



## Supplementary report to the UN Committee on Economic, Social and Cultural Rights at its 67th session, hearing of Norway 25-26 February 2020

We refer to the Committee's concluding observations of 13 December 2013 regarding Norway, and the Committee's list of issues of 12 November 2018. We further refer to the State Party's report of 31 October 2019.

In the following are our comments to paragraph 15 of the list of issues regarding the situation of asylum seekers.

### *1. Paragraph 15 (b) of the list of issues: «The steps taken or envisaged to ensure that the protection and care of all unaccompanied asylum-seeking children under the age of 18 are provided by the Child Welfare Services»*

It is still the Directorate of Immigration (UDI) that is responsible for the protection and care of unaccompanied asylum seeking children between the ages of 15 and 18 that come to Norway. There are major differences in the standard of care provided for these children compared to the care provided for children under the care of the Child Welfare Services.

A report by the Norwegian National Human Rights Institution (NHRI) shows significant differences in the care provided in reception centres for unaccompanied asylum seekers between the age of 15 and 18 as compared to the care provided for unaccompanied minors under the age of 15 and to other children under the responsibility of the Child Welfare Services. NHRI has concluded that the differential treatment of the children between the ages of 15 and 18, are in breach of the UN Convention on the Rights of the Child.<sup>1</sup>

We strongly disagree with the State Party's description that «the reception facilities offered to unaccompanied minors aged 15–18 are designed to meet the needs of this group». In our experience, the care provided for this group is not adequate, as confirmed by the Fafo Research Foundation.<sup>2</sup>

The State Party has been recommended that the protection and care for these children are provided by the Child Welfare Services by The UN Committee Against Torture (2018), The UN Committee on the Elimination of Racial Discrimination (2019), The UN Committee on the Rights of the Child (2018), The Human Rights Committee (2018) and the UN Human Rights Council (2019).

### **Recommendation**

The State Party must ensure that the Child Welfare Services are given responsibility for all unaccompanied minors under 18, regulated by the Child Welfare Act.

<sup>1</sup> <https://www.nhri.no/2017/temarapport-2016-omsorg-enslige-mindrearige-asylsokere/>.

<sup>2</sup> <https://www.fafo.no/index.php/zoo-publikasjoner/fafo-rapporter/item/et-trygt-sted-a-vente>

English summary:

<https://www.fafo.no/index.php/zoo-publikasjoner/fafo-rapporter/item/et-trygt-sted-a-vente>



**2. Paragraph 15 (c) of the list of issues: «Cases of unaccompanied asylum-seeking children who are missing from reception centres, including the number of such cases reported and investigated and the outcome of the investigations, and the main causes for children going missing and the measures taken to address them»**

In recent years, a high number of unaccompanied minors have disappeared from Norwegian asylum centres. Many of the children that have disappeared, are children from Afghanistan who had only been given a temporary resident permit in Norway until the age of 18.<sup>3</sup>

Adequate protection and care is important to prevent disappearances. As shown above, the protection and care given to unaccompanied minors between the ages of 15 and 18 is not sufficient.

The State Party states that «the immigration authorities and the police have guidelines on how to deal with disappearances of unaccompanied or separated children».

However, a report by the Norwegian Institute for Urban and Regional Research states that there is no clear division of responsibility between the police, the welfare authorities and the immigration authorities - and thus no authority takes the main responsibility to make sure proper action is undertaken when disappearances of unaccompanied asylum seekers from Norwegian reception centres are reported to the three institutions.<sup>4</sup>

### **Recommendations**

The State Party should:

- Stop giving unaccompanied children temporary residence permits only until the age of 18.
- Provide adequate protection and care to unaccompanied minors between the ages of 15 and 18.

**3. Paragraph 15 (d) of the list of issues: «The measures taken to ensure that all asylum applications are considered on the basis of their merits and to provide for in-country appeal procedures for rejected applications»**

As stated by the State Party, an asylum application may be refused consideration on its merits if the applicant has travelled to Norway after having stayed in a «safe third country».

It is important to note that since December 2015, there is no longer a criterion that the asylum seeker has access to proper asylum procedure in the countries deemed as «safe third country» by Norwegian immigration authorities.<sup>5</sup>

<sup>3</sup> [https://www.noas.no/wp-content/uploads/2017/10/EMA-notat\\_web.pdf](https://www.noas.no/wp-content/uploads/2017/10/EMA-notat_web.pdf); <https://press.no/wp-content/uploads/2018/02/Vi-kan-ikke-reise-tilbake.pdf>.

<sup>4</sup> <http://www.hioa.no/Om-OsloMet/Senter-for-velferds-og-arbeidslivsforskning/NIBR/Publikasjoner/Forebygging-og-oppfoelging-av-enslige-mindrearige-asyloekere-som-forsvinner-fra-mottak-og-omsorgssentre>.

<sup>5</sup> <https://www.noas.no/wp-content/uploads/2019/07/Storskog-rapport-februar-2019.pdf>.



Further, as documented in our report published in 2019 (pp. 50-51)<sup>6</sup>, it is important to highlight that the right to free legal assistance has been effectively abolished in asylum cases where the assessment on the merits is denied either pursuant to the amended «safe third country» provision or a separate «first country of asylum» provision concerning persons already benefitting from international protection in another country. Asylum-seekers arriving after 7 December 2015, whose applications are denied assessment on the merits pursuant to those two provisions, are no longer eligible for free legal assistance without means assessment, as a result of an amendment of section 17-18 of the Immigration Regulations. This poses the issue of whether such applicants in reality will ever find a lawyer willing to take on the case, since the County Governor (Fylkesmannen) might deny an application for free legal assistance. In practice, such applications are almost never granted to asylum-seekers.

As we further highlight in our report (pp. 51-52), since 1 October 2016, inadmissibility decisions issued pursuant to the two provisions «may be implemented immediately», in accordance with section 90(3) of the Immigration Act. Pursuant to this provision, a time limit for requesting suspensive effect shall only be given «if it is not clear that the application should be refused examined on its merits». This amendment was proposed in 2016 as part of a larger legislative package of restrictions of the rights of asylum-seekers and refugees. In the preparatory works, the Ministry «emphasizes in this context that, when rejecting to a safe third country, it must be expected that in practice it will be clear in the vast majority of cases that rejection shall take place.» The Ministry further specified that if time limit for requesting suspensive effect is given, it may be set to be «very short, for example to a few hours.»

### **Recommendations**

The State Party should:

- Reintroduce into Norwegian law the criterion that the asylum seeker has access to proper asylum procedure before referring to a «safe third country» and refusing consideration of the asylum application on its merits.
- Provide free legal assistance in asylum cases where the assessment on the merits is denied.

#### ***4. Paragraph 15 (e) of the list of issues: «The extent to which the measures taken by the State party ensure that the principle of non-refoulement is strictly followed when returning unsuccessful asylum seekers to their home countries, particularly those from Afghanistan»***

A comparative study published by NOAS in 2018<sup>7</sup>, shows that Norway accounted for 65 % of Europe's forced deportations to Afghanistan in 2016. According to the Afghan authorities, a total of 580 Afghans were forcefully returned to Afghanistan in 2016. Of these, 381 were from Norway. Norway, Danmark and the Netherlands are the only European countries forcefully returning families with children to Afghanistan.

<sup>6</sup> <https://www.noas.no/wp-content/uploads/2019/07/Storskog-rapport-februar-2019.pdf>

<sup>7</sup> <https://www.noas.no/wp-content/uploads/2018/05/Afghanistan-notat-på-engelsk.pdf>



### The internal flight alternative

In 2018, the UN High Commissioner for Refugees (UNHCR) published updated eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan.<sup>8</sup> UNHCR is particularly concerned about the security situation in Kabul, where the highest number of civilian casualties was documented. According to UNHCR, civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city. UNHCR concludes:

*Against the background of the considerations relating to the relevance and reasonableness analysis for Kabul as a proposed area of IFA/IRA, and taking into account the overall situation of conflict and human rights violations, as well as the adverse impact this has on the broader socio-economic context, UNHCR considers that an IFA/IRA is generally not available in Kabul.*

Norway has referred extensively to the internal flight alternative in the cases of asylum seekers from Afghanistan.

The internal flight alternative has been developed with three cumulative criteria; internal flight must be safe, accessible and reasonable for the person in concern.

As documented in the above-mentioned comparative study (pp. 30-31)<sup>9</sup>, the Norwegian Parliament decided to remove the reasonableness criteria from Norwegian law in 2016, cf. the Immigration Act section 28 fifth paragraph. The Government argued that the condition of reasonableness does not follow from Norway's international obligations.

Prior to the removal of the reasonableness criteria in Norway, it was generally considered unreasonable to refer both unaccompanied minors (UAM) and families with children to areas where they do not have a network. Both families with children and UAM are now assessed in accordance with the provision for residence on a humanitarian basis, cf. Immigration Act section 38. Due to the high threshold for stay after this provision, the removal of this criteria has led to a large number of UAM being referred to internal flight.

To our knowledge, Norway is the only country that has removed this requirement from its national legislation. UNHCR and other legal experts have stated that removing the reasonability criteria is in breach of the UN Refugee Convention.<sup>10</sup> The Immigration Appeals Board has also commented on the law amendment, stating that Norway is bound by international law to apply reasonability criteria when referring applicants to internal flight.<sup>11</sup> Nevertheless, the amendment was subsequently passed and the criteria abolished.

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<sup>8</sup> <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5b8900109&skip=0&query=guidelines&coi=AFG>

<https://www.noas.no/wp-content/uploads/2018/05/Afghanistan-notat-pa-engelsk.pdf>.

<sup>9</sup> <https://www.dagbladet.no/kultur/det-erna-ikke-sier-om-behandlingen-av-oktoberbarna/68879269>.

<sup>11</sup> <https://www.regjeringen.no/contentassets/4da4984e3d0e4088aa7824a254c0d436/utlendingsnemnda.pdf>,

pp. 13-14.



### Legal aid

Asylum seekers who have their case rejected in the first instance, are given 5 hours of free legal aid to appeal. This is not sufficient to secure the basic right of the asylum seeker, as confirmed in a report by Oxford Research.<sup>12</sup>

In a small number of asylum cases, the Immigration Appeals Board invites the asylum seeker to a board hearing. An extra 5 hours of legal aid is in this case provided. However, the board hearing can last longer than 5 hours. In reality this implies that the lawyer is not paid for preparing himself/herself and the asylum seeker for the hearing.

The State Party states that «rejected asylum seekers are given access to court». In reality, however, most asylum seekers have no possibility to access civil courts in order to challenge decisions by the Appeals Board. The state covers the costs of trying an asylum case in court only in a very limited number of cases.

No legal aid is provided in cases that are declared inadmissible pursuant to the safe third country rule, including when appealing decisions to the Appeals Board, as mentioned above.

### **Recommendations**

The State Party should:

- Reintroduce into Norwegian law the reasonability criteria connected to the internal flight alternative, in accordance with the UN Refugee Convention.
- Increase the number of hours of free legal aid given in asylum cases.

*For further information, please contact:*

*Mona Reigstad Dabour, senior political advisor (+47 48022166 / [mrd@noas.org](mailto:mrd@noas.org))*

**Norwegian Organisation for Asylum Seekers  
24<sup>th</sup> of January 2020**

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<sup>12</sup> Oxford Research, *Evaluering av advokatorordningen for asylsøkere*, 2012, p.54 (available from: [https://www.udi.no/globalassets/global/forskning-fou\\_i/beskyttelse/evaluering-av-advokatorordningen-for-asylsokere.pdf](https://www.udi.no/globalassets/global/forskning-fou_i/beskyttelse/evaluering-av-advokatorordningen-for-asylsokere.pdf)).