

The gap between legal protection, good intentions and political restrictions. Unaccompanied minors in Norway

Hilde Lidén, Institute for Social Research

Elisabeth Gording Stang, Oslo and Akershus University College of Applied Sciences

Ketil Eide, University College of Southeast Norway

1 Introduction

The Norwegian policy on UAM is ambivalent. On the one hand, Norway has promoted a high profile on human rights in general, and especially on children's rights. Norway was the first country to establish the Ombudsman for Children in 1981. The UN Convention of the Right of the Child (CRC) was ratified by Norway in 1991 as one of the first countries in the world. The CRC was implemented as one of five human rights conventions into national legislation in 2003. The Immigration Act of 2008 applied child sensitive measures. Increasing flux and flows of migrants have, on the other hand, led to several restrictions in the immigration law and practice, with substantial consequences for UAM. The aim of the article is to explore these ambiguities and changes in regulations, with regard to the gap between restrictions, new policies and practice on the one side, and the human rights standards set forward in the CRC, the Norwegian Constitution and the intentions behind the Immigration Act's child-sensitive approach on the other.

An unaccompanied asylum-seeking minor is a person younger than 18 years old who arrives in a country without parents or other legal guardians and applies for protection.¹ In previous years, approximately 10 % of all asylum applicants in Norway were reported to be UAM. More than five times as many applicants arrived in 2015 than in 2014, including more UAM younger than 15 years old. In 2016 the number decreased, due to the EU agreement with Turkey, stricter border controls in many European countries and new and stricter regulations in Norway. About 85 % of the UAM applicants were boys (see Table 1). Over the past ten years, the largest groups of UAM came from Afghanistan, Eritrea and Somalia. In 2015, 10 % of the UAM came from Syria.

The challenges for UAM in the phase of asylum and resettlement are numerous. They have to comprehend and adjust to the asylum procedure, including giving sufficient and adequate information in the asylum interview, to live with uncertainty when waiting for the case to be assessed. Their health condition varies, but most UAM have undergone difficulties before and during their journey, in addition to loss and the feeling of being on their own (Jacobsen et al.

¹ See Norwegian Directorate of immigration (UDI) (2016). PU will usually register the stated age of the minor, and assess whether they consider this age likely to be correct. If the unaccompanied minor is obviously under age 18, the UDI may decide to exempt him or her from the age assessment. Those whom the police consider obviously above 18 (a) will be registered as such and placed in a reception center for adults. The final decision concerning the individual's age is made by UDI caseworkers as part of the asylum decision.

2014; Jensen et al. 2014; Seglem 2012). They encounter several barriers (language etc.) when resettling in a new country. Before arrival, most minors have discontinuous education, and they need to finish primary education (Lidén et al. 2013; Pastoor 2015).

The article is based on six research projects, each carried out by one of the authors or as collaborating projects (Stang 2012; Lidén 2012; Lidén et al. 2013; Stang/Lidén 2014; Staver/Lidén 2014; Lidén 2017; Eide et al. forthcoming). The text combines legal analysis (human rights conventions, national laws, regulations and court cases), the analysis of the quantitative data from immigration authorities to identify particular areas of concern and qualitative research including fieldwork and interviews with minors, staff in reception centers, legal guardians and the Immigration authorities.

2 Legal framework

In 1991, Norway became one of the first countries in the world to ratify the CRC and later incorporated the whole Convention text into national legislation through *Menneskerettsloven*² [Human Rights Act] of 1999, with a specific rule of advantage. Thus, all national regulations not in accordance with the CRC provisions must be changed or interpreted in line with it, as with the Constitution. The CRC has semi-constitutional legal status, positioned between the Constitution and ordinary formal parliamentary legislation in Norway's legal hierarchy. If a provision in ordinary legislation (e.g. the Immigration Act or *Utlendingsforskriften*³ [Administrative Immigration Regulations] contradicts an article in the CRC, the latter shall override the former, or the legislation must be interpreted in accordance with the CRC.

The principles of the CRC were even strengthening when in the spring of 2014, *Grunnloven* [the Norwegian Constitution] of 17 May 1814 was revised, including the addition of a chapter on human rights. Article 104 directly addresses children's rights, stating that children have the rights to respect for human dignity and to be heard in questions concerning them, and that due weight shall be attached to their views in accordance with their age and development. The child's best interests shall be a primary consideration in all actions and decisions affecting children. Article 104 also stipulates that children have the right to protection of their personal integrity, recalling the CRC Article 19 on the prohibition of all forms of physical and mental violence, abuse and neglect of children. Thus, two main principles of the CRC found their way into Article 104 of the Norwegian Constitution: the principle of the best interests of the child (CRC Article 3 no. 1) and the child's right to participation (CRC Article 12). The other two main principles of the CRC—the child's right to life and development, and the prohibition on discrimination against children, are expressed through other constitutional provisions (Articles 93 and 98).

The development in the field of immigration law and practice shows that the normative standards described above are under increasing pressure. In the further, we will look into some of the issues where the gap between the normative standards and policy is emerging.

2.1 Immigration Act of 2008 — Implementing a child-sensitive approach

The Norwegian Immigration Act of 2008 contains several provisions and formulations to strengthen the legal position and rights of asylum-seeking children. Assessments made under section 28, which regulates refugee and asylum status, shall take account of whether

² Lov om menneskerettighetenes stilling i norsk rett, LOV-1999-05-21-30.

³ Forskrift om utlendingers adgang til riket (*Utlendingsforskriften*); FOR-2009-10-15-1286.

applicants are children. The legal threshold to obtain asylum based on refugee status is lower for children than adults. This allowance is highly relevant to UAM. This reference to applicants as children implies that the legal criteria in section 28 are to be interpreted in a child-sensitive manner. Circumstances that might not reach the level of the legal terms “well-founded fear,” “persecution,” “torture” and “inhuman and degrading treatment” required for adults might do so for children. Consequently, children might be given asylum based on human-rights violations that would not necessarily lead to asylum for adults. This approach especially applies to UAM, who are seen as the most vulnerable of all refugee children.

The child’s best interests shall be a primary consideration for residency permits granted on humanitarian grounds under section 38, as likewise follows from Constitution Article 104 and CRC Article 3 no. 1. The Immigration Act articulates the best-interests principle in section 38, but unlike section 28 on asylum, the assessment in section 38 gives strong consideration to other factors in order to control and/or limit immigration, prevent illegal actions and safeguard society at large.

The best interests of the child shall be a primary, but not the exclusive nor necessarily the decisive, consideration in these cases. Nevertheless, an asylum practice or policy that consequently overrides the child’s best interests in individual cases by referring to immigration control arguments will be in conflict with both the Constitution and the CRC. In the concluding observations on Norway’s fourth report to the UN Committee of the Rights of the Child, the Committee expressed reasonable concerns whether the best-interests principle is sufficiently applied in asylum cases:

“The Committee is [nevertheless] concerned that the principle of primary consideration of the best interests of the child is not yet applied in all areas affecting children, such as child custody cases and immigration cases, and that those responsible for taking the child’s best interests into account are not always sufficiently trained to conduct a thorough case-by-case assessment of the best interests of the affected child.” (CRC/C/NOR/CO/4, para 22)

Humanitarian grounds count i.e. severe somatic or psychiatric illness or conditions (like cancer, HIV/AIDS, schizophrenia, psychosis, manic-depression). Post-traumatic stress disorder (PTSD) is a quite common condition for refugees (see Jacobsen et al. 2014; Jensen et al. 2014), fleeing from war and conflict, but according to administrative regulations PTSD will not in itself lead to residence permit on humanitarian grounds, unless there are other strong humanitarian arguments in the case. PTSD thus is in Norwegian immigration practice considered in line with lighter psychological conditions as minor or moderate depressions.⁴ Thus, despite the fact that PTSD may be considered as serious condition from a medical point of view, especially regarding children – in some cases even leading to suicide or suicide attempts or other self-harming actions – Norwegian immigration practice do not recognize that. This rejection of PTSD as a sufficient humanitarian ground for residence permit can be identified as one example of how immigration control arguments and politics prevail over the individual child’s need for protection and support. This lack of formal and legal recognition of a – in our view – serious psychological (and often somatic as well) condition in children is criticized by Stang (2008).

⁴ Administrative regulations from the Immigration Directorate [UDI retningslinjer], IM 2013-004 Helseanførsler i asylsaker [health claims in asylum cases].

2.2 Limited residency permits and return of unaccompanied minors

Norway returns UAM only in the cases, where they have ensured that the minor can reunite with family members. According to the Dublin Convention⁵, Member States may return asylum-seekers to the country where they first registered (by fingerprints) or applied for asylum, thereby referring the case to that country. UAM are not excluded from the Dublin Convention, but according to Norwegian practice, UAM are returned to another Dublin country in only a very few situations and if they have family members who can care for them in that country or if their application for asylum has been decided in another European Union country. In 2015, Norway returned 14 of 1,165 UAM under the Dublin Convention and, in 2016, only 23 of 2,239.

Regarding return to the country of origins, the CRC General Comment no. ⁶ states that return may not be 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 on the Rights of the child stresses that, in principle, return to the country of origin shall be arranged only if it is in the best interests of the child, taking into account safety, security, available care arrangements, the child’s views and the child’s level of integration into the host country. ⁶ Those general comments from the CRC Committee are not legally binding for the Member States; but still important tools of interpretation and implementation of the CRC provisions. Nevertheless, the Norwegian Supreme Court has stated that the general comment no. 6 may not be given decisive weight in individual cases, meaning that immigration control arguments can override the best interests of the child.⁷ When the Supreme Court makes statements that indicate less importance of the CRC general comments, the Supreme Court decisions and assessments will be legally binding for all lower courts and for all public authorities. It contributes to weakening the position of the CRC as a legal source in the Norwegian legislation, and thus makes it more difficult to fully implement the intentions and provisions of the CRC. The vague formulation of several of the CRC provisions, including Article 3 no. 1, does not make it easier to promote the best interests principle. The unclear CRC - and other human rights instruments - provisions give room for political influence on both legal interpretation and discretionary assessments which makes it difficult sometimes to divide clearly between politics and law.

Since 2009, political restrictions on immigration policy have led to the practice of granting limited residency permits to UAM who are not considered to be refugees in need of protection and for whom it was not possible to trace care persons in the country of origin to return the children to. The Administrative Immigration Regulations section 8-8 states that UAM over 16 years at the time of the decision, who do not meet the criteria for either asylum or residence permit on humanitarian grounds, may be given temporary permission to stay until they reach 18 years old if the reason why they cannot be returned is the lack of care persons in their home country. But after 2009 the threshold for obtaining residence permit on humanitarian grounds has been much higher, and the room for interpretation and discretion has shrunk

⁵ Council Regulation (EC) No 343/2003 of 18 February 2003 establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged by a third-country national in a Member State.

⁶ General Comment no 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005)6 1. September 2005, para. 84.

⁷ Supreme Court decision 2009, the Ashok-case, Rettstidende 2009, s. 1261

remarkably. As a consequence, it takes much more to argue in the best interests of the individual child against general immigration control arguments, and reach through with a child-sensitive approach. In practice it means that if a UAM do not get asylum, he will probably not get a humanitarian permit whatsoever, and if his case is not sufficiently enlightened, for example because he did not dare to tell his whole story in that one interview, the rejection of asylum will be based on insufficient or false facts, Norway risking violating human rights without any one in the asylum system knowing. Policy and political signals seems to have become more important than the protection of individuals.

In 2016 the Immigration Act was subjected to a new series of changes and restrictions as a response to the large increase in asylum seekers, including UAM, to Norway during 2015 (Table 1). For example have the criteria in section 28 on asylum been changed to open up for a larger number of asylum seekers with status as refugees - and thus a documented need for protection - could be internally displaced to a “safe place” in their country of origin.⁸ The assessment of what is a safe place should, according to the child-sensitive approach that is basic for the Immigration Act and to the Constitution Article 104, be carried out differently for children than for adults, with a special regard to the child’s need for care and protection. Nevertheless, this particular change has led to an increase in limited permissions until 18 for applicants from Afghanistan, for then to be returned as internally displaced in Afghanistan.⁹

3 CRC Article 22 - Special protection of refugee children

According to CRC Article 22, Member States are obligated to provide special protection to refugee children, including access to basic rights under the convention, appropriate asylum procedure and humanitarian assistance.

3.1 The Asylum proceedings

Anyone wishing lodge an application for asylum in Norway is directed to the offices of the Police Immigration Service (PU) in Oslo. Asylum seekers who approach other offices (i.e. police stations, border control points) are escorted to Oslo.¹⁰ The PU registers formal asylum applications and inquiries about claimants’ identity and travel route. Legal guardians support UAM during the application process.¹¹ Since 1 June 2011, the PU has offered an on-call legal guardian service so that UAM can register asylum claims with legal guardians present at any time.

Legal guardians are expected to be present whenever minors speak to UDI and their lawyers.¹² The legal guardians shall ensure that all decisions are made in the best interests of the children (including filing appeals on their behalf) and that they are heard and receive suitable care,

⁸ These new restrictions came into force 1. October 2016

⁹ Norway is the country in Europe with highest numbers of returns to Afghanistan, including children in families. VG 15.10 <http://www.vg.no/nyheter/innenriks/afghanistan/norge-tvangsreturnerer-flest-barn-til-afghanistan/a/23793615/>

¹⁰ In 2015, provisional registration offices and procedures were introduced.

¹¹ Immigration Act Section 98a states that the provisions about 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 Fylkesmann [The County Governor]. A mandatory course is needed to become a guardian.

¹² Applicants have five hours of free access to a lawyer, primarily to help to file appeals if their applications are rejected.

housing, education, language support and health care. Legal guardians are not responsible for children's day-to-day care. When minors obtain residency permits and are settled in municipalities, new legal guardians are appointed.

The PU usually registers the stated age of the minor and assess whether it seems to be accurate. If the minor is clearly underage, the UDI may decide to exempt the minor from the age assessment.¹³ Although the age of not all UAM is disputed, asylum-seekers whose declared age is 16 to 18 years old are frequently referred for age assessment. In some cases, immigration authorities may also initiate procedures to assess whether a child is younger than 15 years old as children younger than 15 are placed in special child-care facilities administered by child welfare services. The age assessment involves a dental examination and hand X-ray, in addition to an observation and a medical statement organized by the Public Health Department. The methods of age assessment have been criticized (NOAS 2016, see also Crawley 2007). An assessment of the methods by The Norwegian Medical Association in 2016 concluded that the practices were not in line with their medical ethics, and in March 2017 the University of Oslo terminated the contract.

An asylum interview is carried out after the age assessment. The child's right to be heard under CRC Article 12 and Constitution Article 104 is expressed in the Immigration Act section 81, Forvaltningsloven¹⁴ [Public Administration Act] of 1967 section 17 and regulated in more detail by government regulations under the Immigration Act, sections 17-2 and 17-3.¹⁵ UAM are entitled to asylum interviews similar to adult asylum seekers. According to section 17-2 of the Immigration Act, these conversations shall be carried out in a way that sheds as much light as possible on the asylum case. From the best-interests principle, it follows that the interviews shall be conducted in a way compatible with the best interests of the child and taking the child's needs into account.

A challenge when it comes to UAM with trauma experiences, or experiences from repressive political regimes where there is no reason to trust public authorities, is that one single asylum interview not always will create the safe and good atmosphere that is needed for a child to communicate his or her real fear for persecution or other human rights violations, and their experiences from i.e. sexual abuse, torture or forced participation in armed conflict. In their review of Immigration Appeals Board decisions, Stang and Lidén (2014) mention one case with a 14 years old boy who did not dare to reveal his greatest fear – to be killed by his traffickers – in the asylum interview, thus he got his application refused as “not documented a need for protection.” Finally, during the fourth proceedings of his asylum appeal before the Board, he had met with, and developed trust to, a teacher and dared to tell her that his traffickers had forced him to kill another person. The Board gave him asylum in the end.

If minors' applications are rejected or they receive a limited permit (see Table 2 UAM limited), they may appeal to the asylum appeal court (UNE). A new case assessment may take 12–16 months, and during that time, minors continue to stay in care or reception centers.

¹³ Referring to circular RS 2010-183, Guidelines for age assessments of UAM asylum seekers.

¹⁴ Lov om behandlingsmåten i forvaltningssaker, LOV-1967-02-10.

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

3.2 Care arrangements under the asylum procedure

CRC Article 22 expresses the general principle of non-discrimination articulated in CRC Article 2: refugee children possess the same fundamental human rights and protection needs as other vulnerable children. The non-discrimination principle was a strong argument for the transfer of administrative responsibility for UAM in 2008 from the *Utlendingsdirektoratet* [Immigration Directorate] to the *Barnevernet* [Child Welfare System] (see section 2.4). Non-governmental organizations (NGO) such as Save the Children, the Children's Ombudsman and child-rights activists, lawyers and researchers argued that the care situation for UAM in ordinary reception centers did not meet the same quality standards provided for children living in child care institutions under the Child Welfare Act. Following, UAM were exposed to discriminatory treatment from the state, violating CRC Article 2 and Article 22 and several other human-rights conventions.¹⁶ Despite the care reform concerning UAM under 15 years, it may well be argued that his discriminatory treatment is still being practiced towards UAM between 16 and 18 years which still live in ordinary reception centers administered by the Immigration Directorate.

Care centers for unaccompanied minors younger than 15 years

Since 2008 UAM younger than 15 years old are entitled to live in special care centers administered by the Directorate for Children, Youth and Family Affairs to ensure that young UAM should be entitled to the same standards of care and support as were the children in child protection institutions.¹⁷ Consequently, all the Child Welfare Act's provisions on quality standards for institutions, qualifications of staff members, the rights of the children living in institutions, use of coercive measures and regular supervision by the county governor were implemented for the care centers for UAM. Those regulations do not apply to ordinary reception centers. These regulations stipulated the clear obligations for center staff to investigate the children's special needs for care and protection and accordingly make individual follow-up plans, as well as enforce regulations on children's right to privacy and protection against unlawful or arbitrary use of forced measures. The UN Committee on the Rights of the Child approved the Norwegian model with care centers but criticized the age restriction:

“The Committee welcomes the State party's indication that the consideration of cases involving unaccompanied asylum seekers shall be prioritized. (...). The Committee is [also] concerned that that the State party has limited the responsibility of the Child Welfare Services to children under the age of 15 leaving older children with reduced assistance.” (CRC/C/NOR/C/04, para 50 and 51)

Further, the committee expressed concern at the cursory identification of children from armed conflict, length of time until decisions are taken, work overload of legal guardians, challenges to age assessments and disappearance of minors from reception centers.

Despite the committee's approval of the care reform in 2008, the Norwegian government that same year decided to reduce admissions of asylum seekers and to indefinitely postpone the

¹⁶ A document drafted and signed by representatives from civil society, including numerous associations, nongovernmental organizations (NGO) and professionals, demanded transfer of responsibility for UAM to the child welfare system and was submitted to Parliament, NGOU: 1 Først og fremst barn (First and foremost children)

¹⁷ The care reform in 2008 resulted in the addition of a chapter to *Barnevernloven* [Child Welfare Act] of 1992 to regulate care centers for UAM (chapter 5A).

expanded reform. In 2017, the reform is no longer an explicit political aim set forward by the Norwegian government. To the contrary, the Ministry of Children and Equality proposed in 2016 to reverse the care reform and pass a new act to establish a new arrangement for all UAM outside the child welfare system.¹⁸ Driving the new proposal, the increasing number of UAM who arrived in 2015 and the high number of minors in need of care were challenging to handle under the Child Welfare Act's strict regulations of institutions. A more flexible law was needed, argued the ministry, to allow deviating from the Child Welfare Act's standards for the quality of care in child welfare institutions. The proposal was met with sharp criticism and thus did not pass through the parliamentary voting proceedings. But it might serve as an illustration of how far the government is willing to argue contrary to the best-interests principle when the changes can be justified by the need for a stronger immigration control system.

One argument for the 2008 care reform was that UAM were children with similar needs for care and support as other children deprived of their families, whereas the argument for the new act proposed in 2016 was the opposite: UAM are "a mixed group with diverse needs" and "differ from children in the ordinary child welfare system." (The Ministry of Children and Equality, 2016:1) The Ministry of Children and Equality has not explained in what ways the needs of UAM differ, why they have different needs for care as children in the ordinary system and why UAM should not be guaranteed the same standards of care and follow-up.

Reception centers for those 15-18 years old

UDI supervises the reception centers for those 15-18 years old.¹⁹ These minors are housed in separate transit reception centers until they finish their asylum interviews. Then, they move to UAM reception centers or separate units within a reception center for adults and families, where they wait for the decision on their asylum claims. Once their cases are decided, they are either relocated to settle in a municipality or must leave Norway.

In 2014, UAM waited on average 2.5 months from obtaining residency permits to being settled in Norwegian municipalities. Since 2015 the wait time for the assessment of the asylum proceeding was extended to approximately a year, depending on UAMs' citizenship. UAM who turned 18 years old before their applications were assessed were then assessed as adults. The waiting time before resettlement was also extended. Those granted a limited permission to stay will live not be settled in a municipality, however, stay in the reception center until they turn 18. Since the number of this category has increased, the reception center may be the living condition for the minors for months and years.

UDI has delegated responsibility for running asylum reception centers to three types of operators: municipalities, NGO and private companies. Operators compete to run reception centers in open calls for tender, and private companies run most centers. The centers may be provisory accommodations (shut down hotels, schools, barracks etc.) due to the flux in arrivals, with 30-50 minors in one unit. The quality standards for institutions are lower than for the care centers. The reception centers are not regulated by child welfare legislation, and

¹⁸ Ministry of Children and Equality: Høringsnotat: Forslag til ny lov om omsorgssentre for enslige mindreårige asylsøkere (omsorgssenterloven) [Hearing document: Proposal for a new act of care centers for unaccompanied asylum-seeking minors (the Care Center Act)].

¹⁹ In 2014, there were four care centers, and in 2015, more than 40 care centers and 80 reception centers for UAM were established. In 2016, most transit centers and some ordinary reception centers were closed.

there is no specific required staff-to-minors ratio. In the reception centers educated staff members are limited and these centers have lower staff-to-minors ratio (about 0,5 pr. minor) than in the care centers (about two to three staff pr. minor) (Lidén et al. 2013).

UDI stipulates detailed guidelines for the care of minors²⁰ and demands that reception center staff provide the necessary care for minors, including screenings to identify their individual needs. Staff members, however, have expressed concerns that they do not have the resources to follow up minors' needs, as they have in the care centers for the younger children, including extra support from health services in cases of serious health problems. Centers are also required to protect minors' rights of participation, maintain communication with minors' legal guardians and follow up if minors disappear from the center. Center staff members must provide structured daily life for minors and supervise their education, leisure-time activities and health condition and needs. Lidén et al. (2013) assessed the living conditions in reception centers and found that they were improper for those staying for extended periods of time. Staff members' dual roles as care persons and supporters of immigrant authorities can create ambiguous relationships with minors.

3.3 Access to education and welfare services

Asylum-seeking children younger than 16 years old have equal right to primary and lower-secondary school education as other children and are most often enrolled in local schools. Since 2014, 16-18 year olds have also been granted access to education. Minors who have completed lower-secondary school before arriving in Norway are enrolled in upper-secondary school after taking an introduction class. However, most UAM do not have an education equivalent to lower-secondary school when they arrive in Norway and must attend classes to complete this level as part of their introduction classes. Those who receive residency permit have the same rights to education as Norwegian citizens.

The Norwegian welfare system is based on universal provision for those who are citizens and public delivery of services. The welfare model implies also certain standards, values and expectations, such as gender equality, acquiring sufficient skills for labour participation, integration and broad social engagements (Kvist et al. 2011). The education is free of charge, and most pupils attend public schools in their local community. Newcomers attend introduction courses to learn the language and the curriculum of the age group. Only asylum seekers staying in a care/reception center get economic support. Asylum-seeking children are entitled to regular benefits of the local health care system and child welfare services if needed. However, while children's asylum proceedings are underway, health institutions may be reluctant to start treatment for mental problems or chronic health problems due to the uncertain timeframe. Researchers have also found that local child welfare offices only follow up on grave problems involving UAM (Lidén et al. 2013; Paulsen et al. 2014; Tyldum et al. 2015). When UAMs are not granted a residence permit, they have only access to emergency health services.

3.4 Experiences from the unaccompanied minors' point of view

Interviews with UAM have shown that worries about their asylum application, the uncertainty of their own future and concerns about family members make the time in reception centers very demanding (Lidén et al. 2013; Berg/Tronstad 2015). They express feelings of loneliness

²⁰ Including specific guidelines for how reception centers should organise care for UAM, outlined in circular RS 2011-034 (Requirements for care work for UAM in reception centers).

and ambivalence amid high expectations for their new lives. UAM make use of different resources to achieve resilience, such as sport activities, education, religious faith and socialising with co-inhabitants of centers. Those living in reception centers for longer periods of time, either while on a limited residency permits or while awaiting legal appeals to be finalized, express concerns about the future. Often, their mental health problems increase. They live in a state of uncertainty about the outcomes of their asylum cases and, if they receive residency permits, where to live, even at a time that the health care system hesitates to start treatment.

As asylum applications increased in 2015, changes in procedures and care arrangements were made as a part of the restrictions in law and policy. New transit and UAM centers were established, and after a while closed down, and UAM were moved more frequently to new centers. The many moves among new centers and locations required changes in legal guardians, which limited UAM's relationships with their legal guardians. In addition, changes were made to the interview procedures, and more restricted regulations lead to more uncertainty and temporary stays.

The new, stricter practice has been criticized for the unsecure situation and extra stress they cause for young asylum seekers, preventing them from settling down, making attachments with care persons in Norway, integrating into society, graduating from school and making plans for the future – in fact, preventing them from having a full life (Lidén 2017). For some of the minors, this hardship in interim limbo has driven them to suicide attempts, or other self-harming actions (Dagsavisen 2017).

A special concern for 16-18-year-old UAM living in ordinary reception centers is the risk of disappearing or becoming victims of human trafficking (see Appendix Table 2 and 3). In observations made in 2012, the UN Committee against Torture expressed this concern and stressed that Norway should strengthen its efforts to prevent minors from going missing from asylum centers by allocating sufficient resources to immigration authorities to prevent and investigate every case of missing minors. The police should be provided with all the necessary resources to investigate and prosecute cases of trafficking.²¹ According to the Child Welfare Act section 4-29, a child may be temporarily taken into care and placed in a child care institution without the child's consent if there is a real risk that the child might be exposed to human trafficking. Such placement has to be considered necessary to protect the child and, of course, in the best interests of the child (Tyldum et al. 2015).

From 2008 to 2015, 625 EMA, or 1% of applicants, went missing. Around half disappeared from transit centers (Aasen et al. 2016). There has been an increase in disappearances from UAM reception centers as a consequence of the 2016 changes in policy and regulations. For example in the first four months of 2017, 143 UAM disappeared from receptions and care centers.

4 Custody and holding center

The Trandum Detention Center (Trandum Utlendingsinternat) is the only center specially designed to legally detain irregular or undocumented migrants, and persons who got their asylum application rejected, or have been expelled, but do not follow the instructions to leave

²¹ See also Committee against torture: Concluding observations on the combined sixth and seventh periodic reports of Norway, adopted by the Committee at its forty-ninth session (29 October–23 November 2012), para. 22)2.

the country. Trandum is managed by the Police Foreign Unit and is authorized and operated in accordance with the Immigration Act.²² The center is a former military barrack, situated near the Gardermoen International Airport. For most rejected asylum seekers experiencing a forced return, either in accordance with the Dublin-convention or return to their home country, a stay at Trandum becomes part of the forced return procedure.

According to the Immigration Act section 106, foreign nationals may be arrested and remanded in custody under certain conditions, for instance, if they have not cooperated to clarify their identity or used false identification or if specific reasons for suspecting evasion by foreign nationals exist. The overall length of custody may not exceed 12 weeks, unless there are particular reasons. According to Immigration Act section 107, a foreign national arrested and remanded in custody under section 106, as a rule, shall be placed in a holding center administered by the police.

Neither section 106 nor 107 specifically addresses children or refers to the best-interests principle but should be interpreted in a child-sensitive manner, taking into account both the best-interests principle in CRC Article 3 no. 1 and the CRC provisions regulating the deprivation of children's liberty. The Trandum center is in fact much like a prison, as a closed institution. According to CRC Article 37 b), no child shall be deprived of liberty unlawfully or arbitrary. The custody, detention or imprisonment of a child shall be consistent with the law and used only as a measure of last resort for the shortest appropriate period of time. Furthermore, Article 37 c) stipulates that every child deprived of liberty shall be treated humanely, with respect for the inherent human dignity and in a manner that takes into account the needs of the child's age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so. All other and less comprehensive measures shall be considered and attempted first.

The Norwegian Parliamentary Ombudsman conducted two investigations and issued several criticisms of the conditions and practices at the detention center Trandum in 2015 (PU 2015). The ombudsman pointed out that there were no available public statistics or systematic reports on the number of children at Trandum, including both UAM and children with their families.²³ The 2015 report states that the ombudsman learned that a total of 330 children, including 10 UMA, stayed at Trandum that year. Children's activities and access to the outdoors were strictly limited at Trandum. In 2016 12 UAM stayed at Trandum. The same year 143 children seeking asylum together with their families had a stay at Trandum. The average time spent at Trandum in 2016 was approx. 1.5 days for EMA and approx. 2.5 days for children in families (Lidén 2017). The 2015 report underlines that Trandum was not a suitable living place for children and might even traumatize children. The Parliamentary Ombudsman's 2015 report describes a non-child-friendly environment with high levels of stress among adults. Several children experienced violent incidents and witnessed their parents harming themselves, as well as suicide attempts, riots by other detainees and the use of force against their parents and other detainees.

Several researchers and lawyers have strongly argued in the public debate that the conditions at Trandum are not in accordance with Norway's obligations under the CRC and other

²² See in particular Chapter 12 of the Immigration Act and Immigration Directive 2009.

²³ According to the police, children stay there at Trandum for only a short time. The Children's Ombudsman counted 17 cases of children staying at Trandum 24 October–31 December 2012.

human-rights conventions, especially not the best-interests principle. In June 2017, Borgarting Court of Appeal concluded that Norwegian authorities had violated the ECHR Article 3, by keeping a family at Trandum over a too long period of time (20 days of detention for a family with four children 7-14 years of age). Also UNICEF, Save the Children and the Children's Ombudsman have had strong reactions to the practice of detaining families and UAM at Trandum. There seems to be a systematic lack of assessments of the human rights principle of proportionality in these cases (NOAS 2017). According to the CRC, detention of children shall always be the absolute last resort, but assessments of alternative measures are not always made, in example measures under the Child Welfare Act. The detention of children at Trandum holding center is extremely problematic in relation to our obligations under the CRC and ECHR.

5 Care arrangements for unaccompanied minors with residency permits

The resettlement of UAM starts when they receive residency permits and move from reception centers to municipalities. Immigration policy calls for resettling newly arrived refugees in municipalities across the country. Garvik et al. (2016) found that child welfare services are responsible for the resettlement in three of four municipalities. Care arrangements pursuant to the Child Welfare Act grant state funding to local authorities. There are reasons to believe that shifting the existing funding system from 100 to 80% support could prompt future changes in the organization from the preferred residential care run by child welfare services to lower cost accommodations run by the social services. Residential care facilities are the preferred care arrangement in the first period of resettlement. Most residential care facilities house three or four minors with professional staff members who live on site 24 hours a day, seven days a week (Garvik et al. 2016). However, older minors may live in apartments which staff members visit regularly and when the minors need special support.

Foster care is also an option for municipalities to provide proper care arrangements, especially for younger children. Garvik et al. (2016), though, found that less than 10% of municipalities prefer foster homes as care arrangements. Most foster families come from Norwegian ethnic and language backgrounds, and only a few minors are placed in foster homes with relatives who share the same ethnic and language background. The main reason cited is that there are not enough foster homes available (Bunkholdt 2010), although some social workers point to discrimination and claim that the unaccompanied refugee children are not a priority in child welfare services (Garvik et al. 2016). Kinship care used to be more common in the past but has decreased in line with new professional recommendations (Eide 2000). Today, a care assessment is required before kinship foster care is recommended. In contrast, during the 1990s, kinship care was seen as a private placement, not a public responsibility.

Some assessments of resettlement have been conducted (Garvik et al. 2016). Residential care seems to be the best care arrangement and to result in positive experiences, as long as the minors are closely monitored (Svendsen et al. 2010; Paulsen et al. 2014). Overall, researchers (Eide et al. forthcoming; Kjelaas 2016) have stressed the importance of minors' right to participate in daily decisions and building trust in the relationship with the staff in both care arrangements and the process of resettlement.

After receiving residency permits, refugees must attend an introductory programme, which takes up to two years. Refugees receive economic support whilst participating. The introductory programme for UAM includes courses to pass elementary-school exams, and to gain further education (Pastoor 2015).

5.1 Support from local authorities after 18 years old

The Child Welfare Services can offer prolonging of support and child welfare measures if those measures have started before the child was 18, to those who accept and want such measures until the age 23. Research finds that most minors need to continue the support they get from Child Welfare Services also after turning 18 years old (Garvik et al., 2016). In most municipalities, Child Welfare Services offer prolonging of ongoing measures until UAM turn 20 years old. During this period, most minors continue in higher-secondary school, and some also start working. Continuing their education often requires moving to a university city.²⁴ Also higher education is free of charge in Norway, making further education accessible. A 2011 study by Statistics Norway found that 71% of refugees 18-29 years old who arrived unaccompanied were either in education or working.²⁵ New data show that the percentage of young refugees who have jobs has increased slightly since 2011; among young male refugees from Afghanistan, as many as 91% are in education or work (Dalgard 2016). Among young men, the employment rate increases with the time of residence, while young women tend to acquire further qualifications as well as work (Wiggen 2014; Dalgard 2016).

6 Concluding remarks and required research

In Norway, the some major steps to implement children's rights in immigration legislation and other relevant measures (e.g. health, education, child welfare services) have been taken. However, much remains to be done to apply these rights in practice. The 2015 rise in asylum applications has led to efforts to reverse the legislation and neglect the rights and evaluations based on the best interests of the UAM.

Studies on UAM in Norway have mostly consisted of applied research which has asked limited research questions about, for instance, living conditions, human trafficking and access to education and child welfare services. In recent years, doctoral-level research has added to the understanding of such issues as health and communication (Seglem 2012; Kjelaas 2016). Legal issues concerning refugee children have been assessed (i.e. Sandberg 2008; Stang 2012), particularly on their participation rights in hearings for UAM, asylum interviews with UAM and hearings for children in appeal court cases (Lidén/Rusten 2007; Lidén 2012; Stang/Lidén 2014).

Some research has assessed the living conditions in care and reception centers (Deloitte 2014; Lidén et al. 2013; Berg/Tronstad 2015). Researchers have pointed to acceptance of different standards for care arrangements for UAM than child welfare services guaranteed for children living permanently in Norway. The minimum standards of care and living conditions in reception centers make this type of accommodation only acceptable for short stays. However, for more minors the stay in the reception centers has been prolonged due to the new practices of granting limited stay in Norway until the UAM turns 18. This does not only increase the uncertainty of the future, but also exacerbates the living conditions and health problems of the minors. This practice is inconsistent with measures in the immigration Act with the intention to ensure a child sensitive assessment and that the principle of the best interest of the child is taken into consideration for UAM.

²⁴ SSB 2016. In 2012, 22% lived in Oslo, while only 9% were originally settled there.

²⁵ SSB 2016. Young refugees from Afghanistan, Sri Lanka, Eritrea and Ethiopia have a higher participation rate than those from Somalia and Iraq.

Most research on UAM has focused on mental health, such as PTSD symptoms, and psychological problems, such as depression and anxiety, demonstrating that this population is more prone to psychological problems than other groups of children and young people living in the same communities (Oppedal et al. 2009; Jensen et al. 2014; Jakobsen et al. 2014; Vervliet et al. 2014; Eide/Broch 2010). For some, the need for mental health support increases after arrival and while living with uncertainty and worries about their future (Jensen et al. 2014; Oppedal et al. 2009). The new legislation may add to the conditions producing health problems.

Research on resettlement has mainly discussed improvements in education (Pastoor, 2015) and resettlement arrangements (Garvik 2016; Eide et al. forthcoming). An on-going comparative Nordic research project, CAGE, is collecting longitudinal register data and conducting qualitative studies on education, employment, health care and social services²⁶.

In conclusion, we offer final reflections on some key challenges to protect the rights of UAM and provide adequate care arrangements for them. These topics are also suggested as main areas for further research. One challenge is the credibility assessment of UAMs' asylum applications due to the experience of child-specific forms of persecution, exploitation, inhuman treatment and human trafficking (Stang/Lidén 2014; Tyldum et al. 2015; Lidén/Salvesen 2016; UNHCR 2010). Although many UAM are granted asylum or residence permits on humanitarian grounds and later refugee status, there remain significant numbers of minors whose reasons for asylum are not given credibility. Furthermore, if the age assessment establishes minors as "overage" (age 18 years or older), contradicting their claims and those of their legal guardian, this might influence of the immigration authorities' (UDI) credibility assessment of their asylum claims and thereby their case outcomes (Tyldum et al. 2015). This is the case even if the confidence in the age assessment measures is low. If assessed as overage, the minor will no longer get support from a legal guardian. Their case will be assessed as an adult.

Another issue worth investigating is the increase in limited residency permits for UAM. The practice seems to be policy driven and can be ascribed to stricter immigration regulations. Such permits might lead to a situation where more minors spend a significant period of time living with uncertainty about their future, which might reduce their aspirations for education and inclusion. The high number of minors disappearing from reception centers seems to be a finding that supports this hypothesis. In general, there might be a growing number of UAM who live as illegal migrants in Norway or other European countries. Therefore, the practice of granting time-limited residency permits and the rising numbers of missing UAM are problematic for both minors and society and demand further research.

A fourth challenge is the provision of adequate living conditions and care arrangements for those living for months and perhaps years in reception centers. Norway's strategy to transfer responsibility for the care of the children 15-18 from child welfare services to immigration authorities based on the need for more flexibility can be assessed as discrimination. Long stay under prolonged uncertainty produce vulnerability and health problems. This adds to the gap in the standards between UAM and Norwegian children living in care arrangements regulated by Norwegian child-welfare legislation.

²⁶ www.cage.ku.dk

Using Trandum as a detention center is not in accordance with Norway's obligations under the CRC and other human-rights conventions, especially not the best-interests principle. Research is needed to find alternative solutions than detaining children.

The final challenge creating a need for more research is the practices of resettlement and integration. More knowledge is needed about best practices and the kinds of support that minors need to integrate into their new society and to ensure their access to education and work, support their family formation and maintain their (transnational) identities and belonging. Research on these issues should focus on how to provide UAM with opportunities equal to those other groups of children and youth.

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Appendix

Table 1 — Total number of asylum applications submitted by UAM 2010–2016, disaggregated by sex and age (Source: UDI)

Application/ Year	2012		2013		2014		2015		2016	
	M	F	M	F	M	F	M	F	M	F
0–14 years	98	34	117	29	155	23	1036	66	49	6
15–17 years	603	94	560	124	701	117	3656	317	107	22
EMA 18+*	120	15	202	38	175	33	204	18	17	1
Total by gender	821	143	879	191	1031	173	4896	401	173	29
Total	964		1070		1204		5 297		320	

* EMA 18 refers to those who determined an age assessment to be 18 years old but are still included in the asylum process and reception conditions for EMA.

Table 2— Asylum decisions for UAM by the Norwegian Directorate of immigration (first instance) by citizenship and outcome, 2012–2016

Asylum decisions	2012	2013	2014	2015	2016
Asylum	150	252	513	715	1028
Other protection	215	154	132	307	314
Humanitarian grounds	31	50	50	49	270
UAM limited	35	17	21	15	316
Rejection	36	23	34	27	150
Dublin II Convent	128	53	15	14	23
Safe third	8	3	5	6	3

country					
Withdrew/ dismissed	52	37	44	32	135
Total	655	589	814	1 165	2 239

Table 3— Asylum decisions for UAM 2016 by the Norwegian Directorate of Immigration (first instance) by citizenship and outcome for the three most common citizenship applicants and total for all citizenship applicants.

Citizenship	Asylum	Other protection	Humanitarian grounds	UAM limited	Rejection	Dublin III Convention	Safe third country	Withdrew/ dismissed	Total
Afghanist an	424	307	259	295	111	5	2	82	1485
Eritrea	227	0	1	1	0	2	0	3	234
Syria	315	0	0	0	0	11	0	17	343
Total – all nationalities	1028	314	270	316	150	23	3	135	2239

Authors' Addresses

Hilde Lidén, research professor
Institute for Social Research
Munthesgate 31 0208
Oslo, Norway
Phone +47 95123660
www.socialresearch.no

Elisabeth Gording Stang, professor L.L.D
Oslo and Akershus University College of Applied Sciences
Postbox 4, St. Olavs plass
0130 OSLO, Norway
Phone +47 90591909
<https://www.hioa.no/eng/employee/elist>

Ketil Eide, PhD, associate professor

University College of Southeast Norway
Faculty of Health and Social Science
Boks 203
3901 Porsgrunn
Phone: +47 35575456
www.usn.no