNHCR’s guidelines, identifying criteria for providing reasonability.²⁸ For example, the Norwegian Immigration Appeal Board emphasized that most countries apply the reasonability criteria. Hearing bodies also contended that the European Court of Human Rights follows the UNHCR’s guidelines and that the criterion on reasonability is reflected in the EU’s status directive Article 8.

The new, restrictive regulations have had consequences for the number of rejections, as was intended. Nearly all applicants from Syria and Eritrea are granted asylum, however most refugees from Afghanistan and Iraq, which are countries that the Norwegian immigration authorities assess as safe for return, have received

28. UNE, Advokatforeningen, Amnesty and NOAS were among those that criticized the new restrictions (see Prop. 90 L (2015–2016)).

rejections on their applicants. In 2017, residence permits were given to only 28 per cent of applicants from Afghanistan compared with 52 per cent in 2014.²⁹ In 2017, a majority of Afghan families with children received rejections.

Another consequence of these new regulations is that those eventually granted residence permits in accordance with Immigration Act Section 38 are not granted the same right to family reunification as refugees who are granted asylum under Section 28. This may have significant implications for children in families split by war and flight. This change is in line with stricter immigration policy but can conflict with the CRC principle of the child's best interests and with the European Convention on Human Rights Article 8.

Returning parents and children in need of protection as internally displaced people may raise new and extended concerns that relate, for example, to states' responsibilities regarding healthcare treatment and reintegration after child-specific forms of persecution, ill treatment, abuse or exposure to inhuman treatment of close relatives, as stated in CRC Article 39. Another issue is states' responsibility to ensure refugee children's right to education as defined by CRC Article 22 (see also *UNHCR Handbook* 2003). When a family is returned and faces internal displacement, it is no longer covered by the UNHCR's regulations.

11.3.2 LIMITATIONS ON UNACCOMPANIED MINORS

The new regulations also have implications for the assessment of asylum applications from UMs. In recent years, a large proportion of UM applicants (66–94 per cent) were granted residence permits, primarily on asylum grounds. However, the Norwegian authorities regard return to the country of origin as an option for adult refugees from Afghanistan, so UMs from that country are granted temporary residency until they reach the age of 18 years and are then immediately returned.

The practice of granting temporary residency permits to UMs was first implemented in 2009.³⁰ UMs who were 16 to 18 years old and did not qualify for asylum or residency on humanitarian grounds but would have had no access to proper care if returned to their country of origin could receive temporary, non-renewable residence permits that would expire once they reached the age of 18 years (Immigration Regulations Section 8-8). From 2009 to 2015, immigration authorities

29. <https://www.udi.no/en/statistics-and-analysis/statistics/asylum-decisions-by-citizenship-and-outcome-2017/>

30. This regulation was one of the thirteen points for limiting the number of (unwarranted) asylum applications proposed in 2008 (see Stang 2012).

were reluctant to grant temporary residency to UMs.³¹ In 2015, the Norwegian government proposed a new temporary residency regulation including all UMs who did not have pending asylum claims or were younger than 16 years old. This proposal was heavily criticized by the hearing bodies of the tender for creating an unsecure situation with extra stress and vulnerability.³² Nevertheless, the Ministry of Justice continued to apply the regulation to minors aged 16 to 18 years (Prop. 90 L (2015–2016)).

The hearing bodies argued that temporary residency increases mental health problems and may reduce motivation for participation in school, work and other activities. It prevents minors from settling down, forming attachments with caregivers, integrating into Norwegian society, graduating from school and planning for the future. The UNHCR was also critical of the proposal, citing the CRC, particularly the principle of the child's best interests.³³ The UNHCR stated that children should not be discriminated against in the asylum procedure due to their status as children.

Children recognized as refugees following a child-sensitive application of the Convention should be granted full protection status and an ordinary permit. That children are recognized according to child-specific standards does not mean that they do not fully meet the criteria of the refugee definition, only that it has been applied in an age- and child-sensitive manner. (Section 67)

Under the new regulations, the number of UMs granted temporary residency each year has increased substantially. Over that period, the numbers of UMs disappearing from reception centres also increased significantly (Lidén 2017). UMs tend to remigrate to other EU countries, where they either remain as street-dwellers without asylum status or seek asylum (Aasen et al, 2016, NOAS 2018a).³⁴

31. From 2009 to 2015, a total of 221 UMs received temporary residency. Twenty percent of them were returned to their country of origin after reaching the age of 18, while one third 'disappeared', mostly to other EU countries. Others have been settled in Norway (Dok.8:13 S (2015–2016); see also Aasen et al. 2016). In 2017 342 Afghan UMs received temporary residency. Also, Sweden and the United Kingdom grant temporary residency for UM, however, fewer than in Norway, both in numbers and in percent of the UM applicants. Another difference is e.g. that in Sweden the minor can have a second assessment after turning 18, which is not an option in Norway (see NOAS 2018b).

32. See also Committee on the Rights of the Child (2005), *General Comment No 6*, para. 89, which stipulates that children must be given a secure juridical status if reunion with their family is not possible.

33. Juristforbundet, UNHCR, Rettspolitisk Forening, Press, Amnesty, Helsingforskomiteen, Advokatforeningen and NOAS see the proposal as in violation of Norway's international obligations.

34. See also <http://missingchildreneurope.eu/News&press/Post/1023/Europol-confirms-the-disappearance-of-10-000-migrant-children-in-Europe>

In the autumn 2017, numerous of those granted limited residency turned 18. This elevated the critique of the new regulations. Fourteenth November 2017 the Norwegian Parliament decided to re-introduce assessment of reasonability for unaccompanied minors, giving those with a decision to return a new assessment on certain conditions.

11.3.3 THE CHILD'S BEST INTERESTS AS THE PRIMARY CONSIDERATION

General Comment No. 14 on the child's right to have his/her best interests taken as the primary consideration emphasizes three main aspects. Firstly, this right applies in *all* matters concerning the child. Secondly, if a legal norm is open to more than one interpretation, *priority* shall be given to the interpretation that most effectively serves the child's best interests. Thirdly, a best-interests determination implies *a formal process* with strict procedural safeguards.

So far, the politicians have discussed the principle of the child's best interests in cases in which children stay in Norway for a long period. The UNE (2013) prepared guidelines for how the child's best interests were to be understood in such cases, and due to strict interpretation of these guidelines, several long-staying children were rejected because their parents had not proven their identities. Consequently, in December 2014, the immigration regulations were amended to give more weight to the child's affiliation to Norway. The rules are still strict: generally, children must have lived in Norway for a minimum of 4.5 years and have attended school for one year.³⁵ The amended guideline on the best-interests assessment calls for examination of the child's affiliation and social networks. There may be reason to consider best-interests assessments in light of the new practice of reasonability assessment. This consideration now also applies to the return of families and children who have *protection needs*. They may have experienced severe threats, extortion and violence before and during their flight, and they may need healthcare and support. If the return would be to an environment in which they were previously exposed to persecution, the child's subjective feeling of insecurity will increase. This relates to the interpretation of CRC articles on rights to life and development, health, education and support and social inclusion after experience of abuse, violence,

35. According to the partnership agreement between Solberg-Government, The Christian Democratic Party and the Liberal Party (2013), a permanent arrangement for long-staying children, including changes in Immigration Regulation, Section 8-5, should be elaborated. The 2016 UNE report showed that 82 per cent of (80 of 92) families that appealed for a change in the UNE's decision were granted residency permits.

abuse and exploitation.³⁶ The Norwegian immigration authorities have not publicly clarified how the child's best interests are to be interpreted in cases of returning refugee children with protection needs to their country of origin or how the principle of an asylum threshold that is lower for children than it is for adults is to be implemented.

11.4 FORCED RETURN – CHILDREN IN HOLDING CENTRES

For children in families whose asylum application has been rejected, confinement at a detention centre may be part of the return procedure. In such cases of forced return, CRC Article 37 on custody and holding centres is relevant to the asylum assessment.³⁷

The Trandum Detention Centre (*Trandum Utlendingsinternat*) is the only centre specially designed for legal detention of irregular or undocumented migrants – and is discussed in more detail in Chapter 6. It is managed by the Police Foreign Unit and is authorized and operated in accordance with the *Immigration Act*.³⁸ The centre is a former military barracks near Gardermoen International Airport. For most rejected asylum seekers facing forced return, either to another European country, in accordance with the Dublin Convention³⁹ or to their country of origin, a stay at Trandum is part of the forced return procedure.

According to the Immigration Act Section 106, under certain circumstances a foreign national may be arrested and remanded in custody; for example, if he/she does not cooperate in clarifying his/her identity or has used a false identity, or if there are clear grounds for suspecting evasion. The overall custody may not exceed 12 weeks, unless there are particular reasons to the contrary. According to the Immigration Act Section 107, a foreign national who is arrested and remanded in custody under Section 106, as a rule, shall be placed in a holding centre administered by the police.⁴⁰ Neither Section 106 nor Section 107 specifically addresses

36. Committee on the Rights of the Child, General Comments Nos. 6 (unaccompanied minors), 7 (early childhood), 13 (violence), 15 (health) 18 (harmful cultural practices), 20 (adolescence) are among the General Comments that contribute to the interpretation of relevant CRC rights.

37. Committee on the Rights of the Child (2007) *General Comment No. 10* on child rights in juvenile justice stresses the basic principle (session 79); the use of deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time.

38. See, in particular, Chapter 12 of the *Immigration Act* and *Immigration Directive 2009*.

39. Dublin Convention (Regulation No. 604/2013) is a [European Union \(EU\) law](#) that determines the [EU Member State](#) responsible for examining an application for [asylum seekers](#) seeking [international protection](#) under the [Geneva Convention](#) and the [EU Qualification Directive](#), within the [European Union](#).

40. See also discussion in Chapter 6 on policing.

or refers to the best-interests principle, but the provisions are expected to be interpreted in a child-sensitive manner, and both the best-interest principles in CRC Article 3 No 1 and the CRC provisions regulating deprivation of the liberty of children have to be taken into account (see Committee on the Rights of the Child's General Comment No. 10).

The Parliamentary Ombudsman conducted two investigations of the conditions and practices at Trandum, the main holding centre, and made several critical comments.⁴¹ The 2012 report does not state whether the children were UMs or were detained with their parents. The 2015 report states that a total of 330 children, including 10 UMs, were detained at Trandum. The average time spent at Trandum in 2016 was 1.5 days for UM and 2.5 days for children in families (Lidén 2017).

Researchers and lawyers have protested that the conditions at Trandum are not in accordance with Norway's obligations under the CRC and other human-rights conventions, especially the best-interests principle.⁴² There seems to be a systematic absence of assessments of the human-rights principle of proportionality in such cases (NOAS 2017). In June 2017, the Borgarting Court of Appeal concluded that the Norwegian authorities had violated the European Convention on Human Rights Article 3 by detaining a family at Trandum for too long.⁴³ For children, detention should always be the absolute last resort, but assessments of alternative measures are not always made, for example, according to the provisions of the Child Welfare Act. The detention of children at the Trandum holding centre, therefore, is violating the state's obligations under the CRC. In a court decision from 2017 the court of appeal [*Lagmannsretten*] concluded that the CRC Art. 37 b as well as the European Convention on Human Rights (ECHR) Article 3 and 8 had been violated when a family with four children, aged 7–14, were detained at Trandum for a period of 20 days.⁴⁴

41. Sivilombudsmannen [Parliamentary Ombudsman], *Besøk til politiets utlendingsinternat på Trandum høsten 2012* [Visiting the Trandum holding centre, autumn 2012] and *Besøksrapport politiets utlendingsenhet på Trandum, 19–21 Mai 2015* [Report on a visit to the Trandum holding centre, 19–21 May 2015].

42. UNICEF, Save the Children and the Children's Ombudsman have reacted to the practice. See also the 2017 NOAS report.

43. This period is 20 days of detention for a family with four children aged 7 to 14 years.

44. See LB-2016-8370 *Fengsling. Barn. Tvingende nødvendig. EMK Art 3 og 8* [Detention, Children, Absolutely necessary, EMK art 3 and 8] <https://www.udiregelverk.no/no/rettskilder/underrettsavgjørelser/lb-2016-8370/>. Due to the criticism, the immigration administration in 2018 established a separate centre for children and families. However, that this may lessen the burden does not change the fact that children are imprisoned for a period of time.

11.5 RECEPTION CONDITIONS AND THE PRINCIPLE OF NON-DISCRIMINATION

CRC Article 22 expresses the general principle of non-discrimination, which is articulated throughout the CRC, that refugee children have the same fundamental human rights and protection needs as other vulnerable children. As already mentioned, the UNHCR regards Norway's new regulation on temporary residency for UMs as possible discrimination against children. In this context, it is important to consider the status of asylum seeking-children living in reception centres, especially whether they have the same fundamental human rights and protection needs as other vulnerable children.

In accordance with the Norwegian Human Rights Act of 1999, asylum-seeking children have the same access to education, healthcare and child-welfare services as other children in Norway. Asylum-seeking children up to 16 years old have an equal right to primary and lower-secondary school education. They are enrolled in introductory classes at local public schools. Since 2014, asylum-seeking children aged 16 to 18 years have been granted access to education. Minors who completed lower-secondary school before arriving in Norway are enrolled in upper-secondary school after taking an introductory class. However, most young refugees do not have education equivalent to lower-secondary school on arriving in Norway and must attend classes to complete this level, either while living in reception centres or once settled in a community (Pastoor 2015). Those who receive residency permits have the same right to education as Norwegian citizens.

The non-discrimination principle (CRC Article 2) was also a strong argument for the transfer in 2008 of administrative responsibility for UMs from the Immigration Directorate (*Utlendingsdirektoratet*) to the child welfare system (*Barnevernet*). Non-governmental organizations such as Save the Children, the Children's Ombudsman and child-rights activists, along with lawyers and researchers, argued that the care situation for UMs in ordinary reception centres did not meet the quality standards that apply to children living in childcare institutions under the Child Welfare Act. Since 2008, UMs younger than 15 years have been entitled to live in special care centres administered by the Directorate for Children, Youth and Family Affairs, to ensure that they receive the same standards of care and support as children in child-protection institutions.⁴⁵ Consequently, the Child Welfare Act's provisions on quality standards for institutions, qualifications of staff members, the rights of children living in institutions, use of coercive measures and regular

45. The 2008 care reform resulted in the addition of a chapter to *Barnevernloven* [Child Welfare Act] of 1992 to regulate care centres for UMs (Chapter 5A).

supervision by the county governor have been implemented at the care centres for UMs. These standards, however, are not equal to those of most institutions governed by the Child Welfare Act (Deloitte 2014).

The UDI continues to supervise the reception centres for UMs aged between 15 and 18 years. These centres are not adapted to house minors granted temporary residency, which means that such UMs are living in the centres for too long, with worries and uncertainty while awaiting their return. An increase in serious health problems has been documented.⁴⁶ The reception centres are not regulated by child welfare legislation, and there is no specific required staff-to-minors ratio. There are insufficient properly trained staff members, and the staff-to-minors ratio is lower than in care centres (Lidén et al. 2013; Berg and Tronstad 2015). Despite the care reform for UMs younger than 15 years old, it can reasonably be argued that discriminatory treatment is still being practiced against UMs aged 15 to 18 years who live in ordinary reception centres administered by the Immigration Directorate.

Child protection is another area of concern, especially whether children in the asylum process have access to equal help and support as other vulnerable children. Researchers have highlighted limitations in the procedures for identifying and following up minors who have had complex experiences of sexual and other forms of abuse due to armed conflicts, flight and human trafficking (Berg and Tronstad 2014, Lidén et al., 2013, Lidén and Salvesen 2016, Paulsen et al., 2014, Tyldum et al., 2015). The concerns include the children's everyday need for security, care and support when living in reception centres. The researchers found that local child welfare offices only follow up on grave problems involving UMs. For example, the June 2017 report by the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings urges the Norwegian authorities to adopt a national referral mechanism which takes into account the special circumstances and needs of child victims. The report also recommends that Norway take further steps to address the problem of children going missing while in state care.⁴⁷

CRC Article 39 specifies that states parties shall take all appropriate measures to promote the physical and psychological recovery and social reintegration of the

46. See letter from UDI to the Ministry of Justice, <https://www.abcnyheter.no/nyheter/norge/2017/02/09/195276393/udi-flere-enstlige-mindrearige-har-forsokt-ta-sitt-egget-liv>. See also a letter from the Child Ombudsman, <https://www.vg.no/nyheter/innenriks/i/7aMx9/barneombudet-sterkt-bekymret-for-enstlige-mindrearige-i-mottak>

47. See <https://rm.coe.int/greta-2017-18-fgr-nor-en/1680782abc>

child victims of any form of neglect, exploitation, abuse, torture, armed conflicts or any other cruel, inhuman or degrading treatment or punishment. Also, CRC Article 24 on the right to health and Article 18 on child care are relevant to ensuring that asylum-seeking and refugee children receive sufficient support. International asylum-seeking children have the same access to welfare services as children who are Norwegian citizens, however the local welfare services may be reluctant to give these children sufficient support.

Access to healthcare services, especially the treatment of chronic diseases or traumas, is another area of concern. Children not granted residence permits may still only access emergency health services. Researchers have documented trauma symptoms and mental health treatment needs among unaccompanied refugee minors on arrival in Norway (Jakobsen et al. 2014; Vervliet et al. 2014). The children's health problems may even increase when living in reception centres (Jensen et al. 2014). While children's asylum proceedings are under way, health institutions may be reluctant to start treating mental problems or chronic health problems due to the uncertain prospects. This also concerns minors with a temporary permit to stay.

11.6 CONCLUSION

CRC Article 22 stipulates that refugee children are to receive appropriate protection and humanitarian assistance in order to enjoy the applicable rights set forth in the convention and other international human-rights and humanitarian instruments. Norway has taken important steps to implement the rights of the child in the area of immigration. These steps include the child conversation, the procedures for assigning representatives to all UMs upon arrival, the establishment of a child-competent unit within the immigration administration, the opening of care centres for the youngest minors, and granting of equal education rights to those minors less than 16 years old. Improved participation rights are important for children if they are to disclose their experiences of persecution, inhuman treatment and abuse. For young asylum-seekers, the principle of non-discrimination has been important in setting standards of care and schooling. The intentions expressed in the Immigration Act to ensure child-sensitive assessments and to set an asylum threshold that is lower for children than it is for adults are also significant steps in the right direction.

However, in all these areas, the positive intentions have been challenged in practice because of resource shortages and the need to prioritize sufficient competence. Another area of concern with regard to assessing the rights of the child in

immigration is the *age assessment* (NOAS 2016), the practice of which should comply with the UN guidelines for a holistic age assessment, which considers both physical and psychosocial development. The child's participation rights must also be respected in such assessments. Furthermore, if the age assessment establishes that asylum-seekers who claim to be minors or who are claimed to be minors by their representative are in fact 18 years or older, this may influence the immigration authorities' (UDI's) *credibility assessment* of asylum claims and thus case outcomes, even if confidence in the age assessment methods is low. The consequences may be severe: children assessed to be over-age do not receive support from representatives and their cases are assessed according to adult criteria.

New regulations in the Immigration Act have made the intention to ensure child-sensitive practices more ambiguous and less certain. Meeting the requirements of the CRC may run counter to the political and public demand for restrictive immigration policy. In recent years, immigration control has been tightened by setting aside key provisions of the CRC, for example, by removing the reasonability assessment from the Immigration Act section on asylum and by granting UMs only temporary residency. In their recent concluding observations, the Committee on the Rights of the Child comments on these new regulations.⁴⁸ The Committee is concerned with children being sent back to countries where their rights are at high risk of being violated, which would contravene the principle of non-refoulement.⁴⁹ Prioritizing immigration control at the expense of the child's best interests may violate not only the *individual* child's right to have his/her best interests made a primary consideration but also the child's right for *priority* to be given to the interpretation that most effectively serves his/her best interests when a legal norm is open to more than one interpretation (Sandberg 2017). The Committee also comments on the increase in the use of temporary residence permits for unaccompanied asylum-seeking children, and the absence of any system to automatically reassess the cases of unaccompanied children with temporary residence permits, 'resulting in the fear that their applications for permanent residency would be denied, which they see as an important reason for the relatively high number of children who have disappeared from reception centres.'⁵⁰

A further concern is the detention of children at the Trandum holding centre as part of the return procedure. With an increase in the numbers of rejected refugee families being returned by Norway to their countries of origin, the number of

48. UN Committee on the Rights of the Child, *Concluding observations on the combined 5th and 6th periodic reports of Norway*, UN doc. CRC/C/NOR/CO/5-6 (2018), paras. 31–32.

49. *Ibid.* para. 31(c).

50. *Ibid.* para. 31a.

detained children will also increase. The Committee on the Rights of the Child is concerned about the possibility of detention of children for up to 9 days prior to their deportation and says that children are under no circumstances placed in detention based on their immigration status.⁵¹

A final area of concern, also for the Committee on the Rights of the Child, is the conditions for UMs aged 15 to 18 years placed in reception centres. As the standard of care is unregulated and their access to education is limited, their treatment can justifiably be regarded as a form of discrimination. Furthermore, the reception centres have not been adapted to house the growing number of minors granted limited residency, which means that such UMs are detained in the centres for too long, which exacerbates their worries and uncertainty while awaiting return to their country of origin. An increase in serious health problems among such minors has been documented. As I have shown, there are also serious limitations in the procedures for identifying and following up children with health problems and those who have had traumatic experiences of conflict and flight, violence, abuse and exploitation. The physical and psychical vulnerability of minors is insufficiently taken into account, not only in day-to-day care and support practices in reception centres but also in provision of healthcare and child welfare services. Yet another concern is that asylum-seeking minors who need extra support have insufficient access to healthcare and child welfare services. Finally, the problem of asylum-seeking children ‘disappearing’ from state care needs to be properly addressed. This is also an arena for concern of the Committee on the Rights of the Child. They recommend that Norway ‘address further root causes of disappearance of children out of reception centres’ and to ‘increase efforts to search for missing children, provide them with the necessary protection, redress and rehabilitation, and ensure that if they have fallen victim to crimes, perpetrators are brought to justice.’⁵²

In summary, compared to many other European countries, Norway has made significant progress in ensuring children’s rights in the asylum field. Commendably, Norway has adopted a child-friendly asylum procedure, has given its immigration regulations a child-sensitive perspective and has given asylum-seeking children access to schools and critical healthcare and child-welfare services. However, as discussed above, there are several areas of concern in which children’s rights are not in place or have even been reversed. A child perspective must necessarily consider children’s short time perspectives, whereby months and years are vital for their welfare, education and development. As intended by Norway’s law-

51. *Ibid.* para. 32(f).

52. *Ibid.* para. 32(b) and (c).

makers, the new regulations in the Immigration Act have led to a considerable increase in the numbers of asylum rejections and forced returns to the country of origin. Also, increasing numbers of families with protection needs and UMs with temporary residence permits face demanding conditions. These recent retrograde developments are compromising certain fundamental rights of the child.

As I have argued, in Norway there are worrying tendencies to reverse children's rights in the area of immigration. In periods with high numbers of asylum applicants, the situation of asylum-seeking minors becomes especially precarious. For responsible immigration control, it is important to have robust procedures and plans in place to cope with such peaks while protecting those children who may be even more vulnerable at such times. Prioritizing tight immigration control over the child's best interests is a hotly contested issue that raises conflicting concerns, interests and rights. For example, the political commitment to new restrictions was justified by the argument that they would discourage families and UMs from migrating to Norway. This raises the key question of whether human rights, including the principle of the individual child's best interests should be restricted in order to prevent potential negative effects of migration that concern other children. The dilemmas in this field are plentiful, but the CRC is unequivocal: it grants every child the same individual rights. Above all, this analysis of the current state of children's rights in the area of asylum in Norway has shown that the CRC is still far from being fully implemented in this country.

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