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Vulnerable Protection Seekers in Norway: Regulations, Practices, and Challenges

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The photo for the cover image was taken by Cornelius Poppe/NTB. It was chosen, because it illustrates the precarious situation in 2015, when protection seekers were placed in interim reception centers in Northern Norway.

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Vulnerable Protection Seekers in Norway: Regulations, Practices, and Challenges

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EXECUTIVE SUMMARY

This research report has been published as part of the EU Horizon 2020 VULNER research project (www.vulner.eu). The VULNER research project is an international research initiative, the objective of which is to reach a more profound understanding of the experiences of vulnerabilities of migrants applying for asylum and other humanitarian protection statuses, and how they could best be addressed. It therefore makes use of a twofold analysis, which confronts the study of existing protection mechanisms towards vulnerable migrants (such as minors and victims of human trafficking), with the one of their own experiences on the ground.

This research report presents some of the **intermediate research results of the VULNER project**, based on the first phase of the project, which consisted of mapping out the vulnerability assessment mechanisms developed by state authorities in Norway, including how they are implemented on the ground through the practices of the public servants in charge.

The following research questions are addressed: What do the relevant domestic legislation, case-law, policy documents, and administrative guidelines reveal about how "vulnerabilities" are being assessed and addressed in the countries under study? Do the relevant state and/or aid agencies have a legal duty to assess migrants' vulnerabilities, and if yes, using which procedures, when and how? Following which legal and bureaucratic criteria? How do decision-makers (street-level bureaucrats) understand and perceive the 'vulnerabilities' of the migrants they meet on a daily basis? How do they address these 'vulnerabilities' through their everyday practices? What is their stance on existing legal requirements towards 'vulnerable' migrants? Which loopholes do they identify?

To that end, the objective of the legal enquiry was to analyse and reflect upon how 'vulnerability' is being developed as a legal and bureaucratic concept in the Norwegian regulations. **Legal sources include national laws and regulations related to immigration and welfare (health, child welfare, and social security), as well as more than a hundred administrative guidelines.** The main policy documents included in the analysis consist of white papers, resolution proposals, and written political interventions.

The empirical research methods were conducted to complement and deepen the legal analysis. The aim of this part of the study was to document and analyse how the 'vulnerabilities' of the protection seekers are understood and addressed by the relevant decision-makers in their everyday practices. The **recruitment of participants (36 persons)** consisted of representatives of the Ministry of Justice, street-level bureaucrats in the Directorate of Immigration (UDI), judges on the Appeal Board (UNE), the management in reception centres, representatives for the welfare system, legal guardiens and experts on vulnerable groups.

This led to the following key findings:

- In Norway, human rights discourse is the normative center of asylum law and policies. **The concept of vulnerability is neither explicit in legislation nor in the Immigration Regulations but is implicit** in the principles of non-discrimination and equal treatment.

- Still, **certain groups and persons are given special attention** with reference to the state obligations derived from specific international conventions, creating a hierarchy of vulnerabilities. Most attention is focused on minors, gender-related issues, sexual identity and victims of human trafficking for the purpose of prostitution.

- There is **no specific procedure for identifying especially vulnerable protection seekers**. Instead, the responsibility to identify special needs is integrated in ordinary registration and asylum procedures, and as such dispersed among different institutions.

- Practitioners we interviewed tended to use the vulnerability concept in a descriptive manner, to highlight the complex and often interrelated factors that expose people to harm. **The vulnerability discourse, then, is gaining traction in practices**. This is particularly the case for procedural adjustments and guarantees, assessing humanitarian grounds and in the context of reception conditions.

- Norwegian law excludes consideration of whether removal to a place outside the person's previous residence (an "internal protection alternative") would be *reasonable* for the person concerned, meaning that **vulnerabilities associated with 'return' to internal displacement are structurally overlooked** in decisions related to the grant or withdrawal of refugee status.

- If a protection seeker does not fulfill the criteria for refugee status, **vulnerability factors are considered as part of the assessment of whether "strong humanitarian considerations" justify a residence permit**. Here, vulnerabilities related to health, age and trafficking experience are considered along with compound factors that would make return indefensible from a humanitarian perspective.

- Access to humanitarian status is **influenced by overall asylum flows**. The duty of a decision-maker to balance individual factors against state interests leads to the exclusion of many protection seekers with profound vulnerabilities, including physical and mental health problems. This is particularly true when the protection seeker comes from a country with many similarly situated people, raising equal treatment concerns between countries.

- The weight given to the **best interests of children** as a "fundamental consideration" varies widely depending on the competing state interests.

- The **increased use of time-limited permits** for persons with humanitarian status who have not proven their identity increases the vulnerability of people with a recognized right to remain.

- Despite the **plethora of guidance on certain vulnerabilities**, there are situations and instruments that are not adequately addressed. For example, vulnerabilities experienced by victims of torture (CAT) and persons with disabilities (CRPD) may be overlooked or considered less credibile.

SAMMENDRAG

Denne rapporten inngår som del av EU Horizon 2020 VULNER-prosjekt. VULNER prosjektet er et internasjonalt forskningsinitiativ der formålet er å få en god forståelse av migranters sårbarhet når de søker asyl, og hvordan deres ulike erfaringer av sårbarhet best kan ivaretas. Studien undersøker dette på to måter; både gjennom å kartlegge og analysere hvordan lovverk og praksis ivaretar sårbare migranter (som mindreårige og ofre for menneskehandel), og å få fram flyktningers egne forståelser av sin situasjon og erfaringer.

Denne forskningsrapporten presenterer **de foreløpige funn fra første fase av VULNER-prosjektet**. Denne delen går ut på å undersøke hvilke ordninger som norske myndigheter har innført, gjennom lovverk og forvaltningens praksis, for å identifisere migranters sårbarhet.

Forskningsspørsmålene vi stilte oss var: Hvordan er migranters sårbarhet definert i politiske dokumenter og i relevante lover og regelverk, inkludert administrative instrukser og dommer, på nasjonalt, regionalt og internasjonalt nivå? Finnes det en klar forpliktelse til å identifisere sårbarhet, eventuelt når skal dette skje, og hvordan? Hva er de juridiske konsekvensene av en slik forpliktelse? Hvordan forstår beslutningstakerne i forvaltningen migranters sårbarhet, og hvordan håndteres deres sårbarhet i praksis? Studien har vært induktiv, hvor målet har vært å starte med å undersøke statlige tilnærminger til sårbarhet som et legalt og politisk begrep.

For å svare på disse spørsmålene har vi benyttet to metodiske tilnærminger: dokumentanalyse og intervjuer. **I den juridiske analysen har vi undersøkt hvordan sårbarhet blir brukt som et juridisk begrep i lover og forskrifter angående innvandring og velferdstjenester, samt i et stort antall administrative rundskriv og veiledere.** De politiske dokumentene vi har gjennomgått er lovforarbeider, stortingsmeldinger og politiske innspill som gjelder sårbare individer og grupper.

Den empiriske studien omfatter intervjuer (36 personer) med utlendingsforvaltningen (UDI), ankeinstansen (UNE), ansatte i asylmottak, organisasjoner og eksperter på feltet. I tillegg har vi analysert et utvalg asylvedtak, foretatt av UDI og UNE, og relevante lagmanns- og høyesterettsdommer, for å undersøke hvordan regelverket er brukt i praksis.

Dette har gitt oss følgende hovedfunn:

- **Utlendingsloven bruker ikke sårbarhet som et juridisk begrep.** Menneskerettighetene er i stedet det normative grunnlaget i politikk og lovgivning på asylfeltet. **Innholdet er likevel indirekte ivaretatt** gjennom lovens prinsipper om likebehandling, ikke-diskriminering og andre rettslige forpliktelser som staten har i henhold til de internasjonale konvensjonene Norge har ratifisert.

- **Forpliktelsene er nedfelt i et stort antall administrative retningslinjer og rundskriv**, uten en utstrakt bruk av sårbarhet som begrep og forståelsesramme. Mest oppmerksomhet får barn, kjønnsrelatert vold og overgrep, seksuell identitet og menneskehandel.

- **Norge har ingen egen prosedyre for å identifisere sårbarhet**. Identifisering av enkeltpersoners oppfølgingsbehov er i stedet ivaretatt av ulike instanser i asylprosessen (politiets utlendingsenhet (PU), UDI, asylmottak, helsetjenesten). At flere aktører er oppmerksomme på sårbarhet er en styrke, svakheten er at ingen har det koordinerende ansvaret og spesialkompetanse.

- Rundskriv konkretiserer ordninger for visse sårbare personer bl.a. under asylintervju. Likevel viser vi til **flere prosessuelle mangler**, som begrenset mulighet til personlig oppmøte i UNE og begrenset juridisk støtte.

- **Praktikerne vi har intervjuet bruker sårbarhet som et deskriptivt begrep**, ofte for å beskrive hvordan ulike former for utsatthet forsterker hverandre. Begrepet har fått en mer framtredende plass de siste årene, og bukes særlig for å tilpasse høringsprosedyrer, i vurderinger av sterke menneskelige hensyn, i oppfølging av personer i asylmottak og av velferdstjenester.

- Norsk praksis anerkjenner i asylvurderingen at søkers troverdighet og objektive farer ved retur kan påvirkes av faktorer som alder, kjønn, sivilstatus, fysisk og mental helse, erfaring fra seksualisert vold og menneskehandel. **Situasjoner som ikke er beskrevet i administrative veiledere, kan bli oversett eller gitt mindre vekt.**

- Norge har på noen områder en snever tolkning av forpliktelsene som er forankret i Flyktningkonvensjonen og den Europeiske menneskerettskonvensjonen (ECHR). For eksempel ekskluderer norsk utlendingslov muligheten til å vurdere om bruk av 'internflukt' alternativet er rimelig for personen det gjelder. **Dermed er sårbarhetsfaktorer strukturelt oversett i avgjørelser om å gi eller å tilbakekalle flyktningstatus**.

- **Sårbarhetsfaktorer inngår i vurderingen av 'sterke menneskelige hensyn' som sekundært kan gi grunnlag for oppholdstillatelse**. I norsk lovgivning og praksis veies sterke menneskelige hensyn, som barnets beste, helse og erfaringer fra menneskehandel, opp mot statens interesse av innvandringskontroll. Dette reiser bl.a. spørsmål om likebehandling gjelder for sårbare personer med ulike landbakgrunn.

- **Økt bruk av tidsbegrenset tillatelse** for personer med innvilger status på humanitært grunnlag uten gyldig ID-dokument forsterker eksisterende sårbarhet, bl.a. ved forlenget opphold i asylmottak. Syke eller traumatiserte personer kan ha tilleggsproblemer med å innfri kravene til ID-dokumentasjon.

- **Til tross for det store antallet instrukser for å identifisere personer** med behov for beskyttelse, finner vi få referanser til instrumenter som for eksempel CAT (tortur), CRPD (nedsatt funksjonsevne) som klargjør retten til å oppnå flyktningstatus.

ABBREVIATIONS

AVR Assisted Voluntary Return Programmes
CAT United Nations Committee Against Torture
CEDAW Convention on the Elimination of Discrimination against Women
COI The Norwegian Country of Origin Information Centre
CRC United Nations Committee on the Rights of the Child
CRPD Convention on the Rights of Persons with Disabilities
ECHR European Convention on Human Rights
EU European Union
FGM Female genital mutilation
GDPR General Data Protection Regulation
ICCPR International Covenant on Civil and Political Rights,
ICERD International Convention on the Elimination of Racial Discrimination
ICESCR International Covenant on Economic, Social and Cultural Rights
ICDP International child development programme
ICCPR International Covenant on Civil and Political Rights
IMDi The directorate of integration and diversity
IOM International Organization for Migration
IPA The internal protection alternative
LGBTIQ+ Lesbian, gay, bisexual, transgender/gender diverse, intersex and queer +
NGO(s) Non-governmental organisation(s)
NKVTS Norwegian Centre for Violence and Traumatic Stress Studies
NOAS The Norwegian Organization for Asylum Seekers
PU The National Police Immigration Service
RVTS Regional center on violence, traumatic stress and suicide prevention
UAM Unaccompanied minors
UDI The Immigration Directorate
UNE The Immigration Appeals Board
UNHCR United Nations High Commissioner for Refugees

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CHAPTER 1: INTRODUCTION

This research report discusses the different meanings and dimensions of the concept of vulnerability in the Norwegian legislation, policy and immigration procedures related to persons in need of international protection.

The report has been established as part of the EU Horizon 2020 VULNER research project, which objective is to contribute to a better understanding of the experiences of 'vulnerability' as lived by migrants applying for a protection status (such as the refugee status and other complementary forms of humanitarian protection, including the one awarded to victims of human trafficking), and to critically assess the potentials and pitfalls of using 'vulnerability' as a legal and policy standard to guide the development and implementation of migration policies at EU and global level.

The VULNER project starts from the common observation, widely documented in the scientific literature, that the requirement to address the specific needs of 'vulnerable' migrants, including asylum seekers, victims of human trafficking and unaccompanied minors, is flooding the legal and policy discourse on asylum and migration at EU and global level. The UN Global Compact for Migration and its objective to 'reduce vulnerabilities' in migration, or the current focus at EU level on resettlement programmes for vulnerable refugees namely can illustrate this trend.

The focus on vulnerabilities in the global protection regime is inspired by the policy objective to identify the specific disadvantaged positions of protection seekers who deserve special treatment and attention and is a means of securing equal treatment. Vulnerability is closely connected to the ethics of care, which advocate attention to and solicitude for others as the main ethical paradigm (Fineman, 2008). Yet vulnerability lacks sharp conceptualization and needs to be accompanied by a thorough understanding of its concrete meanings, practical consequences, and legal implications.

The use of vulnerability as a lens through which to study migrant realities is not new. Various studies use vulnerability to focus on certain migrants, refugees, and asylum seekers, such as minors, women, those suffering from health issues, and victims of human trafficking. However, none of these studies actually connects, on the one hand, a thorough study of the interactions between the legal framework and implementation practices to, on the other hand, the vulnerabilities as lived and experienced by protection seekers.

This study on Norwegian legislation and administrative practices regarding vulnerability constitutes a first contribution to the EU Horizon 2020 VULNER research project. The present study on the legal framework and administrative practices on processual adjustments, reception conditions and asylum claims will be followed up with a second project studying the concrete effects of the Norwegian legal framework and implementation practices. The second part will confront the legal and policy categorizations of vulnerabilities with concrete experiences. This study will be published in 2022. A thorough study of the protection seekers' experiences of vulnerabilities and how these are shaped and produced in constant interaction with the legal framework is an important contribution to the state of the art in the field of international migration. The comparative aspect of the VULNER project, correlating the policy, legislation,

reception conditions, administrative practices, and lived experiences of protection seekers in four European countries (Belgium, Germany, Italy, Norway), Canada, and Lebanon, in addition to two refugee camps (in Uganda and South Africa), will further enhance awareness of how vulnerability is assessed, addressed, shaped, and produced.

Although vulnerability is not a *legal* concept in Norway, it is increasingly used in policy and administrative documents and practices to demarcate individuals and groups with distinct needs due to their particular physical, mental, or social circumstances. Our aim is to explore how these distinct needs are addressed in five main contexts of asylum procedures: (a) in special procedural guarantees (b) in the reception system and follow-up in the health and welfare system, and (c) in the assessment of protection seekers' applications for protection, (d) in the procedures of resettlement of refugees in Norway from third countries, and (e) in return practices. In this report, we assess how the vulnerabilities of protection seekers are conceptualized in the Norwegian legal and policy framework and practices through the following key questions:

1. In what ways are the vulnerabilities of protection seekers addressed in the legal framework, policy documentation, and guidelines in Norway? Is there an obligation to assess and address vulnerability?

2. How is the vulnerability of protection seekers understood and addressed by the relevant decision makers (judges and civil servants in the relevant administrations)? To what extent does that understanding differ from the concepts used in the legal framework?

The way vulnerability is addressed and assessed by the immigration authorities cannot be properly understood through an exclusive focus on the legislation. We, therefore, base our analysis on various data sources: legal and policy documents, interviews, court cases, asylum applications, and decisions assessed by the immigration authorities. Hence, the analysis extends beyond a positivist analysis of the legal frameworks to include an assessment of the concrete application of various vulnerabilities by street-level bureaucrats. Decision makers' use of their room of discretion and the possibility of agency in the implementation of legal frameworks are unveiled through semi-structured interviews. The analysis will, therefore, include how the concrete implementation of the legal framework contributes to the actual production of vulnerability as a legal category and as a human experience.

The research is expected to expand knowledge on the vulnerabilities of protection seekers, including how the notion of vulnerability is continuously constructed through interactions with the authorities. The research will contribute to a better understanding of those vulnerabilities by confronting the categorizations of vulnerability within the current legal and policy frameworks with concrete administrative practices. It will also provide the critical reflection necessary to evaluate the various ways of addressing such vulnerabilities and whether a focus on vulnerability meets the stated objective of empowering the weakest protection seekers and allowing them to develop resilience strategies.

1.0.1. The Concept of Vulnerability

We find it necessary to start with a reflection on how *we* are to understand the concept of vulnerability. Vulnerability, or the susceptibility to harm, is a notion that permeates refugee protection in Europe, and Norway is no exception. The term's ubiquity in legislation, public rhetoric, and administrative practice speaks to humanitarian, political, and efficiency imperatives. In short, it sharpens the identification of people with a privileged need for limited protection resources. The concept of vulnerability has been criticized for being both too broad and too vague (e.g. Baumgärtel, 2020; Brown, 2017; Daniel, 2010).[1] Someone who "is vulnerable" or merely temporarily finds himself or herself "in a position of vulnerability" could attribute that predicament to a wide range of internal, external, and systemic factors—or be assigned that label by others. This report concretely explores the specific effects that vulnerability has for the individual protection seeker in Norway, taking as its point of departure the categories of vulnerability that immigration authorities apply in their work.

Norwegian policy makers and bureaucrats operate with multiple, overlapping vulnerability markers, ranging from ontological dimensions, such as age, gender, and illness,[2] to situational ones, such as experience of trafficking or insecure reception conditions.[3] There is also a recognition that these categories overlap in specific contexts: an unaccompanied minor, for example, may be vulnerable not only because of his or her youth and family status but also because of multiple disruptions in his or her living situation, including after arrival in Norway.[4] In some cases, situational vulnerability arises from the migration experience. "Migratory vulnerability" can be a helpful way to think about a "cluster of objective, socially induced, and temporary characteristics" (Baumgärtel, 2020, p. 22) that affect people to different degrees and in different ways.

Vulnerability produces direct and indirect obligations of both a legal and moral nature (Mackenzie et al., 2013). In Norway, the operational consequences of singling out categories of especially vulnerable asylum seekers may include duties to identify, to ensure special accommodations in asylum reception centers, to make relevant adjustments in asylum procedures, to offer an expanded scope of legal protection, and, finally, to provide follow-up support within Norway or the country of origin. As mentioned, a key aim of this report is to explore how these consequences are articulated in law and implemented in practice.

We also identify how vulnerabilities are paradoxically produced through the institutions and policies designed to reduce them ("administrative vulnerability").[5] Drawing on the concept of migratory vulnerability proposed by Baumgärtel (2020, p.24), we argue that state responses should be informed by this lens, which compels consideration of "the variety of social processes that lead to the marginalization of migrants".

1 Other criticisms concern the potential negative consequences of focusing on vulnerability, including the reinforcement of prejudice and stigma and pitting vulnerable groups against each other to access limited resources (Sandberg, 2015; Brown, 2017).
2 Ontological vulnerability refers to embodied and relational factors.
3 As its name suggests, situational vulnerability is social and constructed as we are situated within and dependent upon overlapping and complex webs of economic and institutional relationships.
4 Vulnerability is, thus, universal in its nature but particular in terms of how it manifests itself. It is complex and can manifest itself in multiple forms (Fineman 2013b, 22)
5 This is also called "pathogenic vulnerability" (Mackenzie et al., 2013).

1.0.2. Studies on Norwegian Policy and Praxis Regarding Vulnerable Groups

Norwegian research on vulnerability can be divided into legal studies, health-related research, and sociology-based applied research. While legal studies are few, research on health issues, particularly related to mental health and trauma, is extensive. Numerous studies also consider reception conditions generally and for certain vulnerable groups, such as children in families, unaccompanied minors, and those waiting for long periods in reception centers. In these studies, however, the use of vulnerability as an approach and a concept is not discussed. An exception is a 2010 study that compares the identification mechanism and reception conditions in Norway with EU countries and the EU reception directive regarding vulnerable individuals and groups (Brekke et al., 2010). The report observes the need to improve Norway's identification mechanism and that victims of torture are insufficiently identified and followed up on.

1.0.2.1. Legal studies

Few legal studies address how vulnerability is assessed in asylum applications. The research projects we have identified, with references to a human right discourse, however, are very informative. Research by Schulz (2017) on the internal protection alternative (IPA) and how the reasonability assessment is implemented in Norwegian law and practice is an important contribution. Wessmann (2016) has also discussed this topic. The legal position of children in the Norwegian Immigration Act and in legal procedures has been examined by Sandberg (2012), Stang (2008, 2012), Martnes (2020) and Einarsen (2013) analyzes how the best interests of the child are weighted in a Supreme Court case. Sandberg's work (2015) of the Convention on the Rights of the Child (CRC) and the jurisprudence of the Committee on the Rights of the Child in light of vulnerability theory is illuminating for our discussion. Several studies have been conducted on procedural rights related to hearing children in immigration cases (Lidén & Rusten, 2008; Stang & Lidén, 2014). However, a holistic assessment of how various forms of vulnerabilities are addressed and assessed in the legislation is lacking.

Scholars have also reported on migration management and the production of migratory vulnerability, such as the experience of those affected by the revocation of their right to remain in Norway (Brekke et al., 2018, 2020). In several reports, the Norwegian Organization for Asylum Seekers (NOAS) and Save the Children Norway have documented problematic conditions that are highly relevant for our report, such as the conditions of children in detention centers (NOAS 2017), of unaccompanied minors with a limited permit until they turn 18 years old (PRESS 2017; NOAS 2018), and of children and families living with an ID limited residence permit (NOAS 2020a, 2020b).

1.0.2.2. Health studies

Another strain of research concerns the health conditions of refugees. Studies have identified post-traumatic stress disorder (PTSD), depression, and anxiety among refugees in general and in particular groups, such as unaccompanied minors (Jacobsen et al., 2014; Jensen et al., 2014, 2019) or victims of torture (Varvin, 2018). Relevant studies will be discussed in chapter 4.

1.0.2.3. Sociology-based studies

Sociology-based studies on reception conditions explore topics such as living conditions and access to welfare services generally (Weiss et al., 2017), with several studies discussing how waiting time produces vulnerability (see Brekke, 2004; Weiss 2020). Studies have been conducted on particular groups of residents, such as children in families (Lidén et al., 2011; Berg & Tronstad, 2015) and residents with special needs staying in adjusted units (Lillevik et al., 2017). Several studies discuss the reception conditions of unaccompanied minors (Lidén et al., 2013; Berg & Tronstad, 2015; Sønsterudbråten et al., 2018; Svendsen et al, 2018). Other topics, such as the policy and reception conditions for child applicants with a child marriage relationship (Lidén, 2017) are rarely addressed. The mandate and practices of child welfare services for children living in reception centres are the main topic of several studies (Paulsen et al., 2014a, 2014b). The access to and practices of education for refugee children has also been evaluated (Thorshaug & Svendsen, 2014; Pastoor et al., 2015, 2016; Lynnebakke et al., 2020).

Of the limited studies on the Norwegian practice of resettling UN-quota refugees, one evaluates the Norwegian program for the resettlement of UN refugees, focusing on integration potential as a selection criterion for quota refugees (Long, 2008). Research on refugees' settlement focuses primarily on evaluations of the introduction program, with less attention to children and the settlement of persons with extra needs. Some studies also discuss unaccompanied minors' housing and care situations, as well as the challenges they face in the transition to adulthood (Eide et al., 2018; Svendsen & Berg, 2017; Liden et al., 2020; Weiss et al., 2020). Less research has been carried out on family reunifications (Brekke & Grønningsæter, 2017) and forced or assisted returns (Paasche & Skilbrei, 2017; Strand et al., 2015; Bendixsen & Lidén, 2017; Paasche et al., 2018).

Research on victims of human trafficking in Norway relates mainly to prostituted women (see Brunovskis, 2016, 2019) and to minors (Tyldum et al., 2015; Lidén & Salvesen, 2016). However, in the last few years, some scholars have reported on men experiencing sexual exploitation (Bjørndahl, 2020) as well as forced labor and work-related crime (Jahnsen, 2014; Brunovskis & Ødegård, 2019; Jahnsen & Rykkja, 2019; Lingaas et al., 2020).

Various studies have discussed the assistance offered to trafficking victims in Norway, including access and barriers to welfare services (Sønsterudbråten, 2013; Brunovskis, 2016; Brunovskis & Skilbrei, 2018). Brunovskis (2019) examines what happens when the human trafficking policy framework is introduced into the everyday lives of victims of trafficking and anti-trafficking practitioners.

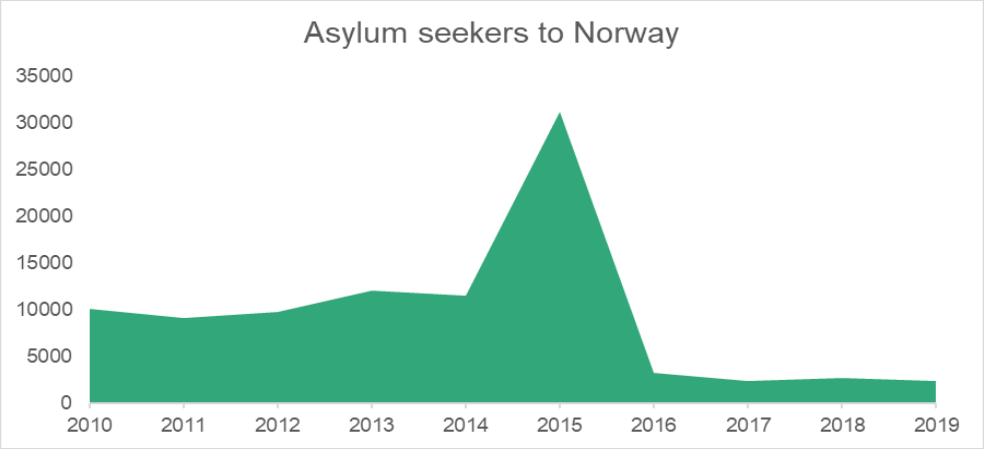
Most of the sociologically oriented studies on protection seekers are applied research with a narrow research topic and are expected to provide answers to authorities' management needs; hence, they are often not theory-driven. In investigating vulnerabilities in the protection regime, the current knowledge gaps prompt the following responses: taking a more theory-driven, holistic approach to vulnerability; assessing the legal framework for addressing people's vulnerabilities in asylum cases; and identifying protection and follow-up gaps related to in situational vulnerabilities. We also observe the need for a more attention to ambiguities and rights dilemmas, as well as how precarity is shaped by legislation.

1.1. Asylum Seekers and Refugees in Numbers

The Directorate of Immigration (UDI) implements the government's immigration and refugee policy and is the determining authority responsible for applications pursuant to the Immigration Act (IA), such as applications for international protection, visitors' visas, family immigration, residence permits for work and study purposes, citizenship, permanent residence permits, and travel documents. In 2019, the UDI proceeded with approximately 98,000 cases.

Figure 1.1 displays the changes in arrivals of protection seekers to Norway the last decade. In 2014 and 2015, Norway, similar to other European countries, faced increased arrivals. The main groups of applicants to Norway the last ten years came from Syria, Afghanistan, Iraq and Eritrea. For unaccompanied minors, the largest groups came from Afghanistan, Eritrea, Syria and Somalia.

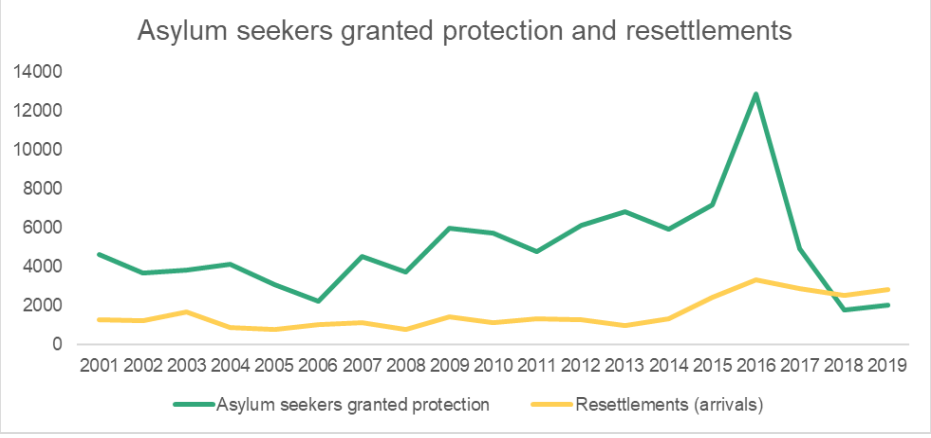
Figure 1.1 Asylum Seekers in Norway, 2010–2019



Source: Norwegian Directorate of Immigration (UDI) statistic

Figure 1.2 shows the numbers of asylum seekers who have been granted protection over the last two decades. Refugees being resettled through the UN-resettlement program comprise an increasing share of the total number of arrivals, as figure shows. This is in line with the priorities of the Norwegian Immigration policy, which gives priority to quota refugees.

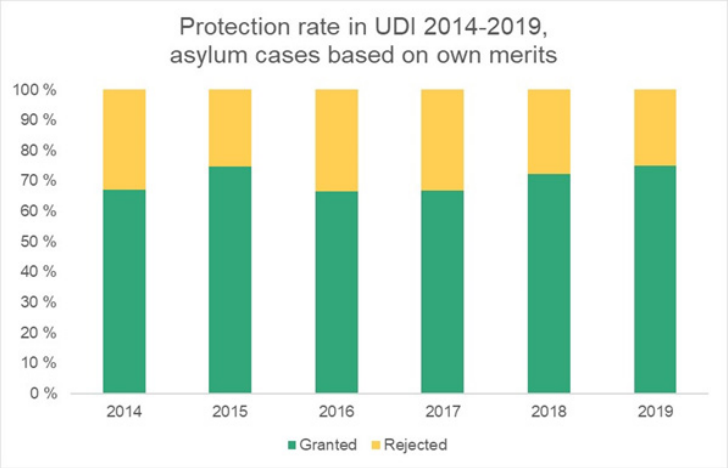
Figure 1.2 Asylum Seekers Granted Protection and Resettlement of UN-Quota Refugees 2001–2019



Source: UDI statistic

Figure 1.3 shows that in 2018 and 2019, a higher proportion of asylum applicants was granted protection than the years with more arrivals. In 2019, 75% of all cases assessed by UDI were granted protection, including refugee status and permit on humanitarian grounds.

Figure 1.3 Protection rate in cases assessed in the first instance UDI, 2014–2019



Source: UDI statistic

1.2. The Outline of the Report

The report is structured in ten chapters. Chapter 1 outlines the research questions and how the concept 'vulnerability' is defined and used as an analytical concept. We also include a short presentation of studies on the Norwegian immigration management. In Chapter 2, the methodology used in our study is presented. Chapter 3 outlines the main legal sources, including the implementation of international conventions and other legal instruments in the national legislation. Chapter 4 discuss the procedural guaranties for those with extra needs, including interview practices for adults and children. The chapter includes a section on the legal aid given to protection seekers in various phases of the proceedings. Chapter 5 displays the reception conditions for protection seekers, such as the procedures for identifying vulnerable individuals and how extra needs are followed up on in reception centres and welfare institutions. We identify different procedures for certain groups, such as unaccompanied minors and victims of human trafficking, and address resettlement practices and challenges. In the following two chapters, we discuss how vulnerability is assessed in the asylum procedure. In chapter 6, we examine the assessment of protection needs related to vulnerability, with attention to the interpretations of the protection needs of children and women as social groups, as well as individuals with other sexual orientations and victims of human trafficking. Further, we discuss the Norwegian procedures on the IPA. Chapter 7 discusses the threshold for granting residence on humanitarian grounds, the practices of the child's best interests, and temporary permits for victims of human trafficking; it also includes a comparison of the consequences of humanitarian versus refugee status. Resettlement refugees have become increasingly important in Norway as a share of the total refugee population, with refugees in the resettlement program now constituting approximately half of all resettled refugees in Norway. Hence, in chapter 8, we consider the practice of resettlement in relation to the criteria and assessment of vulnerability. Chapter 9 addresses the Dublin Regulation and their implications for those with certain vulnerabilities. It also discusses the legal construction of vulnerabilities in the International Organization for Migration (IOM) program and practices of voluntary return. Chapter 10 draws together the findings and makes concluding remarks on Norwegian legislation and practices on vulnerability in the asylum system and procedures.

CHAPTER 2: METHODOLOGY

The analysis of Norwegian legislation and administrative practices made in this report is based on data collected through a combination of legal and empirical research methods. The report compiles data from five different sources (legal and political documents, interviews with experts, judges and street-level bureaucrats, court decisions, asylum case decisions, statistics) to provide comprehensive insights into policies, regulations, and practices regarding asylum procedures and reception conditions in Norway.

2.1. Research Methods

2.1.1 Legal and policy document study

The objective of the legal enquiry was to analyse and reflect upon how 'vulnerability' is being developed as a legal and bureaucratic concept in the Norwegian regulations. We have examined how the legal and policy framework defines and address the vulnerability of the protection seekers and response to their extra needs. Since 'vulnerability' has not been developed as a legal concept in Norwegian immigration law, it was required to start from the vulnerability categories as identified in the UN global compact and relevant EU directives mainly. The scope of the legal enquiry covers the special guaranties in the Norwegian Immigration legislation on asylum procedures, the determination procedure of refugee status and humanitarian status, as well as the regulation on reception conditions for asylum seekers.

The main policy documents included in the analysis consist of white papers, resolution proposals, and written political interventions in debates concerning reception conditions and certain groups of refugees. The legislative documents comprise relevant acts of national law (the Immigration Act [IA], the Immigration Regulations [IR], the Administrative Act, and law and regulation related to education, health, child welfare, and social security), as well as authoritative administrative orders. We have included circulars from the Ministry of Justice and Public Security, and administrative guidance by UDI and UNE, including Notes on practice and interview guides. As the sheer quantity of such sources is substantial, we asked caseworkers to identify the main documents on topics relevant to their work and to our research in addition to the documents we identified and those concerning regulation on the relevant vulnerable groups on the UDI website.[6]

2.1.2. Interviews

The empirical research methods were conducted to complement and deepen to the legal analysis. The scope of this part of the study was to document and analyse how the 'vulnerabilities' of the protection seekers are understood and addressed by the relevant decision-makers in their everyday practices. The aim was to clarify practices on certain issues, including the decision makers' reflections on the legal requirement to assess and address vulnerabilities, measures they adopt to address vulnerability and their room for discretion.

6 UDI regulation: https://www.udiregelverk.no/en/.

The recruitment of participants in the UDI consisted of four rounds of interviews. First, we interviewed the manager for implementing a new arrival procedure, another responsible for the interview procedures, and we also communicated with three coordinators of the implementation of regulations, networks, and training on the topics of a) children/unaccompanied minors, b) various forms of domestic violence and gender identity, and c) human trafficking. The second group consists of unit leaders/caseworkers experienced in the topics listed above and related issues contributed with their perspectives and experiences. We also included an experienced caseworker on Dublin cases; and representatives for the UDI Region and Reception Centre Department (RMA) responsible for extra needs were interviewed. An additional category of interviews was experienced leaders at three types of reception centres or special units for persons with extra needs. The analysis of the Norwegian reception conditions is also based on previous studies (Lidén et al., 2011, 2013) and various thematic reports.

The last group consist of the interviewees included those assessing the applications for resettlement as quota refugees. One team member participates in an ongoing research project on the Norwegian resettlement practices of refugees from refugee camps (Brekke et al., 2021). The interviews with the Ministry of Justice and Public Security and the UDI team responsible for resettlement are included in our dataset. For the (re)settlement process, we also rely on interviews with the IMDi, the advisory team against trafficking of children and persons in charge of the settlement in municipalities. These interviews were supplied with the findings from a recent study (Lidén et al., 2020) that evaluates the settlement procedures and communication flow between municipalities, reception centres, and the IMDi. The former study assessed the settlement of unaccompanied minors; however, the procedures and challenges discussed also illuminate the (re)settlement of refugees in general and those with extra needs.

The UNE is the appellate body for immigration and citizenship cases. We asked the UNE leadership to identify experienced board leaders with regard to various types of asylum cases related to vulnerability that included children and unaccompanied minors. We interviewed four (out of 19) board leaders.

Two legal representatives for unaccompanied minors were consulted regarding their experiences of arrival procedures, asylum interviews, their role as representatives, and reception conditions for unaccompanied minors. We also discussed the vulnerability approach with two experts: a Norwegian member of the CRC Committee and a Norwegian member of the UN Committee against Torture.

The ambition of this report is not to document vulnerabilities as experienced on the ground by migrants. However, this will be the main task in the next stage of the research.

The interviews with representatives of the Ministry of Justice and Public Security, UDI, UNE, and reception centre leaders were all conducted on Teams or Zoom due to the Covid-19 health crisis. The interviews were digitally recorded and either summarized into an abstract of the main arguments or transcribed in full. Altogether, we conducted 36 interviews.

Table 2.1 Number of interviews held according to their institutional background

Institutional affiliation	Ministry of Justice and Social Security	UDI Management and case workers	RMA and Reception centres	UNE	Bufdir/ IMDi/ Local communities	Others	Sum
Numbers of informants	4	14	6	4	4	4	36

2.1.3. Case files

Vulnerability implicates complicated assessments, involving numerous factors and balancing requirements. These nuances might be difficult to ascertain from the documents and interviews with caseworkers. Therefore, we have made use of various forms of case files to identify diverse factors, argumentation, and room for discretion. In terms of the analysis of asylum cases, we have drawn from the following sources:

1) Supreme Court judgments interpreting aspects of refugee law in Norway
2) Lower court judgments from the Borgarting Appeals Court
3) Asylum case decisions from the UDI
4) Asylum case decisions from the UNE

In the legal analysis, we assessed judgements of the Supreme Court and Lower Appeal Court as they are publicly accessible. In Norway, anonymous cases of asylum assessments by the UDI and the UNE are not open to the public. To better understand the interpretation of the legislation and for a detailed assessment of vulnerability, we applied to both instances for access to asylum interviews and decisions in a limited number of asylum cases on relevant topics. Due to novel procedures concerning the application of new privacy rules (EU General Data Protection Regulation [GDPR]) in the UDI, we only received the response to our requests on November 10, 2020. In the end, we had to limit the number of administrative decisions (12 UDI cases + 9 UNE cases) we were able to access. We asked the leader of the UDI research unit, in cooperation with UDI caseworkers and the UNE, to identify cases on specific relevant topics (unaccompanied minors, heath issues, human trafficking, cessation cases, cases under to the Dublin Regulation). The UDI cases included asylum interviews, decisions, and internal comments on the case by the involved caseworkers. The UNE cases included the assessment of the UDI and UNE decisions.

In an early phase of the analytical process, we used the UNE practice database, which consists of abstracts of decisions produced by the UNE, intended to promote transparency in the administrative practice of the appeal board. Using the search word 'vulnerability', we identified and analysed the abstracts of cases categorized by board leaders as related to vulnerability (50 cases). Most of the abstracts include excerpts of the decision, in addition to the abstract of the case. Each case was analysed in relation to categories (age, gender, health issues, situational vulnerability), type of arguments, legal measures evaluated in the case, the law paragraph used in the case and the thresholds for granting or not granting a resident permit as refugees or on humanitarian conditions. The selection of cases is by no means representative, but it does illustrate the ways in which vulnerability is addressed in legal reasoning. We employed the UNE practice database as an additional data source to gain insight into how the UNE understands and operationalizes vulnerability.

2.1.4. Statistics

We mainly used statistical data from the Statistic and Research Unit of the UDI (see appendix).

2.1.5. Former research

The VULNER study relates to—and greatly benefits from—previous and ongoing projects carried out by the team members, including research on the internal protection alternative (IPA) (Schultz, 2017; 2019; Wessmann, 2017), temporary protection (TemPro) (Schultz, 2020), children's participation rights (Lidén & Rusten, 2008; Stang & Lidén, 2014), minors as victims of human trafficking (Tyldum et al., 2015, Lidén & Salvesen, 2016), voluntary return (Strand et al., 2016), human trafficking and return (Paasche & Skilbrei 2017; Paasche et al., 2018), settlement of unaccompanied minors (Lidén et al., 2020) and resettlement of refugees (Brekke et al, 2021).

2.2. Ethical Considerations

The Norwegian Centre for Research Data has assessed the research project, and a Data Protection Impact Assessment (DPIA) was approved in August 2020. The national study on legislation and administrative practices mainly includes interviews with administrative authorities. The examples discussed in the interviews were all anonymous, and we did not encounter specific ethical issues in these interviews. The cases we refer to from case law and the UNE's practice database are all discussed in line with the practices and ethical considerations used in these instances. The UDI and UNE asylum cases were referred to in line with the ethical considerations used in the UNE's practice database.

CHAPTER 3: LEGAL SOURCES - PROTECTION SEEKERS WITH EXTRA NEEDS

The duty to identify and follow up with vulnerable asylum seekers stems from the obligations anchored in international and national legal instruments as well as the general obligation in the health and welfare sectors. Vulnerable protection seekers are explicitly addressed both in the EU Reception Directive and in the Directive for Common Procedures for granting and withdrawing international protection.

In this chapter, we review the legal sources for addressing vulnerability and the rationale behind the attention given to certain persons and groups because of their vulnerable situations.

3.1. Legal Sources Addressing Vulnerability

In this section, we discuss the legal obligation to address and assess protection seekers' vulnerabilities according to national and international legal sources. First, we examine the implications of Norway's dualistic legal system and elaborate on the status of EU regulations and guidance from the UNHCR and other treaty bodies. We then identify national legal sources and policies related to the groups identified as vulnerable in the asylum system.

3.1.1.Use of legal sources in the practice of refugee law

Norway has a dualistic legal system, which means that international sources of law are not automatically legally binding. What normally happens is that Norwegian legislation will refer to an international treaty or incorporate its content. According to Article 3 of the 2008 Immigration Act, the Act "shall be applied under international provisions by which Norway is bound when these are intended to strengthen the position of the individual". Hence, when interpreting norms of protection, national laws must be applied under the 1951 Refugee Convention and other human rights instruments.

Besides the Refugee Convention, we found that the ECHR and CRC are the human rights conventions most referred to in court cases and bureaucratic practice. Both conventions were fully incorporated into Norwegian jurisdiction under the Human Rights Act of 1999. Regarding children, the articles applied most frequently are Article 8 of the ECHR (the right to respect for family and private life), Article 3 of the CRC (best interests of the child) and Article 12 of the CRC (children's participation rights). The Norwegian Constitution (§102 and §104) protects the rights to family and private life, as well as children's rights to be heard and to have their best interests weighed as a 'fundamental consideration'.

The Immigration Act (IA) of 2008 is the central piece of immigration legislation in Norway. Provisions in the IA specific to immigration supplement the regulations on administrative and judicial proceedings in the Public Administration Act.

When applying the statute, multiple types of legal sources are considered: the Constitution, other provisions of the IA, the IR, preparatory works, judgments from other countries, treaty obligations and judicial decisions (especially from the Supreme Court).

Preparatory works frequently illuminate the legislator's intent, especially in the early years of a new law, before there is extensive judicial guidance from the courts on the correct interpretation of its provisions. Two main documents referenced by both the administration and the courts are the *NOU 2004: 20 New Immigration Act* and *Ot. Prp. nr. 75 (2006–2007) On the Immigration Act*.[7] As we will discuss later, several other revisions of existing laws or proposals for new legislation have been made, including amendments to the IA in 2016, the changes in the IA regarding the care for UAMs and the Legal Aid Act. *Judgements/ practice from other countries* may be relevant when interpreting the IA, especially as the authorities have a pronounced goal of harmonising the Norwegian practice with that of other European countries.

Regarding regional legislation, particularly the Common European Asylum System (CEAS) and EU directives and regulations related to asylum seekers, Norway is legally bound only by the *Dublin Regulation* and the Schengen Agreement. Even so, the Qualification Directive, Procedural Directive and Directive on Reception Condition, as well as the continuing development of EU asylum legislation and cooperation still influence asylum policy in Norway.

For example, the preparatory works for the IA highlight that, even though Norway is not legally bound by the EU Qualification Directive, the provisions in the Directive give suitable clarifications and the possibility of a dynamic and flexible usage of the definition of *refugee* in the Refugee Convention.[8]

Norwegian asylum legislation departs from EU regional law in some important respects. On the one hand, it affords refugee status not only to persons who meet the criteria under the 1951 Refugee Convention but also to those who qualify for 'subsidiary protection'[9] in EU countries (risking serious harm)[10]. On the other hand, Norwegian legislation does not include a reasonableness test in the assessment of an IPA, which is required by Article 8.1 of the Qualification Directive.

3.1.2. Guidance from the UNHCR and other treaty bodies

According to Refugee Convention Article 35 para 1, contracting states shall facilitate the duty of the UNCHR to supervise the application of the provisions in the Convention. Guidelines from the UNHCR are soft law and not legally binding, yet they elucidate how contracting states understand the Refugee Convention. They are relevant both when interpreting the IA and the Refugee Convention, as noted in the preparatory work to the IA: '[…] the Ministry wants to underline that the recommendations from the UNHCR shall be given substantial weight when Norwegian authorities interpret the Refugee Convention'[11].

Nonetheless, the UNHCR's guidance, such as that of UN treaty bodies such as the CRC, is given variable weight in practice. The weight given depends on whether it is deemed a restatement of the law or a recommendation on policy grounds.[12] The process by which the guidance was created (i.e. through consultations with state parties or not) is also important. In some cases, even well-established legal guidance in the form of Guidelines on International Protection may be disregarded by Norwegian courts and policy

7 These are reports from government-appointed working committees, set up in cases calling for extensive revisions of existing laws or the development of new legislation. These Official Norwegian Reports (NOU) are objects of open hearings. The Ministry of Justice and Public Security will, based on the NOU, propose legislation (Ot-prp) to be considered and voted on in the Parliament.
8 Ot. Prp. 75, p. 15.
9 Status Directive article 15
10 IA article 28 para 1b.
11 Ot. Prp. 75, p. 73
12 LB-2019-28135

makers. For example, the UNCHR's *Guidelines on the Internal Flight/Protection/Relocation Alternative* (UNHCR, 2003) were set aside when the IA was amended in 2016. This guidance is based on a consolidation of state practice and argues that refugee status may only be denied because of an IPA in the country of origin if relocation is both safe and reasonable. Despite this, the Ministry of Justice and Public Security proposed a bill (adopted by a majority in Parliament) to remove the reasonableness criterion. Currently, Norway operates within a uniquely broad scope for IPA practice.

The Refugee Convention has no higher tribunal that can ensure that contracting states comply with the Convention. National courts can, hence, choose to treat the IA as an act of national statutory interpretation, disregarding guidance from the UNHCR without any concrete consequences. More broadly, Norwegian courts have demonstrated variable practices when it comes to applying the rules of treaty interpretation to resolve questions of refugee law (see the Vienna Convention on the Law of Treaties [VCLT],[13] articles 31 to 33). While some decisions seem to apply VCLT, other important decisions in the field of asylum regulation overlook them in favour of statutory interpretive methods.[14]

3.1.3. Obligations of national law and policy

National legislation gives certain rights to protection seekers, but with certain limitations related to their status, as we will discuss further in Chapter 6. Children are entitled to education and health care and the follow-up of people with special needs, such as pregnant women and victims of torture. The principle of non-discrimination is set out, for example, in the UN Convention on the Rights of Persons with Disabilities ([CRPD] 2006), which states, "[P]eople with disabilities are entitled to the highest achievable standard of health without discrimination due to disability" (Article 25), including protection seekers.[15] Certain commitments related to immigrants' health and welfare issues are articulated in political platforms[16] and action plans[17] issued by the Norwegian government. As demonstrated in the following chapters, the commitment to certain groups due to political priorities is also at the fore in the legislation and administrative practices of protection seekers. We will highlight the legal sources and political commitment to three groups: victims of domestic violence, victims of human trafficking and individuals with diverse sexual identities.

13 Norway has not ratified the treaty, yet it is customary law that Norway is bound by.
14 HR-2015-02524. However, see HR-2017-569-A para 44., where the court affirmed that the point of interpretative departure is VCLT §31, the "natural understanding of the text" in light of a treaty's object and purpose. Yet it concluded that this rule left "little room for dynamic interpretation" of the Convention.
15 The CRPD, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html
16 The latest one is "Granavolden-plattformen", formed by the Conservative Party (C), the Progress Party (PrP), the Liberal Party (L), and the Christian Democratic Party (CDP). In 2020, the PrP resigned from the government. The current government is a minority government. Granavolden-plattformen - regjeringen.no
17 An action plan is a thorough document that highlights specific goals and actions to be taken at a broad level both nationally and internationally to focus on and improve the conditions of certain groups of people.

Forced marriage, female genital mutilation (FGM) and other forms of domestic violence are all punishable by law in Norway.[18] The political platform of the Solberg government[19] aims to combat FGM and strengthen efforts against domestic violence and sexualised violence against women. An action plan was issued in 2017, following several earlier action plans on forced marriage and FGM.[20] In 2017, Norway ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention).[21]

In 2007, Norway ratified the European Convention on Action against Trafficking in Human Beings (St. prp. 2 (2007–2008)). *Human trafficking* is a punishable offence in the Norwegian Criminal Act, and the Norwegian government has issued several action plans against human trafficking. The last one, *The Government's Action Plan against Human Trafficking*, was published in 2016.[22] The action plan calls for Norway to ensure efficient decision making and follow-up of victims. The political platform aims, among other things, to prevent UAMs from becoming victims of human trafficking and to intensify cooperation between the police, public administration and NGOs.[23]

Regarding *LGBTQI+ asylum seekers*, same-sex sexual activity has been legal in Norway since 1972, and anti-discrimination laws have explicitly included sexual orientation since 1981. In 2017, *Safety, Diversity, Transparency: The Government's Action Plan against Discrimination Based on Sexual Orientation, Gender Identity and Gender Expression* was published. The document recognises that LGBTQI+ asylum seekers may experience additional challenges.[24]

In the analysis of the asylum procedure and reception settings, it becomes apparent that there is a link between these policy concerns and legislation and the identification of groups with specific protection needs. The vulnerability concept and discourse is not extensively used when guidelines refer to the obligations related to national laws. Consequently, risk groups that are not prioritised in domestic policies and situational vulnerabilities related to migration may be overlooked in procedural and reception contexts.

Thus, the obligation to assess various forms of vulnerability stems from a combination of international and national sources. Our informants from the administration noted that it can sometimes be hard to stay apprised of all their obligations. Simultaneously, the lack of a 'menu of vulnerability criteria' was also identified as an advantage because it permits a flexible assessment of factors.

3.1.4. Vulnerability not used as a legal concept

In Norway, the human rights discourse is the normative centre of Norwegian asylum law and policies. The concept of vulnerability is therefore not explicit in either legislation or the Immigration Regulations, but arises implicitly through the principles of non-discrimination and equal treatment.

18 There are separate paragraphs in the Marriage Act and Criminal Law addressing forced marriage. Since 1995, a separate act on FGM was approved; however, this is now included in the Norwegian Criminal Law.
19 See footnote 12 on "Granavolden-plattformen."
20 The right to decide over your own life: Action Plan against negative social control, forced marriage and female genital mutilation (2017–2020).
21 https://lovdata.no/dokument/TRAKTATEN/traktat/2011-05-11-22
22 https://www.regjeringen.no/no/dokumenter/regjeringens-handlingsplan-mot-menneskehandel/id2522342/
23 Granavollplattformen p. 19 https://www.regjeringen.no/contentassets/7b0b7f0fcf0f4d93bb6705838248749b/plattform.pdf
24 https://www.regjeringen.no/no/dokumenter/trygghet-mangfold-apenhet/id2505393/

Although the concept of vulnerability is not legal per se, legal obligations to assess and address certain vulnerabilities are implemented in immigration law, as well as in welfare regulations. Certain groups and persons are given special attention with reference to the state obligations derived from specific international conventions. Regarding the CRC, for example, special provisions are made for ensuring that children's perspectives are heard in an asylum determination. A gender-sensitive approach to the reception condition is justified by the CEDAW and Istanbul Convention. Victims of human trafficking have increased protection rights with references to the Palermo protocol[25] and the European Convention on action against trafficking in human beings.[26] Sexual minorities acquire protection to United Nations Resolutions on sexual orientation and gender identity,[27] and persons with disabilities get extra support with the Convention on the Rights of Persons with Disabilities.[28] Hence, protection or support is grounded in the rights and provisions of specific international instruments and the implementation of these regulations in Norwegian law.

Until the past few years, during which vulnerability as a concept has been applied with greater frequency, it was rare to find references to people with special needs described as 'vulnerable persons' or part of a 'vulnerable group'.[29] Instead, group-based vulnerabilities have been discussed concerning the normative content of binding human rights treaties.

In this report, we discuss how human rights duties are interpreted and applied in administrative practices. The discourse on human rights duties is universal, with objective obligations to all individuals within jurisdictions. Our analysis explores how the use of human rights discourse specifies obligations for certain individuals and groups due to their need for effective protection and conditions for specific needs and support. We then expose the normative content without an extensive use of a 'vulnerability' discourse in the regulations; it will be used more as a descriptive concept.

3.1.5. Administrative practice and perspectives on vulnerability

Instructions from the Ministry of Justice and Public Security and internal UDI guidance steer the administrative practice of the UDI to a large degree. These are less important for the UNE and courts, even though the latter may consider the interpretive weight of administrative practice to be relevant if the practice is 'long-standing, of a certain quantity' (Høgberg & Sunde, 2019, p. 320).

According to IA section §76 para 2, the Ministry of Justice and Public Security cannot instruct the UDI in individual cases. It can, however, produce instructions concerning the interpretations of law more generally. While it is possible to change the IR without parliamentary approval (in contrast to amendments to the IA), the quickest way for the government to steer practice is by issuing instructions and circulars to the UDI.

25 PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN - regjeringen.no (2000)
26 Council of Europe Convention on action against trafficking in human beings (2005)
27 See e.g. Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) A/HRC/RES/32/2
28 Convention on the Rights of Persons with Disabilities (CRPD)
29 In the preparatory work NOU 2004-20, the concept vulnerability is used only three times. In the White paper St.Meld. 75 (2006-2007) on the revision of the Immigration Act (IA), vulnerability is used 19 times, mainly related to children and to the reasonability assessment concerning IPA. In 2016, the Parliament agreed on a more restrictive legalisation on protection seekers. Prop 90L (2015-2016) *Modifications in the Immigrant Act,* 33 references to vulnerability are found, mainly relating to children, women, and most often, used by the hearing instances.

Additionally, the UDI codifies, to a certain degree, its own administrative practice in guidelines and practice notes. Administrative practice has little interpretive weight in the judicial branch, yet it is relevant to the administration itself when making decisions. The codification of administrative practice through guidelines and notes has its advantages, promoting the equal treatment of protection seekers and providing a way to document practice.

Several hundred guidelines and circulars address various conditions for protection seekers. We found that more than 60 guidelines/circulars relate to topics and groups with specific protection or humanitarian needs, procedural guarantees or special accommodations and assistance when it comes to reception.

Recently, the UDI collected the main sources of guidance for the immigration administration addressing vulnerability (overall 32 documents, issued from 2009 to 2018) in a separate domain on their intranet, under the following headings: Children, Victims of Human Trafficking, Forced Marriage/Domestic Violence/ Child Marriage, FGM, Torture, Sexual Orientation/Gender Identity, and Physical and Mental Health Problems. The UDI has created most resources, except for a few guidelines created by the Ministry of Justice, for example on FGM and on gender-related persecution.

On the management level, the UDI has three coordinators tasked with harmonising work in all UDI units related to 1) children (UDI 2014-037), 2) victims of human trafficking (UDI 2018-015) and 3) forced marriage, child marriage, domestic violence and FGM (UDI 2018–013).

Other forms of vulnerabilities mentioned on the intranet domain include elderly persons, persons with disabilities, pregnant women, single parents with children, persons subjected to serious forms of physical or psychological violence and women in vulnerable situations. These types of vulnerabilities have no specific guidelines. Instead, the UDI advises caseworkers to make use of guidance related to other topics, in addition to the general guidelines on procedural guarantees and reception conditions.

Like UDI, the Immigration Appeals Board, the UNE, develops internal guidance for case processing, comprising three main types of documents. The internal guidelines contain key principles for UNE's case processing. UNE's obligations pursuant to national and international rules are specified in the professional guides. Procedure descriptions contain more specific and detailed case processing procedures. Many of these guidelines and procedures address issues related to vulnerable individuals and groups.

The practice established by UNE should in principle be followed by UDI. Nevertheless, differences between the UDI and UNE do occur; for example, the UDI may interpret the security situation in a region differently from the UNE. Alternatively, the situation in a specific region may have changed between the time of the UDI's decision and when the UNE decides on the case. Decisions by the Grand Board of Immigration Appeals act as precedents for both the UNE and UDI.

The UNE does not, for its part, consider the UDI's practice unless a specific case clearly goes against established UDI practice and, hence, violates the principle of equal treatment. Instructions and circulars from the Ministry inform the UNE interpretation if they follow Norwegian national legislation and human rights conventions. However, according to one informant, the UNE first gives interpretative weight to judicial practice, preparatory work and obligations of international law.

In summary, administrative decision makers at both the UDI and UNE draw on, as one UNE employee put it, "a sauce of different legal methods", including international laws, national laws, instructions and circulars, and practice notes, many of which identify the practices of persons with extra needs. The administrative decisions also consider the principles of administrative law, which include the principle of efficiency. This means, in practice, that the most obvious grounds for a decision should be prioritised.

Our informants in UDI and UNE stressed that vulnerability as a concept is useful in their discussions about specific cases. As one informant said, "It puts focus on how small, single factors make it unreasonable, cumulatively, to return". Another informant stressed that vulnerability is a valuable concept when one starts reflecting on the case: "It is useful to better understand the implications of the conditions the person talks about – and for what they will face in the future".

The informants found that the guidelines and circulars helped them to address demanding conditions in the cases and the legal obligation to assess various forms of vulnerability: "It is helpful to remind people of the complexity". They also emphasise the dynamic aspect of using various legal sources as vital: "You can be vulnerable for two or more reasons, so the categories should not be exclusive. And vulnerability changes over time and can be situational in unpredictable ways".

The legal rationale for the outcome of a protection claim is included in the decision, but is more detailed for those receiving a rejection than for those granted residency. As mentioned in Chapter 2, decisions from both the UDI and UNE are exempt from public disclosure. The UNE does publish summaries of some of its decisions on its website, but these are merely summaries and do not reflect all the arguments of the decisions. This is a disadvantage for both asylum seekers who attempt to understand practice and for the public.

CHAPTER 4: PROTECTION SEEKERS IN NEED OF SPECIAL PROCEDURAL GUARANTEES

This chapter examines the procedural regulations, routines and guarantees for vulnerable persons seeking protection. Although Norway is not bound by the EU asylum system (CEAS), the Norwegian government aims to harmonise the reception conditions and other aspects of the EU asylum system (see e.g. St. meld 9 (2009–2010) *Norwegian Refugee and Migration Policy in a European Perspective*, Brekke et al., 2010). In the section on administrative procedures in the Immigration Act, only §81 mentions extra needs when the protection seeker presents his or her protection grounds (see also the Immigration Regulation (IR) §17-2.) IA §81 secures the right of children to be heard. Otherwise, there are no regulations regarding how vulnerability is to be understood in administrative procedures.

The chapter first examines the identification mechanism for applicants with extra needs. We then introduce the hearing procedures in the first instance (UDI) and the specific guarantees implemented for vulnerable persons, including the administration's reflections on the adjustments and suggestions to improve their practices. We then discuss the hearing procedure in the appeal instance before presenting the options for legal aids. The chapter includes a paragraph on age assessment as part of the arrival procedure as a provision for young protection seekers arriving without ID documents.

4.1. Two Main Procedures for Protection Seekers

For protection seekers, Norway has two main procedures for granting residence permits: protection seekers with asylum applications submitted at the border and those arriving on UN resettlement programmes. The three procedures for asylum applicants submitted at the border are as follows:

- *A standard asylum assessment procedure*
- *A 48-hour asylum procedure f*or those from a country in which the inhabitants can receive help from their authorities.
- *Procedure under the Dublin Regulation* for those who have been in another European country before arriving in Norway. Unaccompanied minors are excepted from the Dublin Regulation.

As an exception, in 2020, Norway accepted 50 Syrian refugees, all families with children, transferred from hot spots in Greece.

All asylum seekers arriving at the border are directed to the National Arrival Centre situated near the south eastern border to Sweden.[30] The applicant will undergo the initial phases of the asylum procedure here, starting with an electronic registration and registration interview by the National Police Immigration Service (PU), an information programme conducted by the NOAS and a medical/tuberculosis examination.

Those identified in the registration procedure as persons under the Dublin III regulation will be transferred to a reception centre, waiting for the return procedure to start. The Dublin procedure is expected to take up to six months (see Chapter 9). Only asylum seekers in the ordinary procedure have a mandatory interview with the UDI a short time after their arrival.

30 The arrival centre is situated at Råde, Viken County

The second procedure for protection seekers is for refugees arriving on *resettlement programmes*. The annual Norwegian quota for resettlement refugees is decided politically, both concerning quota size and which groups to prioritise. Generally, there has been a political consensus concerning resettlement refugees in Norway. Since 2016, the Norwegian immigration policy has prioritised refugees arriving on resettlement programmes. Regarding case processing, the Norwegian authorities stress that the assessment of the protection needs of resettlement refugees should not differ substantially from the assessment of spontaneous asylum seekers' protection needs. Refugees cleared for resettlement in Norway are settled directly into a municipality upon arrival and, as a rule, do not spend time in the National Arrival Centre or reception centres (see Chapter 8).

4.2. Identification Mechanism of Applicants with Extra Needs

Although Norway is not bounded by the EU Reception Directive (Directive 2013/33/EU) to have an identification mechanism, a mechanism is introduced for identifying the need of extra resources to meet the specific situation of a vulnerable person in the arrival practices. The expectation to identify a person's extra needs are included in guidelines on the arrival phase's administrative procedures and on health issues (Directorate of Health, 2011a). In Norway, the measures to identify protection seekers with extra needs are delegated to various institutions and sectors. The identification mechanism, therefore, involves different actors accountable for different phases of the asylum procedures, with an emphasis on the initial phase. Although there are no list of vulnerable groups, the persons in charge of the initial phases of the asylum procedures are aware of the extra need people with certain visible attributes (unaccompanied minors, children, pregnant women, single women, persons with disabilities) and those communicating specific protection grounds (e.g. sexual identity, torture) may have.

Identification of protection seekers with extra needs start at the Arrival Centre. The purpose of identifying vulnerable asylum seekers in this phase is threefold: first, to identify the need for assistance and improved facilities during the stay in the arrival centre and when moving to a reception centre, and second, to ensure that they receive adequate information about rights and the appropriate welfare service. Thirdly, to provide appropriate support under the hearing procedural. The main actors in the arrival phase are as follows:

The National Police Immigration Service (PU) who undertakes the registration interview at the arrival centre, during which it investigates asylum seekers' travel routes and ascertains their identity, will identify persons with observable extra needs, such as people with disabilities, single women, elderly people etc. If the applicant is believed to be an unaccompanied minor, they are ensured a modified procedure for minors. In the registration interview, standard questions are posed about health issues and extra needs. While the registration interview with the PU may provide an opportunity to display disabilities and obvious somatic health issues, it may be a difficult context in which to disclose difficult or shameful experiences and (mental) health issues.

Arrival centre staff: At the arrival centre, the applicants are lodged in tent halls, which they share with other applicants. The UDI contract with the operational company running the centre (see chapter 5), includes the expectation of a certain sheltering of vulnerable persons in the tent camp, with single women and families with children to be shielded in certain parts. The staff in charge of the accommodation are responsible for identifying vulnerable persons and extra needs, making an initial classification of different categories of applicants. The staff have experienced that persons who belong to ethnic minorities

or local political fractions may risk discrimination if they are lodged with members of controlling elites (UDI PUMA, 2020). LGBTQI+ persons may also find the reception conditions unsafe and, in some cases, will be given alternative accommodation. As one informant said, "Both past persecution and subjective experience of being insecure count." Likewise, if a person discloses in the registration procedure being a victim of human trafficking, he or she will be transferred to a shelter, and certain adjustments will be made when finishing the initial asylum procedure. Identifying vulnerability is, therefore, a core concern. The situation for children at the arrival centre is challenging and exposes not only how children constitute a social group but also how some children are more vulnerable than others. An expert report assessing the conditions for families with children in the arrival centre (Schultz & Langballe, 2019) found that the situation is not fitted to their situation, particularly in the cases of children in single parent families and babies and small children who lack stable conditions for care, sleep, play, and meals. Security is also an issue for young girls and for single parents who have to leave children in the hall when visiting, for example, bathroom facilities, which are situated outside the tent hall. This evaluation was conducted when the applicants' stays in the arrival centre only lasted a couple of days; hence, the conditions will be even more problematic now the stay lasts for three weeks or more (UDI PUMA, 2020). Although some adjustments and efforts to shield families with children have been made since then, a prolonged stay in the camp will be challenging for many children and is also an issue in the identification of their vulnerabilities.

Health consultation: When staying at the arrival centre, the applicant will undergo a mandated compulsory tuberculosis test at the nearby hospital. The health consultation will register some initial needs requiring health support (i.e., pregnancy, mental health problems) and provide contact information about the relevant organization that will follow up on the issue. The health provider's mandate, however, is not to identify vulnerability. However, a pilot study from 2018 with extended interviews on health issues as part of the health consultation, identified that people needed follow-up in 43% of the cases.[31]

Providing information about applicant's rights: An important part of the identification and follow-up of extra needs is informing the applicant of his or her health and welfare rights. This is the duty of all the actors mentioned. Furthermore, the Norwegian Organization for Asylum Seekers (NOAS) is in charge of providing information about the asylum procedures and applicants' rights while staying in the arrival centre. The NOAS may identify extra needs, provide information about relevant health and welfare systems, and in certain cases, communicate these needs to the health service, the reception centre management or/and UDI.

For unaccompanied minors, identified during the PU registration, the interaction with the police and immigration authorities will take place at the arrival centre. They will, however, reside in a transit reception centre for unaccompanied minors situated not very far from the arrival centre. Those younger than 15 will be brought to a care centre, where they stay during the initial asylum procedure. A system of on-call *representatives* ensures that the minor has a representative present at all consultations and interviews with the immigration authorities, police, and other state authorities. The representative will also inform the minors of their rights and the following procedures. He or she may also identify extra needs and ensure that they are followed up on.

31 Based on 69 interviews (Kommunehelsetjenesten Ankomstsenter Østfold, 2018).

Until 2020, the stay in the National Arrival Centre lasted about two days. However, a new system of arrival procedure was implemented November 1, 2020, meaning that all protection seekers will now stay in the National Arrival Centre for a three-week period, during which they will have their asylum interviews and, in ordinary cases, receive their first instance decisions. The aim of this change is twofold: to reduce the application processing time (21 days for regular cases) and to cut costs related to reception centres. In the period at the arrival centre, the applicant will undertake all the preparatory phases of the asylum procedure mentioned earlier (registration by the PU, information about the asylum procedures that the NOAS provides, the compulsory tuberculosis test). From now on, the personal asylum interview will be conducted at the centre, with increased focus on document inquiries initiated to obtain additional information (ID, Eurodac registration, age assessment, language tests, etc.). The objective is to examine the asylum claim and define the outcome before the applicant is transferred to a reception centre.

To increase the attention necessary to disclose vulnerabilities and to facilitate the information flow, an internal UDI evaluation of the new procedure in the National Arrival Centre (UDI PUMA, 2020) proposed having a *separate team responsible for identifying vulnerability*. The report emphasised the need to ensure that persons who are identified as vulnerable by the various actors are followed up on during their stay-in the tent area, through the registration procedures, and in the asylum interview, as well as after they move on from the arrival centre.

Although the National Arrival Centre has located the responsible actors in the same administrative building, which may simplify the flow of information, other challenges have yet to be met. The newly initiated arrival procedures have a condensed timeline, which includes the time afforded to protection seekers to apprehend all the information about rights and systems. Furthermore, the unsettled context of the arrival centre may impede communication on difficult issues.

In addition to the initial identification of vulnerability at the National Arrival Centre, the asylum interviews and reception centres are important arenas for identifying vulnerable claimants. As we will discuss more thoroughly in chapter 5, accommodating special needs is part of the standard tasks in ordinary reception centres. The employees at a reception centre have the opportunity to observe a person on a daily basis and understand how vulnerability affects the person's daily functioning. Together, the different actors' perspectives form a more complete picture than a single actor's perspective of how vulnerable a person is.

We find that there are advantages to an identification procedure that includes different actors responsible for identifying a person's special needs, as the asylum seeker will have various opportunities to disclose information. At the same time, the lack of a single, dedicated identification mechanism to identify vulnerable persons, as the EU Reception Directive proposes, is problematic, particularly in situations where the vulnerability is not obvious and visible. Competent actors are necessary to identify and address multiple vulnerabilities and their intersectionality. Solid routines for communication and documentation must be in place when information flows across institutional and sectorial units. The communication involves different units of the UDI as well as actors in welfare institutions. A national guidance document for health promotion to asylum seekers and refugees includes guidelines for documentation and information flow, as well as a tool for undertaking a first diagnostic interview (Directorate of Health, 2011a). However, studies show that very few actors actually make use of this tool (Lie et al., 2014; Kommunehelsetjenesten, 2018).

An additional concern is that only more visible or obvious needs are identified in the present routines. As mentioned above, a pilot study was conducted in 2013–2014 including an extended diagnostic interview at the initial health consultation. The study found that the individual needs of protection seekers for health support were relevant for the asylum cases with the help of triage (Lie et al., 2014).[32] The purpose of the project was to learn from the organization and outcome of the mapping to improve the existing identification mechanism. The aim of a voluntary diagnostic interview was to identify needs related to health issues, including migration-related experiences of exploitation, torture, and other forms of inhuman treatment, to be followed up on by health and immigrant authorities, as well as to ensure and improve the information flow about asylum cases between the UDI, health providers, and reception centre. The interviewers were health staff with experiences in diagnostic and semi-structured interviews on health issues. The main challenge for the identification was to ensure that the needs exposed in the interviews were followed up on by the local health service and reception centre. If this does not occur, the identification becomes counterproductive. The researchers also emphasised the language difficulties, the use of an interpreter, and the extended use of written information in the arrival procedure, making it difficult for many applicants to read and thoroughly understand the information.

These findings from the pilot study are highly relevant when discussing how to improve the mechanism for identifying vulnerable persons. The report recommended a standard triage interview as part of the health screening in the arrival procedure, with the option of referring those in need of immediate treatment to a specialist health service. They also emphasised the need to see the identification of vulnerability as an ongoing process.

Person under the Dublin Regulation procedure will stay in a reception centre until they are deported by the PU to the former country of entry. For these protection seekers, there are few options to be followed up on extra needs, except if the situations are grave enough to be reported to the UDI for an evaluation of the case to be assessed in Norway (see IR §7-4 and chapter 9).

The Norwegian practices, then, meet some of the expectations in Article 22 of the EU Reception Directive which asserts within a reasonable period, an identification mechanism into existing national procedures that identifies the extra resources needed to meet the specific situation of a vulnerable person (Directive 2013/33/EU). However, the chosen model, involving many actors and settings, have certain limits. The Norwegian practices of identification those with extra needs overlap the Reception Directive's list on vulnerable groups. However, those with visible needs are more likely to be identified than other persons in vulnerable situations.

The UDI unit in charge of the reception conditions (RMA) (se chapter 5) as well as the UDI administrative unit responsible for the hearing procedure are obligated to take into consideration the documentation of extra needs in the applicant's case file. The following up on vulnerable applicants with special reception needs will be discussed in the next chapter. In the next subsections, we will examine the following up on vulnerability in the hearing procedures.

32 In the actual period, the health consultation was conducted at the transit centre.

4.3 Legal Aid

Asylum law is complex for decision makers processing the cases and even more so for a claimant unfamiliar with the Norwegian language and legal system. Moreover, protection seekers often come from states where trust in public authorities is minimal. As mentioned above, the Norwegian Organization for Asylum Seekers (NOAS) is in charge of providing information about the asylum procedures and applicants' rights, however NOAS will not give advice in individual cases. An applicant has no free legal aid before or under the hearing in the first instance (UDI). If a foreign national risks losing or being denied a permit to stay in Norway, the person will have a right to *effective remedy* based on Article 13 of the European Convention on Human Rights (ECHR) if this violates any articles in the ECHR (typically Articles 2, 3, and 8).

Foreign nationals are entitled to free legal aid without means testing in cases concerning r*ejection, expulsion, revocation of a permit, or revocation of a residence document* (section §92 of the IA). Claimants who apply for a residence permit under section §28 or invoke protection against removal under section § 73 are entitled to free legal advice without means testing upon appeal of a negative decision by the UDI.[33] However, this does not apply in cases where the foreign nationals appeal against only having been granted a residence permit under section §38. Unaccompanied minor asylum seekers (UAMs) receive three hours when applying for asylum and five hours when appealing a decision. They are also entitled to a representative who complements the role of the lawyer (see below).

When the UDI rejects an asylum application, the claimant who chooses to appeal the decision will have a right to a lawyer. UNE decisions can be clarifying which courts, yet with no free legal aid provided. This results in limited appeals of UNE decisions, only 150 in 2017, almost half of which were ruled in favour of the foreign national (NOU 2020-5, p. 226).

The Norwegian Association for Asylum Seekers (NOAS) has drawn attention to restrictions on the right to contradiction in appealed asylum cases. For example, UDI's decision may be approved by the UNE on completely different grounds. If the claimant does not meet in person in the UNE and the new decision is based solely on written documents, the person will not be able to counter the UNE's new assessment nor present important new information.[34]

White Paper exploring the need for changes to legal aid is currently being assessed (NOU 2020-5).[35] The Paper concludes that the decisions in the immigration cases should still be made within an administrative system as opposed to the courts but that the legal aid scheme must be strengthened.[36] It suggests increasing the number of hours of legal aid a claimant receives for the appeal of an ordinary negative asylum decision from five to eight. Currently, the five hours also cover the time in the UNE if a claimant meets there in person. Hence, the paper suggests adding three hours of preparation time for the UNE, and including the time spent in the UNE hearing. Currently lawyers are not paid to hear accompanied children under the age of 14; hence, the paper suggests granting two hours for all accompanied children above the age of seven.[37]

33 The NOAS can provide free legal aid and counselling throughout the asylum process.
34 NOAS (01.11 2020) https://www.riketstilstand.noas.no/2019/rettssikkerhet
35 NOU 2020-5 was published in April of 2020, deadline to comment is November 2020. Chapter 29 deals with legal aid related to immigration cases
36 NOU 2020 5, p. 226
37 NOU 2020 5, p. 235

Furthermore, it suggests that specific immigration cases should be given free legal aid in the court system. This is a good initiative because, as the NOAS points out, since 2015, Norway has amended the IA to represent a narrower scope of protection despite protests from the UNCHR.[38]

4.3.1. Legal Representation for Unaccompanied Minors

According to the IA §98 and Legal Guardian Act §17, a representative is appointed for each minor by the county governor in the county in which the reception centre is situated. The representative will be present in the arrival procedure, including the PU registration and asylum interview. The representative has the legal mandate to provide consent and advice on legal matters in the absence of a parent or guardian. The representative has the responsibility of giving legal advice and information about the asylum case during the processing. The mandate also includes the responsibility to ensure that a minor receives necessary care and access to adequate education and welfare support.

A new representative is appointed when the UAM is moved to a reception centre in another part of the country. Studies have found that the representatives' practices vary and do not always fulfil the expectations for legal advice and support (Weiss et al., 2017; Lidén et al., 2020). Lidén et al. (2020) found that guardianship for settled refugee minors is crucial in ensuring that the minors receive sufficient support for extra needs and in resolving problems that escalate in their everyday settings. Hence, there is a significant need to make the mandate of guardians better known among service providers. The guardianship mission is largely carried out in a spirit of volunteerism, with the quality of the work tied to the motivation to assist a young person in a vulnerable situation. The representatives are recruited, supervised and paid for a limited number of work hours by the County Governors of Oslo and Viken. The study considered that the path forward is to develop a common understanding of guardianship and provide sufficient resources to build skills for guardians to carry out the mandate in line with this understanding. While the work of guardians needs to be appreciated, it is also important to introduce routines for supervision and control. A UDI-initiated study on the role and practices of representatives will be conducted in 2021.

4.4 Hearing Procedures

Processual adjustments relate to the concern and tension between the wish of the state to adhere to its human rights commitments, while limiting migration as much as possible (Carling, 2011). This tension means that asylum decision makers must handle two seemingly contradictory goals in their daily work. On the one hand, they must safeguard sufficient information to ensure the rights of individual protection seekers. On the other hand, they must maintain control of those not considered eligible for refugee status. The main task of caseworkers is to make correct distinctions among applicants and guarantee justice to the right group of people.

Applicants often lack documentation to verify their stories, which makes the assessment of credibility crucial to the outcome in many cases. To determine whether protection is justified, Norwegian authorities assess not whether the refugee's claim is likelier than not under the normal standard of proof in civil cases, but instead whether the claim is somewhat likely, which is a lower standard to accommodate the problems refugees face in providing evidence to support their claims. One requirement, however, is that the claimant has contributed to illuminating the case as far as reasonably expected. The claimant's general credibility is also a relevant factor.

38 https://www.riketstilstand.noas.no/2019/rettssikkerhet

The UDI's Asylum Department is responsible for conducting the asylum interview, examining applications for international protection and making decisions at first instance. In 2019, the UDI proceeded with approximately 2,000 asylum cases and the resettlement of 3,200 quota refugees. The Managed Migration Department also makes decisions on rejection and expulsion.

4.4.1. The Asylum Interview

The asylum interview is the main context for identifying various forms of vulnerability and extra needs.[39] The quality of the interview depends on the interviewer's and the applicant's commitment to the purpose and the communication, as well as a trustful and respectful relationship between the applicant and interviewer. The protection seeker must trust the asylum system, case worker and interpreter before disclosing information about difficult experiences and trauma, as there may be strong feelings of shame and social stigma associated with vulnerability and special needs. This challenging interview has shortcomings when it comes to identifying various needs (see below and chapters 6 and 7).

The interview consists of introductory, fact finding and concluding sections.[40] An interpreter who speaks the claimant's mother tongue or preferred interviewing language is always present. The interviewer must consider any psychological or physical illness and other challenges.[41] The asylum department follows a precise interviewing method, and all interviewers are trained to know how traumatic experiences and stress may influence the claimant to present his or her narrative. Furthermore, the training includes an awareness of how culture, shame and/or gender may make it difficult to present a case.[42] During the introduction, the interviewer explained to the claimant the roles of everyone in the room and what would happen during the day. Simple language should be used, and the interviewer must be aware of his or her nonverbal communication. It is also essential to mirror the words the claimant uses to identify himself or herself. To reassure the claimant, it is important to emphasise the duty of confidentiality of both the interviewer and interpreter.

Before the interview, the interviewer reads the police registration, as it may offer clues into whether a person is vulnerable or has special needs. The interviewer then prepares for the interview by reviewing the specific interview guides and Actions Cards available. The interviewer may also consider extra provisions for claimants with special needs, such as recommending that the person bring someone with him or her to the interview or that two interviewers be present from the UDI. However, such requirements are rare in practice.

During the interview, the interviewer will acquire in-depth information about what a person risks in the future, what has happened to them in the past and how both place the person in a vulnerable situation. Toward the end of the interview, the claimant is asked whether he or she has any serious physical or psychological illnesses. In the UDI interviews we have read, some interviewees simply answered 'no', while others described having some sort of health problems and suffering. The claimant is then informed of the right to assistance, that serious health problems must be documented and that the reception centre can help with this. From the asylum interviews, it seems likely that many claimants simply do not understand

39 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/ section 2
40 An interview in the UDI starts at 9:00 a.m. and must be finished at the latest by 4:15 p.m. Additional time another day is allocated if needed.
41 UDI website (01.11 2020) https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-012/ section 1
42 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/ section 2.3

this formal language and, hence, cannot communicate and document real physical and psychological vulnerability, for example, due to torture, rape and sexual violence. Our reflection is that the duty to identify vulnerabilities based on human rights obligations should not depend on the claimant's ability to formulate his or her vulnerability. It may be useful to receive input from professional health personnel regarding how interviewers can pose more fitting questions to acquire a real picture of a person's vulnerability.

The UDI believes long and complex interviews should, as a rule, not be conducted digitally, including interviews with particularly vulnerable claimants or claimants in a vulnerable situation. Until November 2020, a personal asylum interview was conducted in the UDI in Oslo. However, when a high number of refugees arrived in 2015 and during the COVID-19 health crisis, the UDI and UNE conducted digital interviews on which a UDI guideline has been published.[43] Digital interviews are interviews in which the claimant, interpreter and/or the interviewer participate through a digital meeting. As a main rule, the interviewer and interpreter sit together in the same room in a UDI building.

The guideline also highlights some claimants may find it easier to conduct the interview digitally at the reception centre, as it might be easier to reveal sensitive information without the interviewer and interpreter in the same room. A UNE employee confirmed that it is less of a burden for a vulnerable applicant to avoid travel to the interview, and, hence, the claimant can focus more on conveying the narrative.

4.5. Modified Hearing Procedures for Vulnerable Persons

As discussed in Chapter 3, international and national legal obligations, as well as measures from action plans and political platforms, directly influence which persons and groups are identified and followed up by the administration. UDI has adjusted hearing procedures for minors; unaccompanied minors conduct a child-sensitive interview, while a child seven years or older applying for asylum as a family member, can conduct a child's conversation. Furthermore, there are guidelines for persons with extra needs for modified measures to ensure equal procedural rights.

4.5.1. Identifying vulnerability in the asylum interview

One main aim of the interview, the general interview guide on asylum interviews stresses, is to "contribute to identifying vulnerable applicants with special needs so the interviewer can make necessary adjustments during the interview, contribute to necessary follow-up and prevent danger" (UDI 2013-011 section 1). The guideline has a section on the preparation of "an interview with a person with extra needs", including sufficient information on relevant issues, specifically mentioning victims of human trafficking, gender-related persecution, torture, KKL, forced marriage, domestic violence and negative social control, some of which have specific interviewing guidelines.[44]

More detailed interview guides and action cards on certain issues contribute to the quality of the hearing and ensure that the specific procedural guarantees are implemented in practice. For example, when a person with extra needs is identified before or during the interview, it is common for special measures to be implemented regarding the choice of interpreter and the use of terminology. For the person, if it is known, the UDI will choose an interviewer experienced in the relevant area, such as harmful traditional practices or LGBTQI+ claims. The Guideline on Sexual Orientation and Gender Identity in Applications for

43 UDI website (01.11 2020) https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-012/
44 UDI 2013-011 Intervju i søknader om beskyttelse

Protection[45] emphasises the need to follow the claimant's preferences for an interpreter as much as possible. These preferences could include choosing the gender of the interpreter and whether the claimant wants an interpreter from another country or via telephone. The interviewer is to inform the interpreter about the interview's subject before it starts. Informants in the UDI stressed that sexual identity should be factored into both the substantive analysis and how the interviews are conducted. The competence of the interviewers to avoid being offensive when questioning LGBTQI+ claimants has been an issue. The informants welcomed NGOs to exchange knowledge with immigration authorities by, for example, inviting NGOs to UDI seminars to improve their competence and collaboration.

Sometimes, the interviewer will need to raise a subject not verbalised by the claimant, such as FGM or human trafficking. Many asylum seekers come from countries where, for instance, sexual orientation and rape are shameful topics and, hence, may lack the proper language to express himself or herself. The specific interview guidelines list indicators that may point to these illegal practices taking place. For instance, a woman from a country known for human trafficking may not keep her own passport or may have lived for several years in other European countries known for hosting forced prostitutes.

As our informants in the UDI and UNE have experienced, past trauma can make it harder for the claimant to remember and retell events, and the narrative may be inconsistent and fragmented. Domestic abuse, rape, sexual orientation and human trafficking are examples of intimate and sensitive topics. LGBTQI+ persons may experience 'shame and internalised homophobia, and may have mental health problems because of isolation, ill treatment and the lack of social support'.[46]

These possible responses are expected to be kept in mind by the interviewer when interviewing and the decision maker when assessing the claimant's credibility. Because of this, it is essential to make the claimant feel safe during the interview to encourage the person to recount as much as possible of his or her narrative. Importantly, however, the lack of focus on victims of torture has consequences for the ways credibility has been assessed. Despite the recognition that past trauma can undermine a claimant's ability to tell a coherent narrative, in some cases, people with confirmed PTSD and injuries consistent with torture have been denied protection precisely because they cannot give sufficient details about events that took place.

Ways to reassure a claimant, one informant told us, can be to say that same-sex relationships are legal in Norway and that LGBTQI+ persons have the same rights as everyone else.[47] Likewise, the interviewer can inform a victim of human trafficking that it is legal to sell sex in Norway, but not to buy it. Claimants may be reluctant to tell their stories due to immediate threats. Victims of human trafficking may be afraid to reveal their situation, as their traffickers may be waiting for them outside the interview building, while victims of forced marriage or domestic abuse may not want to disclose information about their families and abusers, as they have come with them to Norway.

45 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2018-004/
46 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2018-004/ section 3
47 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2018-004/ section 3.3

4.5.2. Following up vulnerability – the use of action cards

The UDI has issued several 'action cards' that are easily available to caseworkers during interviews and that provide specific guidance on what to do when one suspects, for example, that a girl is at risk of FGM. The action card on physical and psychological diseases lists PTSD, psychosis, self-harm and depression as potential illnesses a person might suffer. It may not be possible to carry out some interviews when these diseases become apparent during the conversation. When they are identified beforehand, special accommodations will be made, such as using a trained interviewer, the interviewer travelling to the reception centre for the interview and taking more breaks during the interview. The person is to be informed of his or her right to health care, and the interviewer will convey the applicant's state to the appropriate health authority.[48] One action card concerns forced marriage. When suspecting that a claimant may have been forcibly married, the interviewer will inform the person of his or her rights and the help offered. This includes the possibility of staying at a shelter, help with annulling a marriage and divorce, and free legal aid.[49]

For victims of human trafficking, the interviewer or claimant can call the 24–7 helpline for Re-establishment, Safe places to stay, Security and Assistance (ROSA; see Chapter 5), which offers immediate assistance to victims of human trafficking, such as a safe place to live, and directs the person to a crisis centre, a lawyer and contact with police. The interviewer must also call the service responsible for reception facilities within the UDI to ensure a safe environment and, if necessary, follow up physical or psychological health issues.[50]

There are no guidelines or action cards related to the identification or hearing of victims of torture.

Action cards specify which actors, such as the police, child welfare services, the regional RMA office (see Chapter 5) or the reception centre, should be contacted in specific situations. For instance, LGBTQI+ persons are informed of their rights and the NGOs they can contact in Norway. Children can also be informed about the emergency telephone for children and teenagers. Providing this information is, of course, equally valid for all asylum seekers, whether they are vulnerable or not. In addition to this general information, vulnerable groups are given specific information. The action card will highlight when there is a need for *acute follow-up* and what information needs to be passed on to other organs. The adjustments then also include whom to contact in specific situations with claimants who need acute assistance.

If the claimant agrees, the UDI can give information to the reception centre, so special accommodations can be made.[51] If a woman has undergone FGM, the interviewer is to notify her about the possibility of receiving medical help; brochures exist in several languages and are handed out to the women. The police and/or child welfare services are contacted if there is suspicion that a girl risks FGM in Norway. [52]

48 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/udi-2013-011v4/ section 3
49 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/udi-2013-011v7/ section 3.2
50 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/udi-2013-011v6/ section 4 and 5
51 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2018-004/udi-2018-004v2/
52 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-011/udi-2013-011v5/

4.5.3. Accompanied children's right to be heard

The adjusted hearing procedures include the accompanying children's right to be heard. *Children* are defined per se as a vulnerable group with the need for an adjusted examination procedure. The IR provides that the general life situation for children with their families will be assessed during the interview with the parents (§17-4). In addition, the child shall be provided the opportunity to be heard in the asylum proceeding, either directly or through a representative, according to CRC Article 12, para 2. IR section §17–3 has the same wording as the Norwegian Children's Act on the child's right to participate in an administrative procedure.

The Norwegian Children's Act,[53] in line with the CRC, defines no minimum age as to when a child should be heard, but rather states that the child is 'capable of forming his or her own views'. In asylum cases, there is a conversation with accompanied children over seven years of age, unless the child himself or herself does not want to or it is considered obviously unnecessary. Independent interviews may also be conducted with children under seven years of age who can express their own opinions. Information about the child's conversation (including in films and brochures) is given to children and parents at the arrival centre as part of the information programme conducted by the NOAS (see Section 4.2).

Children may be heard through oral conversations, writing, their parents, a representative or others who can express themselves on behalf of the child (§17-3 IR). The purpose of this conversation is to illuminate the child's situation and to ascertain whether the child has independent grounds for protection. The child's perspective shall be weighed according to his or her age and maturity (§17-3). The UDI guidelines on interviews with accompanying children[54] lists the following topics that the conversation with an accompanied child should cover:

- If the child has an independent need for protection
- The child's understanding of his or her situation in the home country, during travel and after arriving in Norway
- The child's perspective/opinion on relevant topics
- The child's identity
- The child's relationships and attachment
- The child's possibility to receive care, protection and security
- The child's vulnerability
- The child's health
- The child's education
- How the child envisions a return to his or her home country if a permit is not granted in Norway

The guideline emphasises children are vulnerable and the conversation can result in reactions in the child that require a follow-up. For children who have experienced trauma, the interviewer, if necessary, should refer the child for further support.

53 The Children's Act in Norway, when deciding what children are to be heard in cases of personal matters for the child, specifies in section §31 para 2 "a child who has turned seven, or younger children who are capable of forming their own views."
54 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2010-075/#1.1.1.1._Retten_til_å_bli_hørt

The interviewer in the UDI or the child can choose to exclude parents from the interview, in which case a substitute guardian will be appointed, as outlined in IA section §81. Parents may not be aware that a child's vulnerabilities are part of the assessment in an asylum application. Currently, the UDI does not routinely gather information about a child from the child's school, doctor or similar parties before deciding on a case. However, in appeal cases involving children in the UNE, the lawyer is expected to do this (see Section 4.6).

In some cases, there will be a need for a child to have a legal representative to help the child communicate vulnerabilities, such as abuse, his or her sexual orientation and mental health issues. This option, however, is used in few cases.

Many caseworkers clearly experienced conversation with children as a demanding task, mainly for the child but also for the interviewer, as our informants conveyed. Even though most interviewers in the UDI have received some training on communicating with children, children may be uncomfortable in front of authorities and may not be sufficiently informed about the aim of the interview. The parent present may be supportive; however, he or she may also constrain the conversation. In some cases, as research on child hearing practices has found, the child is well prepared, and substantial information is revealed in the hearing (Lidén & Rusten, 2007; Stang & Lidén, 2014). To what extent the information is included in the assessment and given weight in the decision, however, is a topic for further examination.

It is vital to give a child protection seeker the status of an independent rights subject. In all decisions concerning children, the *child's best interests* must be assessed explicitly. In the concluding part of the decision, the specific argumentation on the child's condition, the nation state's obligations related to the child's best interests and contradictory interests and considerations must be included (IR §17–1 a).

Although certain steps ensure that each child's asylum case is sufficiently informed, the child's hearing practices still need to be improved. In accordance with the CRC article 12, the input of the child must be given due weight, which implies that the authorities clarify and provide feedback to the child on how they have considered the child's input and to what extent this has affected their decision. There is no routine for such feedback, either oral or included in the decision document. Today, it is up to a parent to inform the child of the outcome of the decision in the first instance. Furthermore, children may be exposed to violence and abuse or may have been witness to violence and killing. Therefore, provisions related to special hearing guarantees, such as trained interviewers and interpreters in domestic violence and gender-related issues, should also be applied to minors. Another area for improvement is increasing the competence and routines of hearing children by all actors (PU, UDI, UNE, interpreters) and in all phases (application, appeal, return) of the procedures. This is vital to the common effort to ensure that a child experiences a sensitive asylum procedure.

4.5.4. Asylum interviews with unaccompanied minors

Children are easy targets in armed conflicts. They are used to control adults and are subject to violence or witnessing abuse and violence against family members, which determines they are particularly physical and physiologically exposed. The obligation to protect persons especially vulnerable to harm includes sufficient hearing proceedings and the reliability of evidence.

Unaccompanied minors (UAMs) experience an adjusted asylum interview. UAMs will always have a representative present during the asylum hearing (§17-4); see below. Except for this extra person, the interview conditions, such as the interview guideline, the setting, the choice of interpreter and the timeline, are similar to the adult experience. However, interviews with unaccompanied minors use dialogical communication methodology (DCM). This method is routinely used in administrative communications with children, for example, in child protection cases on violence and in court cases on sexual abuse. The aim of the DCM tools was to be sensitive to and supportive of the child during the interview. Nonetheless, the control aspect, to ensure information is correct, remains a crucial part of the communication (Lidén, 2012).

In some cases, the asylum procedure for UAMs will be prioritised for those needing acute follow-up. Victims of trafficking, forced marriage or other family-related abuse are but some examples; this may also include a child who suffers from serious mental or physical health problems (see also Staver & Lidén, 2014).

4.5.5. Age Assessment

For unaccompanied young people arriving without a valid ID document, an age assessment may be proceeded before the asylum interview take place. The outcome of the age test has substantial implications for the assessment of the applicant's asylum case, not only if the applicant is assessed to be 18 or older but also if he or she is expected to be under 15 or between 16 and 18 years old, as we will discuss in chapters 5 and 6. Furthermore, the result also influences the care arrangements the applicant is given, either in a care centre run by the Child Welfare Authorities for those under 15 years old, a reception centre run by UDI for UAMs 15-18, or in a centre for adults. The test and outcome, therefore, may increase vulnerability related to age. Although the age of not all minors is disputed, unaccompanied asylum seekers whose declared age is 16 to 18 years old 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.

The decision to conduct an age assessment is taken as part of the initial procedure at the PU. In the registration interview, the PU estimates the age of young unaccompanied asylum seekers. If the minor is clearly underage, the PU may decide to exempt the minor from the age assessment.[55] If, during the consultation, the PU concludes that an apparent minor is most likely an adult, it may decide to start adult asylum proceedings. The PU obtains consent from the unaccompanied minor to conduct an age assessment, which is voluntary and requires the minor's consent. However, if the 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 (IA section §88) and may negatively influence the applicant's perceived credibility and the outcome of the asylum claim assessment (Staver & Lidén, 2014; NOAS, 2016).

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

The final decision concerning an individual's age is made by UDI caseworkers 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 UAM, law enforcement officers, and professional staff at the child's reception centre) may also be considered, although this is not routinely done. While these written documents can be examined during the asylum interview, the child is not typically expected to discuss the age issue in the asylum interview.

The age assessment involves a dental examination and hand X-ray.[56] Based on the results, a paediatrician (conducted by the paediatric practice company *Barnesak AS* until 2017) makes a final assessment about the individual's age. In addition to assessing whether the stated age is likely to be correct, the doctor is asked to determine how likely it is that the claimant is above or below 18 and then 16 years old by electing one of the following categories (likelihood in parenthesis):

A. Over 18 (100%)
B. Very unlikely under 18 (90%)
C. Unlikely under 18 (70/%)
D. Doubt (50%)
E. Under 18 (more than 50% likely)

If the claimant is assessed as possibly being under the age of 18, the paediatrician will undertake the same assessment to determine whether the claimant is likely to be under 16 (with analogous categories F–J). If the claimant is assessed in category A or B, the registered age is likely to be adjusted, unless there are compelling arguments to the contrary. In categories C, D, and E, caseworkers will closely assess the medical examination considering other information available to them. There must be a clear balance of probabilities before an applicant who claims to be a minor is assessed as being above 18 years old.

Medical methods of age assessment have been criticized on several grounds (Crawly, 2007; NOAS, 2016). The main criticism is that they are not accurate, as the margin of error is especially large in this age group. Medical examination is only to be used in cases of doubt (IA section §88). However, in some periods, the age assessment has been used extensively. In 2015, for example, because of the chaotic situation with a high number of applicants, most UMs underwent age assessments. A substantial percentage was assessed as overage or 17 years old, which led either to rejection or to a temporary residence permit. Although immigration authorities acknowledge the limitations of age assessment, the discrepancy between the age assessment and the age information given by asylum-seeking children is challenging, as Box 4.1 shows. The discrepancy may negatively affect the applicant's credibility.

The age test will have further implications for following up on a young person's vulnerabilities. In cases of human trafficking, for example, if the person is identified as a minor, the child welfare authorities will take responsibility for the follow-up procedure. If the person is identified as over 18 years old, NGOs are the main actors, and the person must take more initiative to seek help. A challenge is that the false ID given by traffickers for use on the journey may indicate that the person is older than she or he is to limit the suspicion of trafficking (see Box 4.2).

56 The examination practices have changed over time due to the company in charge of the examination or the number of applicants.

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

In 2017, the age assessment system underwent several changes. In December 2016, the Council on Medical Ethics criticised the agent responsible for age assessment for breaching ethical rules in their age determination practice. Oslo University Hospital believed that hand root examinations lacked sufficient scientific evidence, and the University of Oslo, responsible for the X-ray part of the test, stopped conducting the hand root examination. In 2018, a new method, BioAlder, was implemented, which made an improved predication of chronologic age based on results from X-rays of hand skeletons and teeth (BioAlder, 2018). The BioAlder manual states that "none of the methods currently used for biological age assessment can determine the exact age of a person, and there is a wide variation in how the methods are practiced and interpreted in different Western countries."(ibid:3) In 2020, age assessment is based solely on a dental examination.

Box 4.1 Age assessment affecting the applicant's credibility

In one case, a girl told the PU that she was born in 2001 (15 years old). The age test indicated she was more than 20 and that it was out of the question that she was under 18. She, therefore, was moved from the transit reception center for unaccompanied minors to a reception center for adults.

The girl continued to insist that her age was 15 and that her mother had told her the age. Her lawyer sent a complaint to the UDI. The girl's representative sent a letter stating that the girl was small in stature and social but had a childish attitude. The representative's impression was that she did not behave as an adult. The nurse at the transit reception center also sent a letter to the UDI, recounting that, in her experience, the girl could not take care of herself properly and that she seemed to be significantly younger than 18. The staff member responsible for the girl at the new reception center also wrote in a letter that she expected the girl not to be older than 16 due to her physicality and behaviour. The girl did not know how to cook or what constituted a proper meal; she had mostly eaten chips for breakfast, lunch, and dinner. The UDI RMA decided to return the girl to a reception center for unaccompanied minors.

During the time of the asylum proceedings, the girl had several consultations at hospitals where a medical expert assessed her health problems and also determined her to be a minor.

In the UDI decision, however, the UDI emphasized that the results of the age test show that "it is excluded that you are younger than 18 years of age." Its statement continues: "After an overall assessment of the information contained in your case, the UDI believes that you are an adult. We believe that you were not a minor when you applied for protection. You have not explained yourself in the interview in a way that supports the age you have given." Furthermore, the UDI decision stresses: "We have considered your and your representative's comments, but believe they do not give the UDI good enough reasons to doubt the results of the age test. In our assessment, we have also included the statements from the nurse and the hospital. We have measured several factors, and the results of the age survey must be assessed in relation to this. We note that in both parts of the age test, your age is set to be over 18 years of age. We use the age test with caution, and we adhere to the main conclusion of the test. After a concrete overall assessment of all documents and statements in the case, the UDI believes that at the time of your application you were 18 years of age. Your birth year changes from 2001 to 1998."

In the girl's appeal case, the UNE relied on the registration report from PU, where the girl was assessed not to be a minor: "The board is aware of the weaknesses of the methods; however, the methods are used in a several European countries." However, the decision in the UNE, consisting of a board leader (judge) and two board members, was split. The board's minority believed that "the assessments of those who have met the complainant and who see her over time must be more likely to be weighted." The board's majority believed the complainant had not proved that she was under the age of 18 when she was age-examined: "The medical age assessment otherwise gives an estimated image of how old the person is. It indicates a most likely age based on the medical findings. Although there is uncertainty associated with such tests, the majority still believe that a medical examination is burdened with less uncertainty than valuations resulted from different persons' subjective assessments of a person's age." They emphasis that it is difficult to make an assessment based on physical appearance, conduct, and similar factors.

Box 4.2 Age assessment in a victim of human trafficking case

In one case, the girl told the PU that she was 16, and she was given a representative. However, she was identified as 20 in the identification of applicants (EURODAC) fingerprint register when she applied for a visa in another European country. She then underwent an age test, which determined that she most probably was 18 or older. At the same time, the staff at the transit center for unaccompanied minors contacted the local child welfare service due to the information the girl disclosed about her travel to Norway, the woman from the network that brought her to Norway contacting her several times at the center, and her distress and anxiety. The information she gave about her situation was elaborated on in the health screening that she had undergone. The child welfare service then took action; the police contacted her the next day for an interview, and the girl was immediately placed in a protected institution for child victims of trafficking due to the police's assessment of her safety. When the county social welfare boards discussed the case, the age assessment become a central issue. The police investigator referred to the age test, consisting only of a hand X-ray and no dental examination. The board emphasized that the age test was insufficient to identify her age and placed more weight on the information she gave and their own assessment, which supported the reasons to believe she was underage.

4.5.6. Procedures for assessing children's best interest assessment in protection decisions

In all decisions concerning children, a child's best interests must be explicitly stated. Specific argumentation on the child's condition, the state's obligations related to the child's best interests and contradictory interests and considerations must be included in the concluding part of the decision (IR §17–1 a).

In a few court cases, the assessment of the child's best interests had a decisive impact on the outcome of the case. In a court case from Oslo District Court,[57] the court concluded that the Immigration Authorities had not adequately assessed the child's best interests. It "is not clear which factors have been considered and what considerations the Appeal Board (UNE) has emphasised. It is stated in Section 17–1 of the Immigration Regulations that decisions affecting children as a rule shall be justified, so it is evident what assessments have been made of the child's situation, including how consideration for the child's best interests is emphasised. When this has not been done, the court cannot control how the Immigration Authorities have emphasised the child's best interests." Reference is made here to Rt-2012-1985 paragraph 150. In this judgment, the revocation of the residence permit was considered invalid. The case was later appealed.[58]

A study conducted by the Norwegian Organisation on Asylum Seekers (NOAS, 2017b) investigating asylum cases of unaccompanied minors (UAM) found unsatisfactory procedural routines in the assessed cases. The study examined the cases of unaccompanied minors granted a UAM limit residence permit (IR§ 8-8) (see chapters 6 and 7) in accordance with a new 2017 instruction[59] on increased use of the option and reduction of the room for discretionary assessment. These defaults included insufficient individual assessment of the child's best interests and not giving sufficient weight to the best interests. In 32 of the 38 cases, the child's best interest was not included in the assessment of granting UAM limited. The grounds for granting the UAM limit were insufficient, with extended use of standard (auto) texts with few individual assessments. In 20 of the 38 cases, the decision consisted of standard texts only. Information about health problems, family relationships in Norway, limited attachment to and difficult social and humanitarian conditions if returned to their home country were not included in the assessment. The asylum interview revealed mental health problems, including PTSD, psychoses and suicide attempts. Half of them had been exposed to violence, and some had been told about sexual abuse. Most said that a parent was killed or dead because of disease, or they had lost contact with them during the journey to Europe. The report concluded that UDI had insufficiently assessed the complex vulnerabilities of the unaccompanied minors and that the expected holistic and individual assessment of a child's best interest, explicitly articulated in the decision under CRC standards,[60] had not been met.

57 Oslo District Court 15-196902TVI-OTIR/03
58 Borgarting langmannsrett 16-105126ASD-BORG/03
59 Ministry of Justice and Public Security. GI-02/2017. *Instruction on the practices of IA § 38, and IR § 8-8- unaccompanied minors 16-18 years old that can be granted IPA.*
60 UNCRC committee, General Comment no 6 (2005) and No 14 (2013).

4.6 Vulnerability and the Right to Be Heard by the Board of Appeals (UNE)

Administrative decisions made by the UDI in the first instance may be appealed to the UNE, as outlined in the IA, section §76 (1). The UNE also assesses subsequent applications if substantial new elements and significant information about the case are added to the former appeal. The Ministry of Justice Social Security cannot instruct the UNE, and the UNE is not legally bound by the practice of the UDI. The UNE is also not guided by political signals, unless codified in the IA and IR. [61]

The UNE is a court-like autonomous administrative body founded in 2001, and its board chairs are judges in all functions, except for the title. However, in contrast to court cases, case assessment in UNE is based on written documents in most cases. As mentioned, appellants are entitled to five hours of free legal aid and the appeal is processed by a lawyer.

In 2020, there were 18 board chairs who considered all kinds of cases (appeal cases on protection, family reunification, work, citizenship). They are independent decision makers who cannot be instructed in individual cases. The secretariat comprises four case-processing departments, which are divided according to land areas and case types. In 2019, about 1,800 cases proceeded.

If the appeal to the UNE raises no material questions of doubt, it will be decided by the board chair alone (or by the UNE's secretariat). In cases of doubt, a board hearing will take place, with one board chair employed by the UNE and two external board members. Cases of doubt can include (when it may be decisive for the outcome of the case) whether the appellant's allegations of factual circumstances are credible, the assessment of the return situation, the interpretation of legal questions, and the discretionary assessment, as outlined in IR section §16–9. Frequently, the appellant will participate in cases of doubt and is free to bring a lawyer or an authorised representative. In most cases, an authorised interpreter will also be present.

As one UNE informant described, "In our work, vulnerability is an issue in nearly all cases; therefore, everyone working here is attentive to identifying causes that are making the person vulnerable". Often claimants will only express certain reasons for seeking asylum, including at the appeals stage, one UNE informant stressed. The reason may be that they are traumatised by an assault or have concealed their sexual orientation and are worried about this information leaking out. In such situations, decision makers may make accommodations by, for example, arranging for a female interpreter or an interpreter who comes from a different country.[62]

4.6.1. Children and the right to be heard by the Board of Appeals (UNE)

The vulnerabilities of some children only appear during the appeal process in the UNE. Applicant families share the same lawyer. In the family's appeal case, the awareness of the child's conditions and experiences is not always at the core; however, in some cases, the child's situation and vulnerability will be significant issues. According to UNE employees, the sorts of vulnerable children who are recognised as such and receive humanitarian permits are often traumatised children, children who have stayed in Norway for a long time (IA § 8–5), and children of families that have cases with child welfare services. A child's attachment to Norway after having lived in the country for years is acknowledged as a humanitarian consideration (IR §§ 8-5 and 17-1a, MoJ G-06/2014). Clearly, children can have other vulnerabilities that may

61 Between 2015 and 2017, the IA was temporarily amended to enable the Ministry to instruct the UNE.
62 See also UDI 2014-031 section 3.3.

remain undiscovered throughout the asylum process. In some cases, there will be a need for a child to have a lawyer of his or her own to help a child communicate vulnerabilities that may be the cause of the case or because of the possibility of being stigmatised. In a current assessment of the legal aid system, the legal aid committee (see the legal aid section) proposes that each child above the age of seven be given two hours of free legal aid in the case of an appeal of an asylum case. The current policy provides one hour for each child between 14 and 18 years old.

Unaccompanied minors may disclose new information in the appeal case. For minors, they can face difficulties in presenting a coherent claim for protection in the first instance. Additional information and documentation may strengthen their claim, however, not necessarily, as revealed by the NOAS study on cases of unaccompanied minors who had been granted a UAM limit residence permit (NOAS, 2017b). Furthermore, the outcome of an age test, interpreted as a child's dishonesty about age, can weaken the credibility of his or her other statements.[63] They may also encounter another obstacle in the appeal process. As research shows, including the NOAS study mentioned above, the implication for unaccompanied minors in a long procedural period is decisive. The crucial age for the assessment is the time of the decision and not when the person submitted the application. Turning 16 or 18 years has significant implications for the outcome (see also NOAS and Save the Children, 2016).

An evaluation of the routines of hearing children in appeal cases found certain limits in the hearing procedure (Stang & Lidén, 2014). As the case assessment is based on written documents, the quality of such documents from persons around the child (e.g. hospital, teachers at school, local child welfare service, reception centre) is vital.

Our informants stated that, in the last few years, the focus on child-sensitive issues has increased. Regarding children, a UNE informant stressed that decision makers are instructed to consider that children may find it more difficult to substantiate their case than adults. In some cases, the board leader needs a conversation with the child, and in such cases, a personal oral hearing is organised. UNE has now designed a 'children's room' where they undertake such conversations. One UNE informant stressed that the child's right to be heard does not necessarily mean that a representative of the UDI or UNE must hear the child. A documentation of the hearing by a person in whom the child has confidence, for example, a lawyer or another representative, on the issues for which they need more information may be an alternative to the oral hearing by the UNE.

4.6.2. Children that are not heard

If a child is born after one or both parents have received protection, the police are to inform the family that they can apply for derivative refugee status for the child.[64] In most of these cases, the UDI will grant child derivative refugee status without interviewing the child.[65] This means that the authorities potentially do not hear vulnerable children who have the right to an individual protection permit. Moreover, the child might be at risk of FGM or other illegal procedures without anyone knowing.

63 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-007/
64 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014-014/ section 7
65 The IA section §28 para 7 regulates the right to derivative refugee status.

Children who apply for renewals of limited humanitarian permits, as outlined in IA section §38 para 5, are, as a rule, not interviewed either. However, a child may be interviewed if, for example, a prerequisite for renewal of the permit is that a girl has not undergone FGM. In these cases, the permit of the parents may be limited to one year at a time, and the parents will be interviewed on the subject until the daughter turns 18. The child will also be asked whether she wants to talk to the UDI, but may choose to refuse. Another example is when the identity of a child is not probable, resulting in a limited permit. It may occur that older children then will ask for, or be called in for, an interview to elaborate on the question of identity.

4.7 Judicial Hearings

An appellant who receives a definite negative decision from the UNE may take the case to court—first to the Oslo District Court, then to the Borgarting Appeals Court and, eventually, to the Norwegian Supreme Court. The courts can try the administration's statutory interpretation of §28 but not the discretionary assessment of §38. However, non-statutory legal administrative principles derived from the principle of legality decide that the courts may try certain components of the discretionary assessment of the administration. To assure equal treatment, the courts may consider whether the assessment is based on irrelevant considerations or non-objective discrimination or whether it is arbitrary or unreasonable. In recent years, the Norwegian Supreme Court has decided important judgments on the rights of long-staying migrant children, scope for applying the IPA in an asylum claim, cessation of refugee status and revocation of a residence permit. All these topics are of particular importance for vulnerable protection seekers in Norway.

4.8 Concluding Reflections on Adjusted Hearing Procedures

There is no distinct identification mechanism to identify protection seekers with extra needs. The task and measures are delegated to various institutions and sectors and then involve different actors accountable for various phases of the asylum procedures, with an emphasis on the initial phase. The model implies that persons without expertise in specific social and health-related issues oversee the identification. In such a system, detailed instructions and guidelines are a much-needed request to ensure equal opportunities for vulnerable persons in administrative procedures.

Vulnerable people can face unique difficulties in presenting a coherent claim for protection. Issues frequently considered to be signs of non-credibility may equally be a consequence of, for example, communication challenges, anxiety and symptoms of post-traumatic disorder and stress (Gibb and Good, 2014; Liodden, 2017, 2019). Certain guidelines and action cards guarantee extra support and mainly address cultural and psychological challenges in disclosing difficult experiences. Those expecting to need specified processual guarantees are those with gender-related issues, LGBTQI+ persons, children, persons with physical and psychological diseases and victims of human trafficking. The categories identified as those with extra needs in the Norwegian guidelines overlap those identified in the CEAS legal instruments—but not all. For example, those who have been exposed to torture are addressed in separate guidelines.

We have identified crucial aspects with the potential to improve the hearing practice. First, this applies to obtaining sufficient understanding of the purpose of the asylum interview and information on rights related to the asylum assessment as well as reception conditions and assistance. We see the potential to improve access to legal aid and support *before and under* the hearing procedure, for example access to an individual consultant, perhaps run by an NGO.

Another cause of extra attention is the hearing practices. The caseworker is obliged to examine the case sufficiently and to consider the persons' ability to communicate their story, as well as the complexity of the material case. Given their vulnerability, a higher level of due attentiveness is expected in the performance of the examination and preventive protection duties (Ippolito, 2021). We found that important steps have been made to qualify the hearing. As we have seen, UDI guidance instructs caseworkers to consider factors that can influence the claimant's ability to provide information during the interview, which may make it seem like his or her explanation is vague, incomplete or contradictory.[66]

These include, as we have seen, issues related to age, gender, education, social status, physical or mental health, past persecution, sexual orientation or situations of forced marriage and trafficking. The guidelines emphasise that, in some cases, past trauma may affect one's memory, whereas in other cases, it is fear of future reprisals, including from the refugee community in Norway, that colour a person's narrative.[67]

The need for trust and caring relationships is crucial if disclosing, for example, experiences of torture or abuse or triggering feelings of humiliation and shame. Inevitably, the interviews require experienced caseworkers. With a relatively high turnover rate and replacement of caseworkers conducting interviews, sufficient training and competence is a constant administrative challenge. An additional factor is the twofold task of the interview, both to attain trust and confidence, enabling the protection seekers to reveal difficult experiences and, at the same time, to control the information.

We expect that the hearing procedure can be improved by the option to routinely include consultations with health experts and the documentation of torture and health issues. This will not change the need for further professionalising the interviews through training and exercise.

One administrative limit we want to emphasise is the time aspect. For the caseworker, the positive obligation to examine the case sufficiently is met with the corresponding instruction to make decisions that balance acceptable quality and efficiency (UDI, 2010; Liodden, 2019).

Last, we will emphasise the need to improve care for young asylum seekers with undetermined age. We suggest better legal procedures to determine age and a more flexible approach to chronological age.

66 See UDI 2018-004
67 UDI 2013-011V4 section 2.2

CHAPTER 5: VULNERABILITY IN THE NORWEGIAN RECEPTION SYSTEM

In Norway, reception conditions are not specified by law, except for the principle that all asylum seekers are offered free accommodation in a reception centre upon arrival. This is outlined in IA section §95.[68] Beyond this norm, conditions are determined by instructions and guidelines. The reception system includes two main societal sectors. First, the Directorate of Immigration (UDI) oversees the reception conditions, including housing facilities, financial support and information programmes. The second actor is the ordinary health and welfare system. Protection seekers will have rights and access to health and welfare services under certain conditions. When examining reception conditions, the legislation and practice of the ordinary welfare system are vital, in addition to the specific immigration regulations. At the end of the application process, two additional sectors are involved: the municipality sector and Directorate of Integration (IMDi), who are responsible for implementing the government's refugee settlement policy, and the PU, who implements final rejections by running the detention centre and coordinating all deportations from Norway.

As we will see, the protection seekers' reception conditions are characterised by certain paradoxes and contradictions related to conflicting policy interests, divergent legislation and changes in rights related to status in the asylum procedures. The field is also characterised by policy-driven changes in regulations.

The reception system is a contradictory measure in Norwegian immigration policy. On the one hand, staying in the reception centre is the first step and preparation for integration into Norwegian society. The white paper Meld. St. 30 (2015–2016) *From reception centre to the labour market: An effective integration policy* outlines how time spent in a reception centre is part of the integration policy and defines the measures to ensure that newly arrived immigrants with refugee backgrounds rapidly enter the labour market or embark on an education. For those granted a residence permit, settlement in municipalities should occur as soon as possible, and it is obligatory for all persons 16 years and older, men and women, with a permit to stay, to participate in the introduction programme and to qualify for employment. The objective is to ensure that the person quickly establishes a permanent connection to the labour market, aiming to integrate as many people as possible into society from an early stage. On the other hand, the standard in a reception centre is very basic, due to the policy to reduce costs, to lessen the number of asylum seekers choosing Norway as the preferred country for their asylum application and to achieve a faster return of persons without legal residence in Norway.

In this chapter, we will review how reception regulations, including protection seekers' access to welfare services, address vulnerability. We will start by mapping the reception system and its inherent ambiguities related to ensuring protection seekers' support. Based on our interviews, document analysis and former studies, we then delve further into the adjustments available for persons with various forms of vulnerabilities, including minors and victims of human trafficking. Last, we elaborate on the practices of return and resettlement for those with extra needs.

68 IA §95 Innkvartering ved søknad om beskyttelse

5.1. The Reception System

The UDI's circular on the operation of state asylum centres (UDI RS 2011–003) regulates both the UDI's management of the accommodations and the executive activities of the operating operators. The UDI has delegated the responsibility for running such centres to profit and non-profit operators, and the operators compete to run the centres in open calls for tender. Private companies run most centres, while some are run by municipalities and NGOs. The UDI's requirements and guidelines for operating operators of asylum centres are regulated through various circulars. The material reception conditions are expected to provide 'a minimum, but adequate standard of living' (UDI RS 2008-10). The centres are often located in provisory buildings (i.e. shut-down hotels, vacant schools, barracks) due to the flux in arrivals.

The reception system is flexible enough to adapt to fluctuations in the number of asylum seekers arriving in Norway. Like other European countries, Norway saw a sharp increase in the number of asylum seekers arriving in 2015–2016. In 2016, more than 150 centres were situated all over the country, with only 25 still in operation at the end of 2020. The UDI management's task is, therefore, to continuously regulate the number of reception centres regarding the number of arriving protection seekers, those waiting for a transfer to another European country due to the Dublin Regulation, the number of residents with an appeal pending at the UNE and those waiting for a settlement or a return to their home country. The reception system consists of different types of reception centres; however, most protection seekers will stay in an ordinary reception centre (see Box 5.1). The transit centres for adults and families have now been replaced by the extended stay at the National Arrival Centre (see Chapter 4).

Box 5.1 The Norwegian Reception Center System

Transit centers

UAM transit center

- Full-time staffed, health service

Ordinary reception centers

- Consist of 150–200 residents, some up to 300
- Staffed only during the daytime, 08.00 to 15.30, Monday to Friday
- On average, six staff members divided between 150–175 residents
- Most organized as a campus, with individuals/families sharing the same buildings with/without a separate kitchen/bathrooms
- Some centers are "decentralized," with occupants individually accommodated in either flats or houses in the local community.

Integration centers

- Only for those who have been granted, or are likely to receive, a residence permit in Norway
- Residents participate in an obligatory full-time educational program

Reception centers for unaccompanied minors, aged 15–18

- Full-time staffed
- 20–50 residents

Facilitated sections in reception centers (4 units) + special unit Særbol

- Full-time staffed
- Approximately 20 residents

The UDI guarantees a basic allowance to cover fundamental living costs (food, clothes etc.) if staying in a reception centre. Three types of subsidies are offered: a) a *basic amount*, a monthly economic benefit (around 200 euros) that depends on the age of the family members and their legal status and is reduced when the person receives a rejection of his or her asylum claim; b) *directly refundable additional benefits*; and c) a*dditional benefits upon application* (e.g. to cover necessary medical assistance). The claimants are free to live in private housing, but this excludes them from the economic support received when housed in a reception centre. As it is difficult to obtain paid employment as an asylum seeker, and because of the high living costs in Norway, the few who choose to live privately most often rely on the financial support of family members or their own financial means.

One main paradox of reception conditions is the intention to be a place for 'normal life'. At the same time, people have limited options to organise an ordinary life. Many restrictions on employment, private life and information and control over their future destiny form precarious lives. Furthermore, it is expected that residents will be able to deal with their everyday lives.

The UDI has not ascribed minimum standards for staff and material conditions in reception centres. Consequently, different centres may have different standards. The operator is expected to employ enough staff members to ensure that the managerial, organisational and administrative tasks are completed to a sufficient standard. In reception centres with 150–170 residents, the staff most commonly consists of six persons. The staff members will have specific areas of responsibility, such as the follow-up of children, social welfare issues at the centre, financial issues and information and return programmes. The staff are obligated to provide information to the residents and ensure that they have access to local health and welfare services. For adults, the activities offered in the centre are information programmes and courses. Since 2017, applicants have been given lessons in Norwegian culture and values (50 hours), and most applicants are offered Norwegian language courses.

Most applicants stay for several months waiting for their application to be processed by the UDI and, for some, by the UNE. Currently, the waiting time for a decision in the UDI may be six to eight months; however, this may change with the new procedures. The processing time in the UNE is up to eight months. If granted a residence permit, the person stays in the reception centre until he or she is settled in a municipality. In summary, the total time spent in a reception centre varies from several months to years.

As Table 5.1 shows, in 2016, 27,000 persons lived in reception centres in Norway. In October 2020, the number of residents was reduced to approximately 2,100. Of the 500 residents of these 2,100 who have been granted a resident permit, two-thirds were awaiting settlement in municipalities, while one-third continued to stay in a centre due to a limited residence permit (on ID and UAM limits, see chapters 6 and 7). More than one-third are expected to leave the country.

Table 5.1. Residents in Reception Centers in 2016 and 2020, Divided by Status

	31.03.2016	30.09.2020
Application to be proceeded	**19 900**	**750**
– of which a rejection is appealed	1 200	325
Granted a residence permit	**4 000**	**500**
– of which waiting for settlement	3 200	335
Application rejected, waiting for return	**3 000**	**890**
Total	**27 000**	**2 140**

Source: UDI statistic

The rights of a person living in a reception centre are directly linked to legal status. An applicant waiting for a decision in the first instance has more benefits than a person who is waiting for an appeal or who has received a final negative decision. The same distinctions are made concerning access to other rights, such as the course in Norwegian and health services and education for those aged 16 and older.

Table 5.2 outlines the distribution of legal status for those living in reception centres in 2020. Claimants waiting for their application to proceed represent one-fifth of all residents. Eight percent of the residents have a limited residence permit or an application for the renewal of such permission (IA section §38 para 5). Regarding children in families, 10% had a limited residence permit. Although families with children are settled when they receive their first renewal and other claimants when the limitations in their permits

are lifted, the settlement process takes time. Among those over 60 years old, 5% had a limited residence permit. We also find that nearly three out of four persons 60 years or older living in a reception centre have received a negative decision and have stayed in the centre overtime with a pending return to their home countries.

Table 5.2. Residents in Reception Centers on 30.09.2020. (in percentages).

	Unaccompanied minors	Children in families	18–60 years	60 years or more	Total sum
Application under processing in the UDI	56	14	22	6	20
Received rejection, appealed	8	15	16	11	15
Withdrawn application, etc.	0	10	1	1	4
Duty to leave the country	8	25	42	72	38
Granted residence permit, waiting for settlement	25	25	13	5	16
Granted residence, settlement restrictions	0	10	7	5	8
UAM temporary permit until turning 18	3	0	0	0	0
Total sum	100	100	100	100	100
N=	36	537	1480	81	2134

Source: UDI statistics

Those granted international protection who are waiting for resettlement in a municipality will have the same rights as Norwegian citizens. However, those who receive a limited one-year renewable residence permit (§38 para 5, see Chapter 7) are not settled, unless they have children or are UAMs, and will continue to live in a reception centre until the limitations on the permit are lifted.

5.2. Residents with Special Needs

Customising reception conditions to special needs is part of the standard task of ordinary reception centres. Certain groups (unaccompanied minors, victims of human trafficking) and individuals are offered alternative accommodation. The UDI circulars specify support and adjusted information, as well as adjusted material conditions for certain groups, such as children, single women and sexual minorities.[69]

The Reception Centre (RMA) section of the Directorate of Immigration (UDI) oversees transferring persons from the arrival centre to ordinary reception centres and of moving residents between reception centres. Furthermore, its tasks include placing people with special needs in centres or alternative accommodations that can adapt to their vulnerability. The RMA also plays a role when a person moves from a reception centre to a municipality after being granted a resident permit. Hence, the RMA is a vital hub in the information flow when special needs are identified.

69 UDI 2009-006 *Krav til differensiering av beboerrettede tiltak i asylmottak,* UDI 2008-031 *Krav til innkvarteringstilbudet i ordinære asylmottak,* UDI 2017-014 *Varsling fra asylmottak til UDI ved kriminalitet, uro og alvorlige hendelser*, UDI 2009-006V *Tiltakskort Seksuelle- og kjønnsminoriteter*

Each regional RMA office has the responsibility of ensuring that vulnerable people are followed up on in ordinary reception centres and facilitated units. A detailed circular defines the responsibilities and routines of the RMA unit related to placing UAMs in reception centres.[70] As we will see, a considerable number of other circulars address the centres' tasks and responsibilities related to certain groups and critical events.

Our informants in the RMA section, responsible for enacting a greater focus on vulnerability in guidelines and procedures, expect that improved measures in the new arrival procedures will help identify the extra needs of vulnerable persons: "The earlier you deal with a problem, the better. However, extra efforts at the arrival centre are not enough; you have to give attention continuously to vulnerability in reception centres as well".

The regional RMA office staff facilitates communication between the UDI Asylum Department, the applicant, the reception staff and/or the actual health or welfare services, such as the local child welfare service or the NGOs supporting victims of human trafficking. The RMA staff, therefore, play a crucial role in the flow of information and in following up on the identified extra needs. The RMA informants underscored how important the two-directional flow of communication is between the reception centres and the UDI in identifying vulnerability in a person. They stressed that it is mostly when a person lives for a longer time in a reception centre that those vulnerabilities such as domestic violence, forced marriage and human trafficking are exposed. In transit reception centres, the staff discover mainly visible vulnerabilities, such as physical impairment or other acute visible needs.

In the Norwegian model of identification mechanisms, including many actors and agencies, make the flow of information a sensitive issue. The RMA informants point out that strict data and privacy protection rules directly affect the information flow. Information about special needs is communicated via UDI's online computer system, yet there are restrictions regarding what kind of information can be registered in the system. In 2016, when a new Person Data Act was implemented in line with the EU GDPR, the immigration authorities introduced a general legal authority in IA §84 a to process information 'when necessary to exercise authority or perform the tasks under the law'. In accordance with IA §84 b, reception centre staff shall, upon request from the UDI, provide the immigration authorities with information about a resident for use in a case pursuant to the IA without prejudice to the rules on confidentiality (Public Administration Act §13b.2).[71] The staff are permitted to provide information on their own initiative about the resident that is relevant for the asylum procedure or return (IA §84 b).

The exchange of personal data requires the consent of the resident. Our informant in RMA reflected on the implications of stricter rules for communication routines:

> *There are limitations to what we can put into the UDI computer system. This increases the need for personal communication; for example, if significant information is disclosed in the asylum interview, such as about child abuse, the caseworker is obligated to inform the child protection service to investigate the case further. If the case relates to sexual orientation, they may contact the RMA if the person is seen as particularly vulnerable. In such a system, however, the exchange of information becomes dependent on the actual persons in charge following up on the case.*

70 UDI 2013-024 *Region- og mottaksavdelingens arbeid med enslige mindreårige*
71 Only employees in privately operated reception centres have no statutory duty of confidentiality to employees of the UDI.

5.2.1. Dealing with vulnerabilities in ordinary reception centres

As mentioned earlier, the reception centre is expected to be a place for 'ordinary life'. Most residents need support in one way or another. It is also well known that the stay in a centre may increase their precarity, including trauma and mental vulnerabilities.

When settled in an ordinary reception centre, although records of special needs are communicated via the UDI's computer system and the regional RMA office to the reception centre, the available information is limited. Centre staff seek to establish and map extra needs in a first consultative meeting. However, as one centre leader highlighted, only parts of the protection seekers' vulnerabilities were disclosed during these conversations. An RMA informant emphasised that 'individuals with special needs are not necessarily vulnerable, and a vulnerable person does not necessarily have special needs'.

Vulnerability is explicitly addressed in only one circular when referring to domestic violence (including forced marriage and FGM), child marriage and human trafficking.[72] Other circulars on reception conditions do not use the concept of vulnerability. However, they *implicitly* assume that certain groups, due to their positions (disabilities, children), experiences (domestic- and gender-based violence, child marriage, torture) or orientation (sexual identity), are exposed to various forms of precarities or have extra needs. These are the same groups and conditions mentioned in the list of vulnerable groups defined by the UDI and presented on the UDI's website. Several circulars mention specific conditions and the obligation for follow-up for children and unaccompanied minors.

In the aforementioned circular on vulnerable asylum seekers, the purpose of identifying these persons is threefold: 1) to ensure safe accommodation; 2) to ensure they receive the necessary help from various local welfare services; and 3) to ensure the immigration authorities in charge of their application receive relevant information about their condition to be included in the application assessment (UDI RS 2015029). Although these aspects are not mentioned in other circulars, the obligation to act also applies to other groups with extra needs.

The groups with extra needs addressed in various circulars refer both to what can be understood as visible and non-visible vulnerabilities, with needs that should be met practically and situationally or followed up over time. Practical needs are easier to identify than the need for support on psychosomatic challenges, as a manager at a reception centre indicated:

> *We are capturing the more serious things, such as disabilities and whether a person is deaf. In these cases, we know where to start. You know in these cases that something needs to be done. Less visible needs are more difficult to discover. Vulnerabilities caused by what happened in their home country or on the journey to Norway are not easy to voice. They need to settle down before opening up to difficult experiences and feelings.*

The reception centres have standard procedures for persons expected to have special needs according to the circulars on reception conditions. Material adjustments, segregation and regular visits and communication are but some of the extra resources spent to meet extra needs. Persons with disabilities may need adjusted housing conditions and practical support. Even so, they may not necessarily be identified

72 See UDI RS 2015-029 *Sårbare beboere i asylmottak*

as vulnerable. In line with the principle of non-discrimination of persons with disabilities, equal treatment and support are expected for protection seekers in reception centres and when they are settled in a municipality.

Single women are perceived to be vulnerable; however, they may not need extra resources. In most reception centres, single women are placed in a sheltered section reserved for women to prevent them from being subjected to violence, harassment or sexual assault.[73]

Female-headed households with small children may need practical help and extra support. For example, if a mother needs consultation at the hospital, someone needs to take care of the children.

Sexual orientation is another cause of situational vulnerability. The need to be sheltered may be identified before settlement but not necessarily. The person is not inevitably vulnerable, but the conditions of the reception centre, when people from different backgrounds live together with limited privacy, may raise concerns. Staff at reception centres are responsible for reporting serious incidences.[74] LGBTIQ+ persons may experience discrimination, threats and violence from other residents at the centres or family members and friends. To prevent discrimination and harassment, a person may be housed in a separate flat or individual section. For some LGBTQI+ persons, alternative accommodations are considered (discussed below).[75]

In 2016, child marriage was included in the UDI RS 2015–029 guidelines on vulnerable persons in reception centres. In 2015, police registrations and asylum interviews identified young mothers or married girls, some under 16 years old (Lidén, 2017). The UDI then prepared new regulations on reception conditions for married children. UDI RS 2015–029 states that the child welfare office will assess the care situation for married girls under 18. In cases when the child is younger than 16 years old and in most cases also those under 18, the married girl must stay either in an accommodation centre for unaccompanied minors or in an adjusted accommodation for young mothers with a child separated from their husbands. This practice is in line with the norms of Norwegian legislation (Marriage Act, Criminal Act).[76]

Families with children will, in an ordinary accommodation centre, preferably live in a small flat on their own, yet this is not always an option. In each centre, there is a dedicated staff member responsible for child-related facilities.[77] Staff members are responsible for making everyday life as normal as possible for children and adolescents. A paramount concern is, therefore, for the child to attend ordinary educational institutions, such as the local school or day care centre, as soon as possible.

It is an aim to make the time at the centre as normal as possible for adults as well. Parents may adjust to the rhythm of the day of their children. However, the lack of work and educational programmes make it difficult for adults to maintain daily routines. The absence of a social life and family network combined with a dire financial situation further leads to the sentiment of a lack of control.

73 UDI 2008-031 *Krav til innkvarteringstilbud i ordinære asylmottak*
74 UDI 2017-005 *Varsling mellom UDI og asylmottak ved alvorlige hendelser*
75 See UDI 2009-006 *Krav til differensiering av beboerrettede tiltak i asylmottak og UDI 2009-006V Tiltakskort for seksuelle- og kjønnsminoriteter and UDI 2013-013 Alternativ mottaksplass.*
76 Criminal Act 2005 - §§ 251, 252 on force, § 253 on forced marriage, § 262 (2) on child marriage, §§ 282, 283 on domestic violence, §§ 284, 285 on FGM. Marriage Act § 1a on the age of marriage and on the condition for marriage in §§§ in 1b, 7, 16, 18a. Childrens Act § 30 on child marriage.
77 UDI 2011-041 *Krav til arbeid med barn og unge i asylmottak*

"Everyone in a reception centre is vulnerable in some way or another", one of the centre managers observed. One emphasised that living under such conditions can lead asylum seekers to turn trivialities into huge challenges; a headache, dental problems and a baby's unrest at night become unbearable because asylum seekers have limited agency and live with uncertainties and worries. The manager explained that "if something happens, taking all our attention, such as an unforeseen incident, conflicts between residents, threats and violence, which take up much of our time, the staff has no time for these trivialities. Then minor challenges may turn into more complex problems."

All the centre managers that we spoke to had experienced that it is in daily life that one uncovers extra needs. However, such exposures depend on communication, responsiveness and the competence of the staff. The applicant's trust and motivation to reveal vulnerabilities and needs is important in such cases. The circular on vulnerability specifies three dimensions that must be met in the identification process: 1) *sufficient knowledge* about risks and resilience, including specific cultural conditions; 2) *sufficient competence to act*, including updated knowledge on the person's rights, legal regulations, communication methods, referral routines and so forth; and 3) *sufficient system competence* to cooperate with other relevant actors to support the person adequately.

The tasks in the centre have become increasingly regulated by circulars, routines and the requirement of documentation, managers said. Circulars define who handles the various tasks. "This may increase professionalism, including the following up of extra needs", one centre leader stated. Simultaneously, he reflected that what constitutes professionalism in the case of vulnerabilities may be difficult to define and may differ across professional backgrounds.

Numerous studies on reception conditions in Norway have underscored situational vulnerability (e.g. Brekke & Vevstad, 2007; Berg, 2012; Lidén et al., 2013; Berg & Tronstad, 2015; Weiss et al., 2017). The findings are generally unified. For all residents, living conditions are challenging because of the lack of privacy and worries about the future and family members. Informants in the studies expressed social isolation and insecurity. Moreover, the indefinite waiting time negatively impacts their health and well-being (Brekke, 2004; Valenta & Garvik, 2019; Weiss et al., 2017). The studies also emphasise the residents' limited work opportunities and prospects to use their skills. Insufficient Norwegian language skills and a lack of the necessary understanding of the welfare system and new society further restrict their agency.

Researchers have emphasised the need to shield children from the rough environment that the reception centres may become because of other applicants' worries and mental health challenges and their own difficult family conditions (Berg & Tronstad, 2015; Lidén et al., 2011; Paulsen et al., 2014; Weiss, 2014). The studies considering the conditions of children in reception centres found a deficiency of staff dedicated to children during the afternoons and weekends. Children expressed that it is difficult to become part of local peer networks. The conditions at reception centres place great demands on children's coping abilities and affect parents' ability to be good caregivers.

One study explores the situation for children in families who continue to stay in reception centres due to receiving a limited humanitarian residence permit (NOAS, 2020b, Chapter 7).[78] Persons with limited permits, because they have not presented ID documents to the immigration authorities, often find it difficult to obtain a passport from their home country despite efforts to do so. Without valid ID documents, life in Norway becomes burdensome. The study found that the average time for the children's stay in reception

78 This is in accordance with the IA section §38 para 5.

centres was seven years, and many had never lived outside a reception centre. The stay postpones their integration into society; for example, children who are not settled in a municipality do not have the right to attend a day care centre full-time. These individuals or families do not have access to banking services and telephone subscriptions and cannot obtain driver's licences, scholarships and loans for higher education. The study further shows that their uncertain future and concerns regarding their current situation have a significant impact on the mental health of both children and parents. The mental health of parents further affects the well-being of their children (NOAS, 2020a). Consequently, such a prolonged stay in a centre negatively influences a child's mental and social development (Weiss, 2014).

Over the last few years, repeated relocations have become another significant problem for affected residents. Especially for children who start in new schools and day care centres, multiple transfers become a considerable challenge. In 2017–2018, more than 1,250 children were relocated, some up to 10 times within the period they stayed in reception centres (UDI, 2020).[79] In the many closures of reception centres during the last few years, families with children and persons with extra needs have been spared, being the last to move, if possible. Consequently, residents with special needs become less likely to open up about their challenges, as they have told their narrative numerous times before.

Health-related research indicates that many residents in ordinary reception centres suffer from significant health problems. The early identification of residents' general health situation is, therefore, crucial, as is accurate information on the rights to health services and access to these same services (Weiss et al., 2017).

5.2.1.1. Vulnerability, conflicts and violence

If serious incidents occur, the reception centre routinely alerts the regional RMA office.[80] The causes of violent incidents differ; however, often the situation involves people who are mentally unstable or escalating personal conflicts. Shared rooms, the kitchen and toilets may increase tensions. Personal worries, problems and uncertainty are often the core causes of conflicts. We were given examples of how situations can also become precarious in families faced with a parent becoming mentally unstable or violent or with families disagreeing on subjects of morality. This, in turn, can lead to the need to separate family members, with representatives from health services, child protection services and the UDI working together to find a solution.

As we will see, specific circulars for situational vulnerability related to conflicts and violence exist in reception centres. Three types of violence and crimes are addressed in separate circulars: 1) domestic violence, including harmful traditions; 2) sexual abuse; and 3) conflicts between residents. The definition of violence includes various physical and psychological forms. To improve and coordinate the efforts to prevent violence, a specialised coordinator on domestic violence handles efforts and competence on the issue in all UDI units and at all levels, including in the reception centres.[81]

79 The numbers do not include the movement from arrival and transit centres to ordinary reception centres.
80 UDI 2017-014 *Varsling fra asylmottak til UDI ved kriminalitet, uro og alvorlige hendelser.*
81 IM 2018-001 Organisering av UDIs arbeid mot tvangsekteskap, barneekteskap, vold i nære relasjoner og kjønnslemlestelse. An initial study conducted to describe the competence needs regarding domestic violence and abuse in reception centres and the UDI administration (NIFU, 2019) is now followed up with a new call for a study to ensure increased competence.

The circular UDI 2015–029 *Identification and following up on vulnerable inhabitants in reception centres* defines the responsibility to persons with special needs due to domestic violence, FGM, forced marriage, child marriage or human trafficking. The guideline identifies when and under what conditions extra resources and alternative accommodation are offered. A dedicated staff member is expected to have a conversation with the person to allow him or her to disclose information if he or she wishes to do so, as well as to inform the person about his or her rights and available help and to identify any extraordinary reception conditions. Indicators for identifying victims of abuse are added as an appendix to the guideline. Every centre is expected to have written procedures for their work related to children and procedures for handling neglect and violence in families. There are also requirements regarding how to prevent child abuse in asylum centres.[81] The definition of abuse and unacceptable behaviour towards children includes unwanted sexualised contact and physical, sexual and psychological violence, such as intimidation, extreme control and social isolation.

Abuse and unacceptable behaviour may occur within families, as well as in encounters with other residents. Information about such behaviour may lead to the involvement of the police, and if the offender or victim is under 18 years old, the staff must consider giving a note of concern to the local child welfare service.[82] The duty of disclosure to the child welfare service applies without impediment to confidentiality. The reception centre staff is expected to give information on grave incidents to the dedicated person at the regional RMA office, who handles following up on such cases (UDI 2017–014V2).

Avoiding conflicts and violence among residents in reception centres is part of the ordinary relational and administrative responsibilities of the staff. However, to prevent violence in asylum centres, guidelines also exist for the implementation of dialogue groups.[83] The groups target men of all ages "from countries where traditions and/or legislation related to women, children and violence are different from in Norway" (UDI 2019-002 p.1). The measures used include information, dialogue and reflection.

As we have seen, the UDI circulars describe core procedures and responsibilities for identifying women and children at risk to ensure the necessary rights and resources. The emphasis on domestic violence and child abuse reflects key issues in Norwegian social and family policy (see, e.g. Prop 12S [2016–2017]), which has initiated separate action plans over the last 20 years addressing immigrant family-related issues (forced marriage, FGM, honour-related control and crime), other forms of domestic violence and child abuse.[84] Meld. St. 30 (2015–2016) introduced a mandatory course for residents in reception centres on Norwegian values. Many centres have also conducted International Child Development Programme (ICDP) courses for parents,[85] discussing issues related to childhood and parenthood.

It is both challenging and time-consuming for staff members to manage extraordinary events related to abuse, violence and conflict in the reception centres. A centre manager experienced that one main challenge is the few employees in a centre: "Putting too much responsibility on them, we need to balance this". Therefore, it becomes even more important that the regional RMA office supports the reception centres in such cases.

82 UDI 2010-085 *Forebygging og håndtering av overgrep mot barn i asylmottak* 82 RS 2014-015 - *Opplysningsplikt til barnevernet.*
83 UDI 2019-002 *Krav til dialoggrupper i asylmottak for å forebygge vold.*
84 Prop 12S (2016–2017) opptrappingsplan om vold og overgrep. *Action Plan* (2017–2020) *to Combat Negative Social Control, Forced Marriage and Female Genital Mutilation; The Right to Decide about One's Own Life.*
85 ICDP, https://www.icdp.no see also Bråten & Sønsterudbråten, 2017.

There is a dedicated Mediation and Conflict Management Team associated with the RMA offices, consisting of external consultants with expertise in mediation and conflict management. The reception centre can apply to the regional RMA office for follow-up if such a team is needed.

A circular outlines the notification routine to ensure that information is transferred from the reception centre to the UDI with regard to serious incidents, such as violence and abuse, including human trafficking and child marriage.[86] The RMA unit and the involved persons will be informed of the notice sent to the UDI. The purpose is to ensure that these cases are prioritised, including the follow-up of the involved residents in the reception centre. The UDI is expected to include the information in the asylum case and accelerate the application process in such cases.

The RMA may also decide, under certain conditions, to implement increased security measures in the ordinary reception centre and to guarantee economic compensation for the use of extra resources.[87]

5.2.2. Facilitated sections of reception centres for those with special needs

In 2020, there are four facilitated sections, all linked to an ordinary reception centre. The sections are primarily intended for protection seekers with mental health challenges or with physical needs but who do not need to be admitted to a hospital or mental health institution. Residency in a facilitated section is intended to be temporary. There is a high threshold for the RMA to assign asylum seekers to such centres.[88] As few move out of the sections, the capacity in the facilitated section system is limited. Facilitated residency is, thus, seen as a last resort, not as an early intervention. Staying in a facilitated centre is voluntary, and a continuous plan for the stay is made for each resident.

Residency in a facilitated section is intended for persons with special needs due to their somatic and/or psychosocial conditions, including a great deal of help to cope with everyday activities. The residents comprise a mixture of varying diagnoses and needs, as the leader of the facilitated section describes:

> *They stay here because of a cancer diagnosis, mental illness, older persons with dementia, children with severe disabilities, or an illness that is followed up on during daytime, with the parents living in the ordinary centre section. A couple of young persons who arrived as unaccompanied minors did not manage to move to a reception centre for adults; they were fairly traumatized, left their home early, and still need extra care. They, therefore, were moved to the facilitated section.*

The need for extra support is not the only reason for having facilitated sections; almost equally important is making ordinary reception conditions safe as a living space for all residents. As one centre manager told us:

> *To co-locate people with mental disorders, intellectual disabilities, and those who are seriously ill in ordinary reception centres where they are sharing facilities, including shared sleeping rooms and bathrooms, is not appropriate. All residents in a reception centre are in a vulnerable situation, and to be co-located with people who have severe psychiatric disorders and who may be outraged is not very health-promoting.*

86 UDI 2017-014 *Varsling fra asylmottak til UDI ved kriminalitet, uro og alvorlige hendelser*
87 UDI 2010-187 *Dekning av kostnader til ekstraordniære tiltak i asylmottak.*
88 UDI 2011-043 *Bruk av plasser i tilrettelagte avdelinger*

One example of those who need extra support in facilitated sections include difficult situations such as children needing extensive therapy who have inherited the irregular status of their parents and have no prospect of being settled and receiving treatment in steady conditions. For some, the somatic illness, trauma and problems they bring with them are very present, one manager of a facilitated section told us. For others, the situation is not what documentation describes it as being. A general experience of the informants is that, upon arrival, the person is often exhausted, as one manager observed:

> *People need peace, privacy and more control over their life. When they calm down and have a flat on their own, the rage slows down. They get more attention from us, and the option to get some treatment and activities.*

The manager highlights that, for most, the long time it takes to be transferred to the facilitated section exacerbates their difficulties. In addition, the long waiting times and their insecure futures worsen the residents' situations.

> *Some with a definite rejection still have hope. They still expect something to happen that will change the situation for the better. It is not our job to eliminate this hope. We will talk about their prospects, about the realities, but not tear them down.* (Manager, facilitated section)

Most residents are transferred from an ordinary reception centre to the facilitated section. However, if a person is identified with complex disabilities or serious mental health challenges during the registration procedure by the PU or in the asylum interview, he or she may be moved directly to the facilitated section. The procedures undertaken to transfer a person to the facilitated section were described by a manager of an ordinary reception centre:

> *We must prove that the person, because of their specific needs, cannot access their rights when living in an ordinary reception centre. Then, the UDI is responsible for finding another solution. We notify the RMA early to prepare them for a possible application.*

In some cases, the person does not want to move to the adapted section.

> *The person will not necessarily know what the facilitated section may add to their situation. They have heard rumours about drug addicts and people with mental health problems. They prefer to stay where they are. However, the extra support they receive may not last forever. Then we have a problem.*

During the last few years, about 75 persons stayed in a facilitated section, and in 2020, 83 residents lived in these sections. The sections are staffed 24–7 and include staff with social welfare and psychiatric competence at the university level. An action plan for each resident is made. The staff members are not expected to act as therapists; rather, their role is to facilitate so the resident can receive help and treatment from ordinary health and welfare services. [89]

89 UDI 2010-196 *Krav til oppfølging av beboere på tilrettelagt avdeling*

The facilitated section must establish good dialogue and effective cooperation with the relevant health services in their region. The four facilitated sections have long-lasting cooperative relationships with local health services, regional hospitals and psychiatric institutions for both children and adults. Low-threshold mental health facilities in the local community are also significant actors, particularly because many residents are not offered regular treatment due to their legal status. As one manager pointed out, "For many, a definite rejection reduces their access to health care, with only access to urgent medical assistance. Some have restrictions because of ID".

The greatest barrier to access to health services is that some residents lack the formal rights and economic means to pay for treatment. Access to treatment and medication is especially challenging for persons who have had their asylum claims rejected and who have somatic illnesses. In 2017, a study conducted on the facilitated sections and the services and care offered to their residents found that residence in a facilitated section was beneficial to many but to varying degrees (Lillevik et al., 2017). The average period of residence was quite long. Generally, the residents had good access to health services. However, the researchers found variations in how the health services were organised and their comprehensiveness. The study found considerable variation between the facilitated sections concerning how they could meet residents' needs. The differences in the physical structures of the reception centres provided diverse possibilities for privacy, protection, contact and follow-up. In addition, the professional qualifications and the staff's understanding of the purpose of the facilitated sections, as well as the measures in use and the staff's language skills, created dissimilar premises for meeting the needs of various groups of residents. There were also significant variations in how the centres addressed security.

The evaluation further found that the specifications the UDI gave to their contractors lacked a clear mandate and clear quality requirements for the services offered to the residents to ensure that service was based on the residents' individual needs. To better target the services to the needs of the residents, the report recommends formulating new requirement specifications as well as a greater degree of differentiation in the services offered to the residents.

The managers we talked to underscored a final challenge. Their experiences of the procedures of settling a person or family in a municipality were mainly positive. A key task before settlement is to prepare the person for the increased individual responsibility to cope with his or her everyday life, including contact with health and welfare services. However, some residents with extensive needs for assistance wait for many months—even years—to be settled. Weiss et al. (2017) described a resident with a residence permit who lived in the section for over 10 years. He was severely disabled, and the staff could hardly communicate with him. IMDi had not succeeded in their efforts to settle him. The facilitated section was in a municipality with little expertise related to his current form of disability. The support residents received at the time was insufficient.

The facilitated sections have a higher proportion of persons waiting overtime for settlement, the managers told us. They explained that, despite the person's extra needs, the municipality does not receive additional resources from the state to cover these costs over time. Because of this, municipalities may be reluctant to settle persons from facilitated sections (see below).

5.2.3. Care unit for those with special needs

As a supplement to the asylum reception system, including the facilitated sections, the UDI has entered into a framework agreement with a private provider of housing and care solutions for residents with special needs.[90] The stay at Særbol is expected to be temporary. The target group for the framework agreement is residents with threatening and/or violent behaviour towards their surroundings. About 15 to 25 people live in the unit, which consists of two sections situated in disparate parts of the country. The manager told us that if a resident is moved to Særbol, the situation is highly problematic, involving serious violence, including the risk of violence against employees and residents. In some cases, the police are involved, and in others, a preventive order has been imposed. The residents are a mixed group, the manager of the unit explains: "Some of them have drug or behavioural problems; some live here because of their mental or somatic health problems. Other persons live here because they need full-time follow-up: elderly people with dementia, a blind person, a person with mental disabilities". Some are on forced mental health care, in which case the municipality of the reception centre in which they stayed before moving to the unit is formally responsible for them and the expenses of their treatment. The manager further explained: "The person may have gotten a last warning, but he did not manage [his condition]. In one case, a resident was so mentally ill that he was forcibly moved to the special unit. Some people have to choose either to go to prison or to the special unit".

The Særbol care unit for protection seekers with special needs is but one of the cares and accommodation units of the commercial operator. The requirements, routines and competence in the unit are in line with other Stendi units stipulated in the regulations for these types of institutions.[91] The staff ratio is one to one.

The manager recounts that the collaboration with the local health and welfare system, hospitals and other health facilities in the region is good: "We are a professional health and care institution; our guidelines and expertise differ from those in ordinary reception centres". Their role is mainly to care for residents and facilitate and ensure that the instructions and treatment given by the health organisations are followed by residents in their daily lives. The manager requested, however, more specific instructions from the UDI for the individual action plan and the outcome of the stay and treatment of each resident, given their complex situations and legal status.

One challenge for the residents was their private financial situation, as the manager stated: "Some already have debts upon their arrival. Some have no money for the medicine they need. Who is to cover the bill?" The manager asked, therefore, for a better system to cover the health-related costs of the residents. Residents with a resident permit waiting for settlement are intended to participate in the introduction programme. However, very few can do so when living in the care unit. Some have waited for years for settlement because no municipalities have accepted them due to the extra costs.[92] Some are waiting for a return; however, their conditions are unsteady, so they cannot be sent. Some have had their rejection reversed because of their health conditions and are waiting for settlement; however, because of a lack of ID documents, they must remain in a reception centre.

90 Særbol is run by the private provider *Stendi*. See https://stendi.no/heldogns-omsorg/psykisk-helse
91 Helse- og omsorgsdepartementet, LOV-2011-06-24-30, FOR-1988-11-14-932
92 In November 2020, the policy party SV submitted a Document 8 proposal to the Storting (the parliament) to ensure that municipalities are given more money to settle refugees with major health challenges

5.2.4. Alternative accommodation

In extraordinary cases, if a person or family member requires special adjustments due to medical and/ or mental health conditions that cannot be implemented in an ordinary reception centre, the person/family may be settled and receive follow-up from the municipality instead of the reception centre or in the facilitated section. There are other reasons for granting alternative accommodations; for example, an unaccompanied minor who has close family members living in Norway and wishes to live with them can be granted alternative accommodations. This is also the case for families in which the child has been granted refugee status (e.g. because of FGM), and the parent(s) and siblings are in the process of applying for family reunification. In such cases, the family may be settled before their application has been processed.

The UDI and the municipality will enter into an agreement stating that the municipality will follow up on the applicants' needs, but that the extra costs will be covered by the state (UDI).[93] The offer to live in an alternative to the reception centre ends if the person is granted a residence permit, forming the basis for settlement. They will, in such a case, be settled in a municipality organised by the IMDi, with the municipality henceforth taking full responsibility, including economically, for the protection seekers.

5.3. Reception Conditions for Unaccompanied Minors

If the PU considers a minor to be 14 years old or younger, he or she will be sent to a child care centre run by child welfare authorities (Bufdir). Those found to be between 15 and 18 years old will be placed in a transit accommodation centre for unaccompanied minors run by the UDI.

The care situation for unaccompanied minors is an issue long debated by the public. Since 2008, child welfare authorities have been responsible for accommodating unaccompanied minors younger than 15 years. The youngest UAMs stay in care centres run by the Directorate of Children, Young People and Families (Bufdir), with a standard defined by the Child Welfare Act, including the staff ratio and material conditions. The non-discrimination principle was a strong argument for the transfer of administrative responsibility for UAMs from the UDI to the child welfare system. NGOs, such as Save the Children, the Children's Ombudsman and child-rights activists, lawyers and researchers have argued that the care situation for UAMs in ordinary reception centres did not meet the quality standards provided for children living in child-care institutions under the Child Welfare Act. Accordingly, they argued UAMs were exposed to discriminatory treatment from the state, violating CRC articles 2 and 22.[94] Only the youngest UAMs were granted improved care standards.

In 2016, due to an increase in applications, the Ministry of Children and Equality proposed a more flexible law to allow deviation from the Child Welfare Act's standards for the quality of care in care centres for those under 15 years old. The argument for the new act was that unaccompanied minors consist of 'a mixed group with diverse needs' and 'differ from children in the ordinary child welfare system' (Ministry of Children and Equality, 2016, p. 1) and, therefore, did not require the same standards of care and follow-up. The proposal was met with sharp criticism and did not pass through parliamentary vote proceedings.

93 UDI 2020-005 *Alternativ mottaksplass*

94 A document drafted and signed by representatives from civil society, including numerous associations, NGOs, 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)

In the GI-13/2017 guideline, the Ministry of Justice delegates responsibility for the accommodation of UAMs between 15 and 18 years old to the UDI. UAMs are accommodated either in special sections of a regular reception centre or in a separate reception centre for minors, with 30–50 minors in one unit. The conditions of the centres are stipulated in circulars UDI 2011–034 and UDI 2012-037.[95] The UDI demands that the reception centre staff provide necessary care for minors, including screenings, to identify their individual needs. Centre staff members must provide structured daily life for minors and supervise their education, leisure-time activities and health conditions and needs. Centres are also required to protect minors' rights of participation, maintain communication with minors' legal guardians and follow up if minors disappear from the centre. Increased concern about minors who went missing (see Aasen et al., 2016) resulted in an improved guideline, UDI 2015–009, identifying the responsibility of and collaboration between the child welfare system and police.[96] In the circular on minors, vulnerability as a concept and topic is not addressed; instead, the emphasis is young people's capacities and normality.

Table 5.3 Unaccompanied Minor Decisions and the Percentage of Applicants Awarded Residency, 2015–2019

	2015	2016	2017	2018	2019
Applicants, unaccompanied minor	**5480**	**320**	**191**	**159**	**135**
Decisions, unaccompanied minor	**1 165**	**2 239**	**897**	**134**	**167**
Percent awarded residency	**89**	**66**	**46**	**92**	**85**

Source: UDI statistics

Table 5.3 shows that approximately 5,500 unaccompanied minors applied for asylum in 2015. Since then, the numbers have decreased substantially. The percentage awarded residency was high; however, it decreased significantly when the regulation changed in 2016. In 2016 and 2017, more applicants were given a UAM limit (see chapters 6 and 7). Many granted residencies lack ID documents and receive an ID limit, meaning they will continue to stay in a reception centre for an extra year or more. Table 5.4 shows that this is the case for more than one in five persons who arrived as an unaccompanied minor and are staying in a reception centre at the end of 2020.

Table. 5.4 Residents in Reception Centers with the Status of a UAM Limit and ID Limit. Residents who were UAM when they applied and all other residents, October 2020.

Status	EMA when applied
No permit, not applied for renewal	8
Renewal ID limit, third or more application sent	62
First time ID limit, second application sent	15
Valid first time ID limit	2
Valid renewed ID limit	48
Ordinary permit without limits	471
Other types of limited permit	
Unknown	2
Total	**608**

Source: UDI statistics

95 UDI 2011-034 *Omsorgsarbeid for enslige mindreårige i asylmottak* (Requirements for care work for UAM in reception centres). UDI 2012-037 *Kartlegging og tiltaksplan for enslige mindreårige i asylmottak* UDI 2017-002 *Krav til informasjonsarbeid i ordinære mottak.* UDI 2012-012 *om individuell kartlegging og tiltaksplan.*

96 UDI 2015-009 *Enslige mindreårige som forsvinner fra asylmottak*, UDI 2015-009V2 *Bekymringsmelding til barnevernet om enslig mindreårig som har forsvunnet fra asylmottak*

We will address aspects that contribute to the precarious situation of unaccompanied minors living in reception centres. In Chapter 4, we also identified limitations and challenges in the representative system for unaccompanied minors.

5.3.1. Health conditions

Several studies have examined minors' mental health. Many young refugees have had potentially traumatic experiences before and during their flights to Norway (Jacobsen et al., 2014; Jensen et al., 2014). Earlier life experiences, such as family violence and the loss of close family members, add to the risk factors for mental distress (Montgomery, 2011; Varvin, 2018). The studies document that postmigration stressors related to reception conditions and the situation after being (re)settled also increase their vulnerability to PTSD. Mental health issues, such as distress, worries and anxiety symptoms, affect the ability to learn a new language and to participate in the educational system (Lynnebakke et al., 2020).

5.3.2. Insufficient living conditions for those with long stays in reception centres

Several studies on the reception conditions for UAMs recommend an increased ratio of staffing, more child professional competence and improved care and support in reception centres for unaccompanied minors (see, e.g. Lidén et al., 2013; Berg & Tronstad, 2015; Aasen et al., 2016; Sønsterudbråten et al., 2018). The situation is particularly challenging for those who spend extended periods of time in the centres (Lidén et al., 2013). Staff members expressed their concerns about insufficient resources to address minors' needs, including extra support from health services in cases of serious health problems. Staff members' dual roles as caretakers and supporters of immigrant authorities may also create ambiguous relationships with minors.

In 2016, the UDI granted additional funding for increased staffing and child-care skills, and this grant was subsequently continued since then. E.g. training programmes on trauma-informed care have become accessible for staff in reception centres for unaccompanied minors (rvtssor.no).

5.3.3. Minors who disappear from reception centres

From 2008 to June 2015, 625 UAMs disappeared from reception centres and care centres, 61 below age 15.[97] From 2015 to 2019, 413 unaccompanied minors went missing, with their locations still unknown in October 2020. Many had asylum cases pending with the UDI or had received a UAM-limited permit (see Chapter 7) or a final rejection when they disappeared. Table 5.5 shows for 2015–2019 the year the minors went missing and their application status when they disappeared. In 2015–2016, minors went missing when they had an application pending. The number of the missing rose in 2016 and 2017, when more were granted the UAM limit. Many minors also went missing after receiving a rejection.

97 Forty percent of the minors who went missing disappeared within one month of their arrival at transit reception centres. Many of them had their family in North Africa (Aasen et al., 2016).

Table 5.5 Missing Unaccompanied Minors, the Year They went Missing and the Application Status when They Disappeared, 2015–2019

Status when went missing	2015	2016	2017	2018	2019	Total
Application in the UDI	45	65	9	1	2	122
UAM limited	3	32	84	3	1	123
Final rejection	3	13	53	29	1	99
Rejection, sent to the UNE	4	23	34	2		63
Rejected the application		1		1		2
Resident permit, waiting for settlement		1	1			2
Resident permit (ID limit), waiting for settlement		1			1	2
Total	**55**	**136**	**181**	**36**	**5**	**413**

Source: UDI statistics

The provisional housing solution and the high rates of disappearance from reception centres without any conclusive investigations have attracted criticism.[98]

To address the substantial criticism of conditions for UAMs living in reception centres and to ensure improvement in measures to prevent UAMs from going missing,[99] the Ministry of Justice initiated a hearing in early 2020 to include a legal principle for reception conditions for unaccompanied minors in the IA and IR. The suggested regulation consisted of the same conditions as in the present circulars. The Ministry of Justice argues that it is not discriminatory to spend more resources on the youngest children, if all UAMs are given adequate care according to their age. The proposal also clarifies how personal data processed on behalf of the UDI will be regulated in a data processing agreement. Although supporting a new legal authority in the reception conditions, the hearing instances were critical to regulating the contested lack of minimum standards in staff ratio and competence and not including the care of all minors under the Child Welfare Act.

5.4. Accommodation of Victims of Human Trafficking

Human trafficking is in a special position in discussions of vulnerability in legislation, as it is clearly spelled out in the IA and IR. Norway ratified the European Convention on Action against Trafficking in Human Beings (St.prp. 2 (2007-2008)). Hence, the Norwegian authorities are obliged to identify, protect, assist and follow up on victims of human trafficking. To date, Norway has not established a national referral mechanism. The obligation to identify and follow up on possible victims of trafficking is delegated to the various actors that may be the victim's first contact with the authorities, such as the police, the emigration authorities, the health and welfare sectors and NGOs, with an overall coordination unit for the field (KOM) placed in the Directorate of the Police. The organisation of actions against human trafficking is under revision.

98 For example, the CRC Committee report to Norway "Concluding observations" July 4, 2018, Report, the Norwegian National Institution for Human Rights (NIM)
99 UDI 2015-009 *Forsvinninger fra mottak*

Children identified by the authorities as possible victims of human trafficking are entitled to legal assistance and protection. It is the responsibility of the Child Welfare Service to provide care to children suspected of harm, as defined in Bufdir 01/2016.[100] In addition to the Child Welfare Service, the police, the immigrant authorities and health and welfare services are responsible for ensuring that minors receive appropriate help and care. In severe cases where the child may be in danger, he or she can be temporarily placed (up to six months) in a particular institution designed to take care of minor victims of trafficking, without his or her consent (cf. Child Welfare Act, section 4-29). The purpose of the placement is to meet the child's immediate need for protection and care and to secure the child's need for protection from traffickers/perpetrators. The County Board for Child Welfare Issues handles the decision based on the police's assessment of the case.

There are several ways victims of human trafficking can end up in the asylum system. Trafficked persons may be hidden when they arrive irregularly and be exploited over time in Norway before they are identified as victims by the police, PU or NGOs. They are then referred to the procedures for applying for a reflection period, asylum or a voluntary return organised by the IOM (see chapter 9). A trafficked person may also arrive as an asylum seeker on a planned track to arrive in the country. Suspicion will be raised in the PU registration or the asylum interview if, for example, an unaccompanied minor or a minor arriving with a guardian presents the narrative that she will marry a man already living in the country. Minors may recount experiencing exploitation during their travels to and through Europe in the asylum interview. Staff in reception centres state that they witness residents becoming anxious when contacted by external persons during their stay in the centre.

The UDI circular on vulnerability in reception centres includes victims of human trafficking.[101] If there are any concerns about a resident having been trafficked, a consultation with the resident is held to obtain more details on the case, to inform the resident of his or her rights and available support services and to assess if any security measures need to be implemented. If the situation is serious, the person is transferred to a shelter. There are other circulars that define the responsibility of the immigration authorities to identify and follow up with victims of trafficking and that specify the conditions for granting a reflection period (see also chapters 6 and 7).[102] If granted a reflection period, the person will be settled in a municipality and followed up on by dedicated NGOs and the social welfare office with a special mandate to do so.[103]

In 2017–2019, the police and immigrant authorities identified 10 minors as victims of human trafficking (The Coordination Unit against Human Trafficking [KOM] report, 2019). The durable solution to a child trafficking case depends on the immigration authorities' assessment of the asylum application, as well as the outcome of the local police's investigation. The divergent objectives of the child protection authorities, police and UDI may complicate the follow-up and outcome of such cases (see Tyldum et al., 2015; Tyldum, 2016; Lidén & Salvesen, 2016).

100 Barne-, ungdoms- og familiedirektoratet (Bufdir) Guideline 01/2016 *Barnevernets håndtering av saker der mindreårige kan være utsatt for menneskehandel.*
101UDI 2015-029 *Sårbare beboere i asylmottak*
102 UDI 2011-007 *Utlendingsforvaltningens ansvar for å legge til rette for å identifisere og gi oppfølging av mulige ofre for menneskehandel.* UDI 2013-014 *Oppholdstillatelse for utlendinger som antas å være utsatt for menneskehandel.*
103 The main actors are the ROSA project, the PROCentre, the Church City Missions and the social welfare office in the Grünerløkka district, Oslo is responsible for the social welfare benefit for those granted a reflection period.

If the victim is an adult, the main actor providing assistance is ROSA.[104] This public agency provides assistance throughout Norway, 24–7, to victims of human trafficking. The organisation offers a safe place to stay for women, men and transgender people in cooperation with shelters and other housing initiatives for victims of human trafficking. Housing initiatives run by NGOs, such as PRO Centre, the Church City Mission's Fri and Laura's house, a shelter for male victims by the Salvation Army, are the main actors providing safe places to stay.[105] Shelters are another form of safe accommodation used in trafficking cases. The Shelter Act entered into force in 2010 and obligates all municipalities to provide a shelter service to women, men and children exposed to various forms of (domestic) violence. In 2019, 2% of the 18,000 persons (92% were women) staying in a shelter that year were identified as victims of human trafficking.

Persons who stay in a shelter over an extended period are included in the category *Alternative Accommodation*, and the economic responsibility is transferred to the municipality, which is reimbursed by the state (UDI). Only persons granted a reflection period and renewable residence permits (see Chapter 7.6.1) have equal rights to economic support identified in the Social Security Act.

ROSA runs the national helpline against human trafficking and offers advice based on years of experience in providing assistance and legal aid. When the victim is a child, Bufdir runs an *advisory team against trafficking in children* to advise and support Child Welfare Services and other actors to identify and follow up on child victims. In 2019, ROSA reported 118 requests for assistance from victims of human trafficking, mainly involving forced labour and exploitation in prostitution. ROSA assisted 63 possible victims (including five men). Of these, 40 were new contacts, and 23 had obtained assistance over multiple years. They came from 26 countries, mainly Romania, Nigeria and Uganda. Only eight did not have a valid residence permit.

As Table 5.6 shows, there has been a reduction in identified cases of human trafficking over the last few years. This is particularly the case for women from Africa. While those exploited in forced labour continue at the same levels, the number of people in prostitution/sexual exploitation has declined, as Table 5.7 reveals.

Table 5.6 Victims of Human Trafficking, Divided into Children, Women, and Men and their Continents of Origin

	2017	2018	2019
Minors	6	2	2
Women	57	31	35
Men	19	15	15
Total	82	48	52
Europe	9	10	12
Asia	18	11	14
Africa	53	25	18
Latin America	2	2	6

Source: KOM, 2019

104 ROSA was established by the Crisis Centre Secretariat in 2005, as a measure in the government's action plan toward trafficking in women and children, 2003–2005.
105 The Ministry of Justice manages a grant scheme for NGOs that offer various forms of assistance to (possible) victims of human trafficking.

Table 5.7 Types of Exploitation

	2017	2018	2019
Forced labor/service	23	23	23
Prostitution/sexual exploitation	60	35	28
Forced labor/sexual exploitation		1	2
Unknown type			1

Source: KOM, 2019

We have identified main challenges in the field of action against trafficking. These concerns overlap with ongoing discussions over the last few years on how to improve the organisation of actors and roles. On the system level, there is a need to design a model and a referral mechanism that can improve the coordination between the actors involved. Today, the decentralised model is fragmented and insufficiently coordinated. The action field includes actors and missions run by mainstream welfare institutions, as well as dedicated actors mainly run by NGOs. There is a need for better cooperation (Rambøl, 2018, see also KOM, 2019).[106] A decentralised model of action against human trafficking relies on sufficient knowledge in mainstream institutions. The need to improve the competence to identify and follow up victims is widely recognised by field actors. The option to use such competence may be small, because there are relatively few cases every year, and they mainly occur in some main cities and urban areas – but not only there.

There is also an immediate need to increase the attention and action against forced labour in the informal or illegitimate labour market and to include the main actors against forced labour when elaborating on the model and cooperation network described above.

A third concern relates to the practices of the obligations identified in the legislation. In her dissertation, Brunovskis (2019) discusses how the right to assistance for trafficked persons in Norway is presented in official documents as a cohesive set of special rights for one group. The actual access, she argues, depends in fact on other factors, predominantly migration status and the ability to document identity (see chapters 6 and 7). There is a gap between the complexities of, for example, women's experiences in prostitution and the clear-cut categorisations required to receive (helpful and long-term) assistance within the anti-trafficking system in Norway. This manifests in the ethical dilemmas described by social workers in the process of the 'identification' of trafficking victims. Brunovskis argues that special rights for trafficked persons are introduced into a comprehensive universal welfare state that is ill equipped to handle special cases and exceptions that apply to a miniscule number of people. One very serious consequence is that certain forms of assistance can be systematically more difficult for some in the most precarious situations.

The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), in its second evaluation report on Norway (2017), criticises Norway for not establishing a formalised national referral mechanism that defines the procedures and roles of all who may come into contact with victims of trafficking. The report also highlights the need to improve the identification of victims of trafficking among asylum seekers, migrants and persons placed in detention centres. Regarding children, the Norwegian authorities are urged to adopt a National Referral Mechanism that considers the special circum-

106 See also Report 2021: *Utredningsprosjekt – forslag til ny organisering på menneskehandelsfeltet for voksne og mindreårige.*

stances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration. The GRETA report also stresses that Norway should take further steps to address the problem of children who go missing while in the care of the state.

5.5. Protection Seekers' Access to Welfare Services

The Norwegian welfare system is based on universal provisions and public delivery of services. Asylum seekers' and refugees' access to welfare services is based on the sectoral responsibility principle. Each sector, such as the educational and health authorities, has equal responsibilities to both asylum seekers and other citizens. The welfare system ensures that citizens and persons with a legal permit to stay in Norway have equal rights, though with certain modifications. When an applicant receives a residence permit as a refugee (IA §28), they obtain equal rights to citizens; however, those granted a residence permit on humanitarian grounds (IA §38) have more restricted rights than those granted protection (see chapter 7).[107] Asylum seekers have limited access to benefits and services depending on their procedural and legal status. The exception is children, who continuously throughout the legal process have equal rights to, for example, compulsory education and health services as other children.

Table 5.8 Access to Welfare Services according to Procedural Status

	Applicants	Granted residency	Appeal process	ID limited	Final rejection
Health, adults	Assigned general practitioner (GP) Pregnant women full rights Right to receive information about health, illness, and treatment Entitled to an interpreter	Full rights	Same as for applicants	Full rights	Right to be examined at a hospital, receive immediate medical assistance, and other essential health care that is urgent. May be entitled to treatment in the mental health service if mentally unstable Pregnant women equal rights except when hospitalized
Health, children	Full rights, free of charge until 16	Full rights	Full rights	Full rights	Right to child health station service, doctor and hospital, not entitled to a GP
Day care center	4–5 years old: full-time ordinary day care center, costs covered by immigration authorities 2–3 years: free core hours in an ordinary day care center or in reception center (Barnebase)	Full rights Parental payment	Same as for applicants	Full rights Parental payment	Same as for applicants

107 The main restrictions relate to pensions and specific benefits, such as the cash benefit for parents of infants.

Education	Equal rights until 16, enrolled in local schools 16 and over: compulsory school program equivalent to lower secondary school, before entering upper secondary school	Equal rights until 19, enrolled in local schools 16 and over: compulsory school program equivalent to lower secondary school, before entering upper secondary school	Equal rights until 16, enrolled in local schools 16 and over: compulsory school program equivalent to lower secondary school, before entering upper secondary school	Equal rights until 19, enrolled in local schools 16 and over: compulsory school program equivalent to lower secondary school, before entering upper secondary school	Equal rights until 16, enrolled in local schools
Child welfare service	Equal rights	Equal rights	Equal rights	Equal rights	Equal rights
ID and bank accounts	Restrictions on bank account ID card as applicant	Included in National Registry, equal rights	Restrictions on bank account ID card as applicant	Restrictions on bank account ID card as applicant	Restrictions on bank account ID card not valid
Work permit	If applied for work permit is granted under certain conditions	Equal rights	Work permit rejected	Equal rights	Work permit rejected

5.5.1.Children's access to education

The Norwegian school system is free of charge, and most children attend public schools in their local community. Day care centres are heavily subsidized by the state but still require the parents to pay a monthly fee of nearly 300 euros. Day care is considered part of the educational system, and 85% of children in Norway attend day care starting at the age of one. At the age of three, 98% of children attend. It follows from the UDI's circulars that all younger children living in reception centres, regardless of their procedural status, are entitled to a daytime activity. Asylum-seeking children aged four or five living in a reception centre are expected to attend ordinary day care in the local community. Since 2016, municipalities have offered free core hours for all parents with a low income. Quite a few municipalities also extend this offer to children living in reception centres. Other reception operators may cover the extra expenditures to ensure that all children from the age of two attend local day care centres.

Asylum-seeking children aged six to 16 have a right and duty to attend primary and lower secondary school. They are enrolled in introductory classes at local public schools. Since 2014, asylum-seeking children between 16 and 18 have access to upper secondary education; however, they lose this right if they receive a negative decision.[108] Minors who completed lower secondary school before arriving in Norway

108 Opplæringsloven §3-1: https://lovdata.no/dokument/NL/lov/1998-07-17-61

are enrolled in upper secondary school after taking an introductory class. However, most young refugees do not have an education equivalent to lower secondary school upon arrival in Norway and must attend classes to complete this level, either while living in reception centres or once settled in a municipality.

5.5.2. The role of the child protection authorities

Asylum-seeking children and their families are entitled to regular benefits from the local child welfare services, if needed. The local child protection authorities are expected to contact and cooperate with the child and family if the staff is concerned about the child's care situation, violence, or abuse. The threshold for the child protection authorities to act should be the same, irrespective of the formal status of the child and his or her family.

In the case of unaccompanied minors, researchers have found that local child welfare services only follow up on severe problems involving minors (Lidén et al., 2013; Paulsen et al., 2014; Tyldum et al., 2015). The studies identify the need for improvement in cases concerning unaccompanied minors, especially concerning the disappearance of minors from reception and care centres, and improved competence to identify and follow up on child victims of human trafficking.

5.5.3. Access to health care

All protection seekers, irrespective of their status, are entitled to receive basic health care, including mental health care. As asylum seekers, they have the right to be assigned a general practitioner (GP).[109] However, only a person with a legal stay permit has equal rights to health service to other citizens. For pregnant women, all health care is free right up until birth. All children under 18 are fully entitled to health care, and children under 16 may visit a doctor free of charge. Child and youth health centres and school health services are also free. Adults and children above 16 will pay a user fee for seeing a GP/ medical service, but hospital treatment is free of charge.

Those experiencing mental health problems need to contact their GP. The municipalities offer a wide variety of services to those in need of mental health care and to their families, including psychologists, support teams, and low-threshold urgent mental health care services. Because of limited capacity, access to mental health care for moderate mental health problems and disorders is restricted. Practitioners are also often reluctant to start the treatment of those not yet settled. Therefore, claimants are mainly offered short-term therapy or medicine (see below).

The municipalities are responsible for providing health services to everyone residing in the municipality, while the UDI is responsible for ensuring that residents in reception centres have access to health services when needed. It is up to each municipality to organize the health service for those living in a reception centre.[110] The quality and scope of the health services vary between municipalities. A study from 2016 found that only one-third of the municipalities allocated sufficient resources to this group of inhabitants (Rambøl, 2016). Municipalities that had just recently opened reception centres faced more challenges, including providing sufficient expertise in refugee-related health problems.

109 *Forskrift om fastlegeordning i kommunene, tilgjengelig,* https://lovdata.no/dokument/SF/forskrift/2012-08-29-842.
110 Health Directorate, Guidance IS-1022 *National guidance for health promotion to asylum seekers, refugees, and family unified persons* https://www.helsedirektoratet.no/veiledere/helsetjenester-til-asylsokere-flyktninger-og-familiegjenforente/om-veilederen. See also FOR-2011-12-16-1255 *Forskrift om rett til helse- og omsorgstjenester til personer uten fast opphold i riket*

For persons with a final, negative decision, the right to health care is reduced to a bare minimum, including the right to be examined in a hospital and to receive immediate medical assistance and other urgent health care. However, a mentally unstable person may be entitled to treatment in the mental health service. A pregnant woman with a final refusal has the right to health care before, during, and after the birth, as well as to give birth in hospital.

The patient with final refusal has to pay for health care, both when consulting a doctor and in a hospital. The health services will assess the patient's ability to pay for the service. If the patient is unable to pay and the additional support provided by the UDI is not sufficient, the expenses will be charged to the authority responsible for the health service.

Previous studies (e.g. Bendixen et al., 2015) show that people without legal residence will receive health care beyond what can be classified as acute. There is a large *de facto* variation in the health care offered to this group, partly due to the fact that the legislation opens up discretionary health care assessments.

5.6. Follow-up of Protection Seekers in the Health Service

Scandinavian research on refugees' mental health demonstrates high to very high levels of PTSD, anxiety and depression in refugee populations compared to non-displaced populations (Fjeld-Solberg, 2020; Jensen et al., 2019; Montgomery, 2011; Solberg, 2020; Varvin, 2018). Exposure to potentially traumatic events (PTEs), such as torture, war and/or violence-related traumas prior to or during forced migration, as well as postmigration socioeconomic hardships and social isolation, constitute profound mental health risks with potentially long-lasting effects.

A Swedish study (Solberg, 2020) examining refugees from various countries of origin found that the most prevalent type of mental health disorder was depression (68%), followed by PTSD (61%) and anxiety (59%). More men than women reported mental health disorders, particularly regarding anxiety and PTSD, and respondents with the lowest levels of education reported the highest levels of mental health problems. The study also found that the psychosocial situation of the refugee becomes a predisposition that interacts with early postmigratory stressors, which, in turn, have negative effects on mental health. A recent Norwegian study based on self-reported, questionnaire-based data shows that the average prevalence of PTSD among Syrian refugees is 35%, compared to 1% in the Norwegian population (Fjeld-Solberg, 2020). PTSD can ignite depression, substance abuse, psychosis and neurobiological and personality changes. In total, more than 40% of respondents reported having experienced five or more PTEs before their flight from Syria. Additionally, the study documented several possible associations between post-migratory stressors experienced after arriving in Norway and the respondents' mental health problems. The most common form of postmigratory stress experienced was sadness because they could not reunite with family members (51% of the respondents), followed by frustration because they could not use their competences in Norway (44%).

Refugee health research includes several studies on the mental health of unaccompanied minors (e.g. Jensen et al., 2019; Montgomery, 2011). A meta-study of the mental health of displaced and refugee children resettled in high-income countries (Fazel et al., 2012) concludes that further research is needed to identify the relevant processes, contexts and interplay between the many predictor variables hitherto identified as affecting mental health vulnerability and resilience.

The response to mental health treatment varies greatly among refugee patients. A scoping review from 2020 found that few studies on asylum seekers' use of health services have been conducted (Berg et al., 2020). Research in Norway mainly focuses on mental health and infectious diseases, and there is little research on other somatic disorders.

Health treatment barriers include dimensions such as the organisation of and access to health services. In Norway, the capacity of mental health care is limited, and the general population faces long waiting lists to gain access to mental health treatment. However, the situation for refugees is particularly demanding (Opaas, 2019). Additional barriers are language difficulties as well as the therapists' competence related to the refugees' background, war and migration experiences. Equally, the patient's 'health literacy' has an impact on his or her prospects for health support. The patient's motivation to disclose and capacity to express symptoms, as well as relational trust, also affect the consultation. Migratory experiences that result in deteriorated mental health relate to conditions often associated with danger, shame, humiliation and strong pain. The events leading to trauma may be extreme and difficult to describe (Varvin, 2018).

In Norway, a protection seeker will be entitled to professional medical assistance, if needed. All applicants are offered a medical examination free of charge in the public health service within three months of arriving in Norway. The examination will normally be carried out by a nurse at the local health centre and intended to identify extra needs, including chronic health problems, somatic and mental health issues and trauma. The guidelines state that the applicant, not the health worker, is the one to raise serious violations of human rights, such as abuse and torture, in the consultation. If such information is disclosed, a report to the UDI is required. If the applicant requires treatment, he or she will be given an appointment with a doctor for further referral to a specialist. When the person stays in a reception centre, UDI covers the cost if the acute help or treatment is not covered by the health service.[111]

However, when patients are living in reception centres, health institutions may be reluctant to initiate treatment for mental health problems and chronic health conditions due to the uncertain timeframe. If the situation is not life threatening, extensive treatments are postponed until the patient's status is clarified. In reception centres, the use of medication is high, and only symptoms and basic needs are taken care of. As one informant told us, 'They may live with pills over a long time; then, the trauma becomes deeper'.

5.6.1 More on victims of torture

Norway is a state party to the 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT). The EU Reception Directive includes, in articles 21 and 25, that states are obliged to consider whether an asylum seeker has been subjected to torture or other forms of serious psychological, physical or sexual violence. This is in line with the UNCAT, which requests all nation states to ensure the rehabilitation of torture victims (Article 14). The duties to document torture are further outlined in the Istanbul Protocol (OHCHR, 2004).[112] The Istanbul Protocol states that the nation state must ensure that timely medical examinations of alleged victims of torture and ill-treatment follow the proce-

111 UDI 2008-035 *Pengereglementet* 7.3.1., 7.3.4., 7.1.6.
112 Istanbul Protocol *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004)

dures set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in particular that they are conducted by trained, independent health experts with the support of professional interpreters.

The national guidance for health promotion for asylum seekers, refugees and family reunified (Directorate of Health, 2015 IS-1022) refers to the Istanbul Protocol for guidelines for the identification and documentation of torture and its implications. The mapping form for physical and mental health developed by the Norwegian Directorate of Health (2017), contains explicit questions about torture experiences. The guidance is not legally binding; however, it recommends that UN guidelines be applied. During Norwegian reporting to the UNCAT, the importance of following the standard for effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment in line with the manual in the Istanbul protocol has been highlighted.

Experts estimate that between 10,000 and 35,000 people with refugee backgrounds in Norway today have been subjected to torture prior to their arrival (Red Cross, 2020, p. 18). A study on refugees' mental health finds that more men than women report on torture (men 35%, women 18%; Fjeld-Solberg, 2020), a gendered difference in line with other studies (Høyvik et al., 2019). Researchers have asked if the gender gap relates not only to disclosure but also to the insufficient inclusion of various forms of torture according to Article 14 (Sveaass et al., 2018). Experts and health professionals have long expressed their concern about the follow-up of torture victims in Norway.

Individuals who have been tortured are in a particularly vulnerable situation, and the somatic and psychological consequences of torture are serious (Sveaass, 2013). Torture disrupts a person's dignity. Most victims of torture will carry the experiences with them for the rest of their lives in the form of nightmares, insecurity, anxiety, distrust and diminished faith in their own possibilities and abilities. Many will struggle with physical injuries, which, in addition to being painful and resulting in reduced mobility, are a constant reminder of horrific events (Red Cross, 2020, p. 16).

People subjected to torture adjust to their experiences differently and will have individual needs. For many, torture leads to serious physical and mental illnesses, directly and indirectly affecting their adjustments and well-being.

In Norway, ordinary health services are accountable for the rehabilitation of torture victims. The regional resource centres for psychological traumas and violence (RVTS) are expected to have available methodologies for the identification, examination, follow-up and treatment of torture victims and to cooperate with specialists to provide guidance and ensure relevant competence in the ordinary health service. The national resource unit for psychological trauma and violence, NKVTS, handles research on the topic.

The Immigration Directorate (UDI) has no guideline addressing torture. Currently, there are no particular procedures to identify torture or other cruel, inhumane or degrading treatment or punishment (CIDT) or guidelines about how information on torture/CIDT should be considered in the assessment of protection. Several initiatives, including research projects and reports, have been initiated by the Immigration and Health Authorities; however, no new practices have been implemented. An ongoing research project, Torture Survivors in the Norwegian Asylum Procedure, finds that there is limited focus on torture in interviews. Concerning reception conditions, few references have been made to victims of torture. They also request specific guidelines (forthcoming, Sveaass & Weiss, 2021).

A Red Cross report (2020) investigated whether Norway offers sufficient rehabilitation to people subjected to torture. The report covers a threefold mapping of the legal framework, how rehabilitation services are organised and how practitioners address rehabilitation needs in their everyday work. The report highlights two overarching conditions that prevent torture victims from receiving sufficient rehabilitation in Norway. First, the rehabilitation of torture victims is dealt with in the ordinary health system, yet the system lacks the necessary resources and competences to meet specific rehabilitation needs. Second, rehabilitation depends on the identification of torture victims and the examination of their injuries. However, due to the lack of knowledge about torture, as well as insufficient identification and investigation tools in the service apparatus, the measures are not in line with the Istanbul Protocol.

Other factors related to having a refugee background may also influence protection seekers' access to existing services and the fulfilment of their rights, such as language and system competence, adjustment to life in exile and an uncertain legal status. The report concludes that the identification of individuals who have been tortured appears arbitrary in Norway. The quality of rehabilitation services varies greatly at both the local and regional levels. Overall, the services are characterised by a lack of knowledge of and familiarity with international protocols for identification and rehabilitation, as well as a lack of coordination and inclusion of actors who can contribute to a successful rehabilitation process.

For Norway to meet its obligation to identify and follow up on victims of torture, we find that there is a need for the Immigration Authorities to develop guidelines for interviews and procedures addressing torture and other forms of cruel treatment (CIDT). Health authorities require the same, to ensure that health consequences are adequately addressed. There is a need for more expertise on torture related issues, to help raise awareness of and implement obligations under the Istanbul Protocol.

5.7. Settlement of Refugees

The IMDi is responsible for the practical work related to settlement and cooperates closely with reception centres and other sector authorities. For the municipalities, the settlement of refugees is a voluntary task (IMDi, 2020). Municipalities receive state subsidies in the form of an integration subsidy for five years to cover extra costs in the education sector and the health and welfare services. An additional subsidy is granted when settling unaccompanied minors.

To prepare for the settlement, an employee at the reception centre, together with the resident, maps his or her qualifications and needs and information important for the settlement routine. This mapping is the key information that the IMDi receives when sending requests to municipalities to take charge of individual, recognized refugees. The municipality is then responsible for assessing the needs and considering whether they can meet them.

Most refugees settle in a municipality with the help of the IMDi. It is possible, however, for persons with a work and residence permit and who can provide for themselves to settle in the municipality of their choice without the authorities being involved.

The municipality is responsible for ensuring the right and obligation of foreign nationals to participate in an introductory program identified in the Introduction Act and that the general municipal services are adapted to a multicultural population. The introduction program applies to newly arrived foreign nationals between the ages of 18 and 55 who need to acquire basic qualifications. The Act includes quota

refugees, refugees granted residence permits in Norway, and reunified family members, and the program involves measures that prepare all refugees for the labour market. The program may run for up to two years, with additional periods for approved leaves of absence, such as parental leave. When special reasons so warrant, the program may run for up to three years. Refugees receive financial support whilst participating in the introductory program.

A difference between settling quota refugees and those who have stayed in reception centres is that most of the latter have acquired Norwegian language skills and knowledge about Norwegian society over time, and some have established social networks. However, a long stay in reception centres may have given rise to health problems, passivity, and demotivation, which hinder a quick transition to work or training (Weiss et al., 2017).

5.7.1. Settlement of Refugees with Extra Needs

Despite the fact that vulnerable persons are given priority and the consensus that they suffer the most from long waiting periods, persons with complex and chronic health problems that require treatment are in many cases difficult to settle. The lack of resources in the municipalities, insufficient competencies in the local health services, and inadequate communication between the municipalities, reception centres, and the IMDi are cited as the main reasons why persons with special needs represent a challenge with regard to settlement (Weiss et al., 2017).

In such cases, a close dialogue is required between the UDI, RMA, and IMDi and between the IMDi and municipality. In some cases, the IMDi has to contact several municipalities. One study (Rambøl, 2020) concludes that an improved and more open information flow is needed during the settlement phase compared to what is currently the case. The municipalities' need for more comprehensive information and improved communication measures was also the finding of a recent study on the settlement of UAMs (Lidén et al., 2020).

Children are most often not considered vulnerable in the resettlement process. When families with children are settled, the main focus is on education and, in some cases, health services for a child with extra care needs. A research review (Svendsen & Berg, 2018) on the topic, however, demands a more holistic approach to the settlement of children. There are few studies on how newly settled children manage their everyday lives and particularly on the resilience strategies of children in families when family members have extra needs.

When moving to a municipality, a refugee has an equal right to health care as others. Still, the obstacles to making use of health services vary. The persons can no longer rely on the support of the staff in a reception centre to access to the health services they need. Language difficulties and the necessary health literacy, including sufficient information about the system, symptoms, and diagnoses, are other types of stressors. Equal rights also means the refugee must pay for the health service. Few newly settled persons have paid work, and so they face a bleak financial situation. The extra costs for health services are not necessarily prioritized in the family budget.

5.7.2. Settlement of Unaccompanied Minors

For unaccompanied minors, municipalities receive state subsidies in the form of a unit price for each individual until the refugee turns 20 years old. Municipalities choose how to organize service provisions to attend to their obligations in relation to the settlement of minors, and they may opt for different types of living arrangements (e.g., foster homes, group homes, and other supervised living arrangements).

The work of the municipality vis-à-vis unaccompanied minor refugees depends not only on the efforts of each service provider but also on how they coordinate their services. A study assessing service provisions for unaccompanied minors, the researchers evaluated mental health services most negatively, with only one in ten responding that they consider this service to be 'good.' Other important areas that need strengthening are the educational system and the health services in general (Lidén et al., 2020).

Education is of the utmost importance for immediate social integration and for long-term integration into higher education and the labour market. The educational arrangements for unaccompanied minors vary between municipalities. A study on settlement found a tension between the young refugees' desire for quick progress and the assessments of teachers, career tutors, and staff in their residential arrangements concerning what must be in place for the refugees to complete their education successfully (Lidén et al., 2020). The study also points to the need for higher-level cooperation to find alternative solutions to challenges such as absenteeism and special education and to develop measures that can support young refugees' education. Alternative paths to education and training should also be strengthened to provide routes into the labour market for young refugees who have limited schooling and who are at risk of dropping out of primary or secondary education. A study on education and psycho-social support in schools for refugee youths found a need to improve the teachers' and other staff members' competence and the schools' resources to meet the needs of newly arrived students (Lynnebakke et al., 2020).

Studies on the health conditions of refugees find that several post-migratory stressors that are linked to mental health problems can be related to the period after resettlement in Norway. For example, a follow-up study of unaccompanied minors with a five-year stay in Norway found that the average level of symptoms of depression had decreased; however, there were no indications of significant changes in the levels of symptoms of anxiety, post-traumatic stress, and externalizing difficulties (Jensen et al., 2019). The study showed significant individual variation in the degree of improvement of versus worsening of mental illnesses. The researchers see this finding as a clear indicator of the need to monitor the mental health of unaccompanied minors over time and to provide treatment to those who exhibit negative development. We expect that this is also the case for adults facing traumas related to war and torture.

Restrictions linked to limited and temporary residence permits are but one stressor with a negative influence on the health of the person. The unaccompanied minors and the families with children who are settled, as well as living with such restrictions, experience long waiting times to have their permits renewed. Insecurity and fear, thus, continue to reinforce mental health problems (NOAS 2020b, p. 37).

5.7.3. Special Needs Related to Health and Disabilities

Some refugees with particularly special needs await settlement for years, including persons with chronic health problems or diagnoses that require expensive follow-up and treatment. As discussed earlier, the facilitated section in reception centres and the special care unit have a high proportion of residents waiting for settlement far above the average time. The employees in these units consider the situation to be extremely serious.

In 2019, approximately 30 residents were in this category, some of whom had waited up to seven to eight years to be settled. In November 2020, 15 persons were still waiting for resettlement because of their demanding health needs.

Economic uncertainties are particularly linked to the resettlement of some subgroups of refugees with special needs, which includes refugees with extraordinary, long-lasting needs requiring continual follow-up and refugees with unrecorded mental disorders. A municipality receives state subsidies from the Directorate of Health for all citizens with an extraordinary need for resource-demanding health and care services, including newly settled protection seekers.

In addition, the current resettlement system facilitates the resettlement of disabled people by generating an additional grant to the municipality that accepts a person with special needs. This grant lasts for five years. Rambøl (2020) finds in an evaluation of the resettlement system that this extra grant is important for the municipalities' ability to resettle refugees with special needs but that the scheme lacks an incentive for quicker resettlement. The subsidy scheme's facilities also contribute to the municipalities experiencing economic uncertainty when settling refugees with special needs.

In several municipalities, the concern is that these subsidies will not cover the actual extra costs. The municipalities believe that the expectations are too high for the already scarce institutional and economic capacity of the municipalities. In a study (Weiss et al., 2020), the following example was given to specify the dilemmas of the municipalities:

> *We have the expertise. But we don't have the economy. How to manage if this case will cost us one million a year? We've figured it out because we had experienced a similar case earlier: a single mother with three children, all autists. They've figured it out, it could cost one million, maybe up to 10 million, and that's an incredible sum to cover for a municipality. If the state wanted us to take this case, we would say yes if the IMDi covered the costs for five years. The IMDi denied to do so, and then the discussion ended.* (p. 40)

Financial issues, therefore, prevent the settlement of persons with resource-demanding needs (Rambøl 2020). Despite the good intentions to resettle those with special needs and the many positive examples of municipalities settling persons with multiple vulnerabilities, it remains a challenging and time-consuming process.

In autumn 2020, a political initiative was sent to Parliament to seek a solution by extending the period of the subsidy for settling persons with special needs. [113]

113 Doc 8, a request for Parliament, sent from the political party SV. See https://www.utrop.no/nyheter/nytt/234426/. The same solution is addressed by the UDI director, https://www.nrk.no/tromsogfinnmark/mener-de-har-losningen-for-flyktninger-som-ingen-vil-bosette-1.15214968

CHAPTER 6: VULNERABILITY AND THE ASSESSMENT OF REFUGEE STATUS: LAW AND PRACTICE

This chapter maps out ways in which the concept of vulnerability is operationalized in decisions to grant and withdraw refugee status (§28 and §37 Immigration Act). For people denied refugee status, section §38 of the Immigration Act (residence for 'strong humanitarian considerations' or 'special ties to Norway') offers a safety net when return would be, as our informants explained, strongly 'inadvisable' or 'unreasonable ' (chapter 7). While many of the factors overlap (i.e. gender, age, experience of trafficking), the nature of the assessment and well as the legal consequences differ between these two types of status. For example, while specific vulnerability factors may render someone more exposed to persecution or serious harm under IA §28 (section 5.2), the concept of vulnerability tends to inform the assessment of humanitarian need under §38 as a set of cumulative factors. Furthermore, the requirement under §38 to weigh reasons in favour of residence against immigration control considerations means that the legal weight of these factors - including the best interests of children - is diluted. Whether someone is permitted to remain may depend not on the severity of their need but on the number of people from that country in a similar situation (chapter 7).

The analysis in both chapters 6 and 7 draws on primary legal sources like the IA and IR, interviews with decision-makers from UDI and UNE, circulars, practice instructions and a small sample of cases from UDI and UNE.

6.1. Vulnerability and the Law of Refugee Status (Immigration Act §28)

The current Immigration Act of 2008 represents the culmination of efforts to juridify refugee policy in Norway, and to bring Norway into line with regional developments in the law of asylum, including through the Qualification Directive of the Common European Asylum System.[114] Despite ratifying the 1951 Refugee Convention soon after its adoption, for decades , only a small fraction of refugees in Norway were recognized with refugee status. These were primarily people who claimed to be individually targeted on account of their political or religious beliefs (Einarsen 1997). Instead, the vast majority of positive protection decisions were based on 'strong humanitarian considerations'[115] In the late 1990s, the Immigration Regulations were finally updated in response to longstanding critiques, including from UNCHR, of Norway's restrictive application of refugee law.[116] As a consequence, a more gender and child-sensitive approach was adapted in accordance with international doctrine. These changes meant that, for the first time, persecution as a consequence of gender and sexual orientation (under the category of 'social group') was recognized as falling within the 1951 Convention refugee concept.[117]

114 Although Norway is not bound by EU legislation, there is a stated political ambition of alignment in this area. Meld.St.9 (2009-2010) Melding til Stortinget. Norsk flyktning- og migrasjonspolitikk i et europeisk perspektiv. Available at https://www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/jd/tema-og-redaksjonelt-innhold/redaksjonelle-artikler/2012/faktaark-stortingsmelding-om-norsk-flykt/id600197/.

115 Between 1994-2003, for example, 16% of all positive protection decisions were granted asylum, whereas 84% received protection on humanitarian grounds. For the majority of these years, however, the rate of asylum was even lower. See https://www.regjeringen.no/no/dokumenter/nou-2004-20/id387326/?ch=7#kap6-1-3., Tabell 6.5 Innvilgede tillatelser i perioden 1994 – 2003.

116 Ministry of Justice, Retningslinjer for nye asylkrierier, 13 January 1998. Available at https://www.regjeringen.no/no/dokumenter/retningslinjer-for-nye-asylkriterier/id107731/

117 Ministry of Justice, Retningslinjer for nye asylkrierier, 13 January 1998, para 4.

The clear intension of the drafters of the current Immigration Act was to ensure that those with a protection need under international law would be granted refugee status instead of leave to remain on (discretionary) humanitarian grounds.[118]

Section §28 of the Immigration Act of 2008 sets out the following criteria for refugee status:

A foreign national who is in the Norwegian realm or at the Norwegian border shall, upon application, be recognized as a refugee if the foreign national

> a) has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or
>
> b) without falling within the scope of (a) nevertheless faces a real risk of being subjected to a death penalty, torture or other inhumane or degrading treatment or punishment upon return to his or her country of origin.

A foreign national who is recognised as a refugee under the first paragraph is entitled to a residence permit (asylum). In an assessment under the first paragraph, account shall be taken of whether the applicant is a child. An applicant shall as a general rule also be recognised as a refugee in accordance with the first paragraph when the need for protection has arisen after the applicant left the country of origin and is a result of the applicant's own acts. When assessing whether an exception should be made to the general rule, particular weight shall be given to whether the need for protection is due to acts that are punishable under Norwegian law or whether it seems most likely that the main purpose of the acts was to obtain a residence permit. The right to be recognised as a refugee under the first paragraph does not apply if the foreign national can obtain effective protection in other parts of his or her country of origin than the area from which the applicant has fled.

Norwegian law thus recognizes refugee status for persons who meet the refugee definition established in the 1951 Convention as modified by the 1967 Protocol. In addition, it extends refugee status to persons protected from return under human rights law, specifically under Article 3 of the ECHR, Article 3 of the Convention against Torture (CAT), and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). This departs from the practice of many other countries, which provide a distinct, complementary status in such cases. Recently, the Ministry of Justice and Security proposed amendments to the IA, providing the possibility of granting a subsidiary status to persons who fall within the 'extended refugee concept' of §28 (b) in times of 'significant increases' in refugee arrivals.[119] According to this amendment, a person with a need for protection under §28 (b) will not be recognized as a refugee but instead will re-

118 The need to establish a clear distinction between compassionate (humanitarian) and protection grounds is discussed in the White Paper drawn up for the drafting process of the current IA of 2008 (see NOU, 2004, p. 20) *Ny utlendingslov* 6.9.1.

119 Ministry of Justice and Public Security, Høringsnotat: Forslag til endringer i utlendingsloven og-forskriften–oppholdstillatelse på grunnlag av subsidiært beskyttelsesbehov ved en betydelig økning i asyl-søkertilstrømningen, 27 May 2020.

ceive a permit that provides the basis for permanent residence only after two years' residence in Norway. This would make family reunification more difficult, a change that has been criticized by the UDI, among others, for the negative effects on unaccompanied minors who receive this subsidiary status.[120]

Section §28 also, in line with Norway's obligations under the CRC, confirms that "account shall be taken of whether the applicant is a child" in the asylum assessment (§28 para 3). Finally, it carves out an exception to refugee status when authorities determine that the claimant can access 'effective protection' in another part of his or her country of origin—the so-called IPA (§28 para 5). When the need for protection has ended, the Norwegian IA includes a provision on the cessation of refugee status (§37), which mirrors the language contained in the 1951 Refugee Convention (1C).

Table 6.1 Decision Outcomes under §28a and b and §38 in the UDI and UNE from 2014–2019 (quota refugees are not included)

	2014	2015	2016	2017	2018	2019
Convention refugee status	3 828	5 610	11 692	3 977	1 446	1 730
Subsidiary status to persons who fall within the "extended refugee concept"	1 250	780	460	228	79	72
Humanitarian status	800	762	719	679	226	221

Source: KOM, 2019

The following sections explore how the concept of vulnerability is operationalized in the determination of whether the claimant has a 'well-founded fear' or 'real risk' of persecution or serious harm. We then turn to specific categories of vulnerable protection seekers that are recognized in Norwegian law and practice: children, LGBTQI+ persons, women and girls, and victims of trafficking. The final section examines how vulnerability comes into play in decisions to *deny* protection on the basis of an IPA or to withdraw protection when conditions in the country of origin have changed.

6.2. Vulnerability and the "Well-Founded Fear" of Persecution or "Real Risk" of Serious Harm

The IA (§29) defines persecution as a severe violation of basic human rights, both single acts and repetitive measures that cumulatively meet the same threshold. The Act provides a (non-exclusive) list of persecutory acts, which includes sexual violence and 'acts of a gender-specific or child-specific nature. 'Topic and country guidance provide greater detail about types of persecution that refugees in a given context might typically risk. For example, the Gender Guidelines produced by the Ministry of Justice (2012) mention rape, forced sterilization or abortion, FGM, bride burning and honour killing, mistreatment inside and outside the home, forced marriage, forced prostitution, and human trafficking.[121] They also observe that factors related to a person's gender, gender identity, gender expression, and sexual orientation can impact their ability to receive protection. It may be impossible to seek help from the authorities, their

120 UDI, Response to the proposal on changes to the IA and Regulations, available at www.regjeringen.no/no/dokumenter/horing--forslag-til-endringer-i-utlendingsloven-og--forskriften-om-oppholdstillatelse-pa-grunnlag-av-subsidiart-beskyttelses-behov-ved-en-betydelig-okning-i/id2693027/?uid=7951929d-8105-4768-9929-83f6f1cd8603.
121 Ministry of Justice (2012) section 3.1

narrative may not be believed, or they may even experience further abuse from the police.[122] It is typical of the country reports to point out specific forms of persecution targeting both women and children. The Iraq guidance, for example, notes that 'vulnerable children' may be exposed to child marriage, FGM, trafficking, forced labour, forced recruitment, violence (including violence in the home and sexual exploitation), lack of documentation, and a lack of a caregiver.[123]

In addition to identifying acts of persecution or other serious forms of harm that particular categories of people may face, country- and topic-specific guidance documents also recognize that vulnerable groups might be at greater *risk* in insecure situations or that the threshold for harm may also be lower for

vulnerable people. For example, with regard to Afghanistan, the authorities recognize that in provinces where threats associated with the conflict are not so dangerous that they give rise to a *generalized* need for asylum, 'exposed groups', in particular families with children and UAMs, will more often be considered to have a *specific* need for protection vis-à-vis their area of residence.[124] Children may also be less able than adults to resist certain harms, such as forced recruitment by the Taliban, and they might have a stronger fear of such recruitment.[125] Meanwhile the Gender Guidelines note that people who are 'extra vulnerable' will have a lower threshold for experiencing a reaction that can be considered persecution or serious harm; gender may shape a person's response to threats in combination with, for example, age, health condition and/or social network.[126]

Although many vulnerable people may have a heightened subjective fear of return, subjective fear on its own is not *sufficient* for meeting the UNHCR Convention criteria; the central concern is rather whether that fear is justified in an objective assessment. Furthermore, Norwegian practices only consider *future* threats when it comes to the evaluation of a person's 'well-founded fear of persecution' or 'real risk' of serious harms in §28 (a) and (b). This means that survivors of torture and rape will not qualify for protection based on their previous experience alone.[127] However, past persecution can shed light on the danger of new assaults in the future. Intense subjective fear may also be taken into account when there is some uncertainty regarding the objective risk.[128]

6.3. Vulnerability and Categories of People in Need of Protection

As mentioned in section 2.1.1, the UDI website identifies certain categories of vulnerable protection seekers. A distinction may be drawn, however, between how the concept of vulnerability is used in the asylum administration in general and how it is used for the substantive assessment of an asylum claim. For example, certain women, children, victims of trafficking, and LGBTQI+ claimants may have unique protection needs in Norway, which require adaptions in the way they are received, interviewed, and followed up on. These same vulnerabilities may not be intrinsic to the claim: for example, a young Syrian woman may be exposed to harassment from men in a crowded reception facility. Her reasons for leaving Syria, however, may relate to generalized violence rather than specific threats stemming from her age or her gender.

122 Ministry of Justice (2012) section 3.2
123 UDI 2016-011 Asylpraksis Iraq section 5.4.4
124 UDI 2014-10 Asylpraksis Afghanistan section 5.3
125 UDI 2014-10 Asylpraksis Afghanistan section 5.3.4
126 Ministry of Justice (2012) section 4
127 Ministry of Justice (2012) section 4.3
128 Ministry of Justice (2012) section 4.3

When it comes to the refugee claim, the concept of vulnerability serves as a heuristic device to make legible those groups who face 'prejudice, stigma and social disadvantage' that exposes them more routinely or acutely to serious harms, or compromises their ability to access effective state protection (Peroni & Timmer, 2013, p.1075).[129] Because refugee law explicitly acknowledges certain sources of vulnerability – for example based on ethnic or religious identity – it is in the catch-all social group category where the concept of vulnerability does the most work. On its resource page for the term 'refugee,' the UDI explains the concept of social group with examples of LGBTQI+ persons, victims of trafficking, and 'vulnerable groups of women and children.'[130] The types of harm these groups may face are outlined both in terms of topic and country guidance.

The categories of vulnerability are neither exclusive, nor are they clearly delimited. For example, stateless Palestinians have been described not only as a social group for the purposes of establishing a claim to asylum but also as a *vulnerable* one, "disproportionately exposed to controls, kidnapping and imprisonment, with no clan network or other support structure".[131] Somalians who have lived for long periods outside the country may be vulnerable to harassment because they no longer recognize cultural codes. Further, the *intersectional* nature of vulnerability may also be decisive in an asylum decision. For example, a single female survivor of sexual violence with little education and no network if she returns may face a 'real risk' of serious harm based on the collective impact of those factors in some countries. In essence, the concept of vulnerability highlights factors that enhance the risk of exposure to persecution and other serious harm.

In the following sections, we review practice vis-à-vis categories of vulnerable people through the lens of instructions, circulars, and internal guidance, while also highlighting through actual cases how the various aspects of vulnerability interrelate.

6.4 .Gender-related Vulnerability

6.4.1. Single Women Without a Male Network

In some countries, including Afghanistan, Somalia, and Iraq, single women without a male network constitute a social group exposed to abuse that meets the threshold of persecution under the Immigration Act §29 para 1. Where a single woman's only male network lies outside her spouse or close family, decision-makers should consider whether such network is able and willing to maintain her safety. Relevant considerations include, for example, the security and humanitarian situation (Somalia) and the woman's own resourcefulness (Iraq).[132] When return is proposed to a part of the country other than the woman's home area (see section below on IPA practice), the absence of 'effective protection' in the form of a male network can disqualify the IPA.[133] Permits granted on this basis are conditioned on the woman remaining alone: if her husband or partner should show up in Norway, or evidence of a network should emerge, authorities may consider whether her permission to remain as a refugee can be withdrawn (section 6.10 on cessation).[134]

129 This reflects a relational view of vulnerability, which focuses attention on the social, historical and institutional forces that creates or sustains it. Ibid., 1064.
130 www.UDI.no
131 N168483114
132 UDI 2018-014 *Asylpraksis Somalia*; UDI 2016-011 *Asylpraksis Irak*
133 For example, one decision by the UNE considered that the unstable situation in the claimant's home area, combined with the fact that she was young, a Yezidi, and lacked a known network, would disqualify t the possibility of "return" to an IPA in Kurdistan. UNE, N1733661106.
134 See, for example, UDI 2014-004 *Asylpraksis Afghanistan* 5.3.2.1.

6.4.2. Harmful Traditional Practices—Female Genital Mutilation (FGM)

In addition to the Gender Guidelines, the Ministry has issued specific guidelines regarding claims related to the risk of FGM. Girls (or women) from certain countries at risk of having to undergo FGM are recognized to have a well-founded fear of persecution, either almost automatically or based on a specific assessment.

Even if not brought up by the claimant, the UDI still determines the risk of FGM when the practice is common in the claimant's country of origin. The decision-maker must then consider the overall prevalence of FGM, the occurrence within the ethnic and/or religious group to which the claimant belongs, the situation for girls/families who resist the practice, and lastly the authorities' view on FGM. Individual factors include the child's age, the resource situation of the parents, their knowledge of FGM, practice of FGM within the family, and the ability and will of the parents to resist FGM.[135]

For example, in Nigeria, FGM takes place both in the North and the South, but it is more prevalent among the Christian population in the southern part of the country. Nigeria has many different ethnic groups and the procedure can occur on newborn girls as well as women who are about to be married.[136] The percentage of girls undergoing the procedure depends on the ethnic group she belongs to. The administrative decision-maker must hence have in-depth country of origin information, and must take the family's views on FGM and their resources into consideration when assessing the individual risk upon return. A family might be opposed to FGM, but if they are poor and financially dependent on relatives in favour of the procedure, they may be pressured to submit. Decision-makers must then consider the situational context of the family in order to determine whether the girl in question qualifies for refugee status. Context- specific decisions require that country practice notes specify the factors that lead parents to be more exposed to social pressures when it comes to FGM – information that is not always included. In Somali cases, however, since 90 percent of Somali girls undergo FGM, there is little need to go into the specific vulnerabilities or circumstances of each family. Instead, girls who have not undergone the procedure will almost automatically have a well-founded fear of persecution.

Despite vulnerability-sensitive decisions like the one mentioned above, many raises clear protection risks, since daughters are completely dependent on their parents for protection in this context.

6.4.3. Harmful Traditional Practices—Forced Marriage

Although there is no specific guidance on forced marriage, the Gender Guidelines underline that if the claimant has no possibility of opposing a forced marriage without being exposed to serious consequences for his or her life, health, or life situation, it will amount to persecution. More borderline cases can arise when the claimant risks ostracization from the family and/or the local community.[137] The main question is whether the claimant can oppose the marriage without serious repercussions. The category is closely linked to that of single women without a male network, as many women who oppose forced marriages will lose the support of their families and be left to manage on their own.

135 https://www.regjeringen.no/no/dokumenter/retningslinjer-om-handtering/id684016/ Section 9
136 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2011-002/ Section 5.2.1 135
137 https://www.regjeringen.no/no/dokumenter/retningslinjer-om-kjonnsrelatert-forfolg/id696289/ section 3.1

Country-based guidance also addresses forced marriage where the practice is known to occur. For example, according to the Sudan practice note, information about previous mistreatment towards the claimant or other family members in similar situations should be taken into consideration, as well as the claimant's ability to oppose or break out of the marriage. The decision-maker must evaluate whether or not Sudanese authorities can protect the claimant, even though the UDI is of the general opinion that the authorities have neither the will nor the ability to do so.[138] The Ethiopia guidance, meanwhile, emphasises the need for a contextual assessment as the consequences of opposing or escaping a forced marriage varies according to regions, cities, and villages. Risks include stigmatization and exclusion from both the family and the local community, and denial of identity document.[139]

The Iraq country guidance notes that women subject to forced marriage typically lack practical means of opposing it.139 If they do escape, they are likely to be especially vulnerable as single women without a family or network. As opposed to guidance on Sudan and Ethiopia, which frame vulnerabilities of single women regarding shelter, education and work as factors under a §38 assessment (humanitarian conditions), guidance on Iraq frames this as a protection issue under §28, emphasizing also the abuse, harassment, discrimination, and being taken advantage of are other challenges face.[140]

Some country practice memos hence encourage the decision-maker to consider the claimant's vulnerability in the protection assessment, whereas others only do so under the assessment of a humanitarian permit. Some countries of origin have no practice memos at all. This lack of consistency with regard how these risks are treated between countries highlights the challenge of securing equal treatment of protection seekers with similar claims.

6.4.4. Abuse, Domestic Violence, and Rape

As described in the Gender Guidelines, women who experience abuse, domestic violence, and rape may have a well-founded fear of persecution.[141] More specific 'case types' are found in country guidance. The Iran practice note states that 'Women abused by their husband' may lack access to the court system depending on their resources and whether they come from an urban or rural location. The country practice memo also notes that any children involved are more vulnerable.[142] Iranian cases hence call for a context specific approach, whereas the opposite is true for Turkish cases, where those who have been subject to domestic violence almost automatically will be granted refugee status if their narrative is credible.[143] This is based on an assessment of rising rates of domestic violence and the lack of real protection provided by the Family Act. [144]

138 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014-006/#5.3.2.5.3.2_Voldtekt section 5.3.1
139 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014-006/#5.3.2.5.3.2_Voldtekt section 5.3.1
140 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2016-011/#5.4.5.5.4.5_Enslige_kvinner section 5.4.5 1
141 The same goes for forced sterilization or abortion, bride burning, and honor killings.
142 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2016-002/#5.3.1.5.3.1_Kvinner_mishandlet_av_ek_section 5.3.1
143 Cases of Turkish women who claim to have been subjected to domestic violence or honor-related violence will systematically be verified through the Norwegian Embassy in Ankara.
144 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2017-007/#5.2.1.5.2.1_Vold_i_n%C3%A6re_relasjoner_/ section 5.2.1

Asylum based on a well-founded fear of persecution linked to abuse, domestic violence, and rape can be assessed contextually or be granted more or less automatically as described in country practice memos. However, for many countries there is no mention of these issues at all, as is the case for Sudan,[145] Iraq, Nigeria, and Somalia. Nonetheless, in one UNE decision we surveyed, an Iraqi woman whose husband had returned to Iraq following a negative asylum decision requested protection for her and her two children based on reprisals she could expect for leaving her husband. She received protection as a member of a particular social group "women from a conservative environment in the Kurdish Provinces of Northern Iraq who have left a marriage." UNE found that she risked being returned to the forced marriage with potential physical and/or psychological abuse. Honour killing was also a possibility if she opposed restoring the family's honour by returning to the marriage.[146] This illustrates that gender related vulnerability can be multifaceted, involving several different acts of violence. As opposed to many country practice notes, UNE does distinguish between physical and psychological abuse and recognizes that psychological abuse also can be part of the well-founded fear of persecution.

6.5. Victims of Trafficking as a Particular Social Group

The Immigration Act Section §30 para 1 (c) states that "(f)ormer victims of human trafficking shall be regarded as members of a particular social group." The Gender Guidelines specify that forced prostitution/human trafficking can involve abductions, being locked up, rape, slavery, forced labour, and maltreatment and these can all amount to persecution depending on the individual circumstances of a case. That human trafficking has a special position in law is clear from explicit references in the Immigration Act and Regulations. Even so, one UDI employee said it is "difficult to grasp:" it is not always clear when the rights linked to this status are activated. Further, about half of the trafficking cases are linked to the labour force, yet these victims rarely apply for asylum on their own initiative. For example, the so-called 'drifters', - underage boys from North Africa who are caught stealing and in drug seizures- may be victims of human trafficking, but they rarely claim asylum on this basis. A central challenge, then, is to identify victims of human trafficking, and to persuade people to trust the UDI enough so that they dare tell their story. The UDI has published a circular on Human Trafficking that according to one UDI employee is under revision. The UDI emphasises that case workers must take into consideration that potential victims of human trafficking may be subject to threats, violence, and abuse of their vulnerable situation and that this may influence their ability to present their story in a credible manner.[147] As one UDI employee said, there is now more focus during the interview on abuse and mistreatment during the journey to Norway, but that the short time allocated to the asylum interview still presents limitations.

Claimants who have established that they are victims of human trafficking are assessed, like other claimants, according to their future risk of persecution. Determining whether a former victim of trafficking has a well-founded fear of persecution is a comprehensive analysis including the possible risk of repercussions and the risk of being re-trafficked (including whether the claimant's family contributed to the recruitment, how long ago the recruitment took place, potential debt to the traffickers, and what contact the claimant has with the traffickers). Thereafter, reactions due to unpaid debt, cooperation with the police, stigma, and social exclusion must be examined. One UDI employee said that, in Somalia, for example, the risk of persecution is high as women who have worked in prostitution would be completely ostracized from her network if that fact became known. A child-sensitive evaluation is also necessary, as

145 Only the legal implications of rape are described.
146 UNE N16356654. Decision included board members.
147 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014-031/#3.3.3.3._S%C3%A6rskilte_hensyn___ved_vurd section 3.3

"…children may to a greater extent be marked by the negative experiences and therefore be more vulnerable than adults and in need of more follow-up."[148] In Albania, meanwhile, victims of trafficking are as a rule referred to government protection.[149] As one UDI employee explained, UDI generally considers that European countries can take care of their own citizens.

The country practice guide on Nigeria elaborates on the risk of repercussions and being re-trafficked and includes factors that further estimate a person's particular risk. These include the age of the claimant, both when trafficked and at the time of the decision, the degree of vulnerability, and the resource situation of the claimant (education, work history, and network).[150] Decisions on claims from Nigeria often canvass the possibility of return to an IPA (unlike those from smaller countries like Uganda). When the IPA is assessed, an applicant's vulnerabilities in the return area may exceptionally justify a residence permit on grounds of humanitarian factors (her lack of network, caregiving responsibilities for children).

In one UDI case, a former victim of human trafficking was granted protection, not because it was found that she risked being re-trafficked or pursued to pay debts, but because she had reported the trafficker to the police. As the person was 35 years old at the time of the decision, the UDI found that she was too old to risk re-trafficking. In addition, she had not had any contact with the trafficker for several years and had already paid a large portion. On the other hand, she had been trafficked at the age of 26, had worked for several years in prostitution, and had been exposed to high levels of physical and psychological abuse from her trafficker. In this case, her long suffering, her subjective fear and her mental health became part of the protection assessment.

In another decision, the risk of being re-trafficked was recognized, based on the fact that the claimant had been abused by her father, became pregnant at the age of 14, and was now only 30. The decision emphasised her vulnerability, noting her lack of resources, schooling or work experience, and a family history of domestic abuse. The claimant stated that her trafficker knew she had reported to police in Norway, but this was deemed irrelevant since the case was dismissed.

Both decisions culminate by granting protection for a victim of human trafficking. However, the path to this conclusion was different. Even though the two women were about the same age, one was considered at risk of re-trafficking while the other was apparently too old. On the other hand, even though the second applicant claimed that the trafficker knew of her contact with the police, this was not taken into consideration. For the first applicant, the police report combined with her strong subjective fear were decisive.

In a third case, a victim of human trafficking was recognized to risk persecution based on unpaid debt, being re-trafficked due to her young age, and the fact that she reported the case to the police. However, the decision-maker referred her to an IPA, without explaining why effective protection was available. No assessment of vulnerability or subjective fear was made, despite information that the applicant received treatment for trauma. The applicant was however granted a permit to witnesses in human trafficking cases according to IR section §8-4(2).

148 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2011-002/#5.2.4.5.2.4._Menneskehandel_i_form_a_section 5.1
149 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2015-001/ section 5.2.3
150 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2011-002/#5.2.4.5.2.4._Menneskehandel_i_form_a_section 5.2.4

Country practice notes and our small sample of decisions confirm that vulnerabilities related to return after having been trafficked are considered in the protection assessment, but the inclusion or exclusion of specific factors (resources, security of the applicant's social network, police involvement in trafficking networks, exposure to the risk of prostitution or re-trafficking, age, the possibility of an IPA, etc.) differ and are applied inconsistently even among claims from the same country.

6.6. Sexual Orientation

In addition to the Gender Guidelines, the Ministry of Justice and Public Security has issued an instruction to the UDI on how to interpret the Immigration Act Section §28 when an applicant claims to be persecuted based on his or her sexual orientation or gender identity. The relevant question is whether fear of persecution is a central reason for the LGBTQI+ applicants to choose to hide their sexual identity upon return to their home countries. When assessing asylum applications from alleged LGBTQI+ persons, the caseworker must have thorough knowledge of the situation in the home country for LGBTQI+ persons.[151]

In Nigerian cases, the UDI assumes as a starting point that LGBTQI+ applicants who live openly in Nigeria may risk persecution as the President signed a new law in 2014 making same-sex relationships illegal. Even though the law has yet to be ratified by all local governments in Nigeria, arrests are known to take place. In addition to this, there exists a massive condemnation of homosexuality in Nigeria, and little reason to believe that LGBTQI+ persons will seek out or receive help from the police. With regard to an IPA, questions include whether persecutors would pursue the applicant in the IPA area and whether the applicant could live openly there without the risk of persecution.[152]

In Sri Lankan cases, the UDI's country guidance notes that LGBTQI+ persons may constitute a vulnerable group, and that homosexual practice is forbidden by dormant legislation. Decision-makers must concretely consider whether the asylum seeker risks being ostracized from the family or being blackmailed for money by the police or other government agencies. Further, he or she must determine whether or not what the applicant risks amounts to persecution, and whether or not the authorities have the ability and will to offer sufficient protection.[153] As for Albania, the UDI is of the opinion that in most cases it is "obvious" that an applicant from this country does not have a well-founded fear of persecution. [154]

When considering LGBTQI+ claims, decision-makers are instructed to follow a specific method. Central to the credibility assessment is whether the claimant has been able to explain the coming out process in a coherent and reflected way.[155] If so, the next question is whether the applicant would risk persecution if he or she chooses to live openly upon return. If the applicant would be open about his or her sexual orientation, and thus risk persecution, protection will be granted. If the person would hide his or her sexual orientation upon return, the case worker must consider the reasons behind this decision. If the act of

151 https://www.regjeringen.no/no/dokumenter/retningslinjer-om-kjonnsrelatert-forfolg/id696289/ section 2 154 udi-2011-002

152 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2011-002/

153 udi-2012-001 Seksuell legning section 5.3.2

154 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2015__001/#5.2.2.5.2.2%C2%A0Seksuell_orientering_og section 5.2.2

155 In one decision, for example, protection was refused because the female claimant had not sufficiently explained her coming out process and experiences tied to this. Expectations concerning coming out processes and coherent identities have been subject to critique. See for example, Dawson. & Gerber, (2017) pp. 292–322. Although the circulars also mentioned that refugee status may be granted to those who are assigned a particular identity by people around them, the focus on credibility here, and particularly the ability to recount a well-reflected narrative, may disadvantage this group from receiving the protection they need.

hiding the sexual orientation is solely based on fear of shaming the family, broken friendships, or family ties, etc., the person will not be granted refugee status. If, however, a central reason for the secrecy is fear of persecution and the fear is well-founded, refugee status will be recognized.[156]

The LGBTQI+ caseload - frequently labeled as 'vulnerable' - illustrates some of the tensions inherent in attaching the concept of vulnerability to certain categories of claims. In two UDI cases, for example, the claimants reflected carefully on their situation, and dressed openly in ways typical of the opposite gender. Both had prolonged contact with NGOs and had gone through a long process in order to understand their identities in the societal context of their home countries. This resilience - expressed through their comfort with their gender expression was precisely what made them vulnerable to harassment, social exclusion, and acts of violence. Other LGBTQI+ claimants, meanwhile, fail the credibility test if their identity is less clearly expressed, or their claim is based on other people's perceptions of their gender identity or sexual orientation.

6.7. Health and the Protection Assessment

Health-related problems cannot, in general, provide the basis for refugee status in Norway. Although §28(b) provides, in theory, refugee protection for people who face a 'real risk' of return to torture or inhuman or degrading treatment—including as a consequence of serious health problems—Norwegian practice distinguishes between situations covered by Article 3 ECHR that involve 'assault ' or other physical harms of a humanitarian nature. Health problems, therefore, are typically addressed under §38 (chapter 7).[157]

Where health cases are recognized as the basis for refugee status, there is often an element of assault and/or violence on the part of authorities. For example, in UDI's guidance on cases from Somalia, the possibility that people with psychological health problems would be forced into a psychiatric hospital, where they face a risk of being chained for extended periods of time, can give rise to a real risk of inhuman or degrading treatment. In assessing whether this is the case, the decision-maker should consider whether the claimant is aggressive or violent, and whether he or she has a private network that is willing and able to provide medical support not available to the typical Somali citizen.[158]

6.8. Vulnerability and Age, Including UAMs

The Convention on the Rights of the Child (CRC) is fully incorporated into Norwegian law as part of the Human Rights Act of 1999 and the Norwegian Constitution. This means that the 'best interests of the child' should be a fundamental consideration in all decisions, and that a child's right to be heard be considered fundamental to ensure that his or her best interests are identified. As mentioned above, §28 para 3 specifies that 'account shall be taken' in the asylum assessment if the applicant is a child.

However, although the 'best interests of the child' are recognized as a guiding principle in all decisions involving minors, it is transposed in the asylum context to a 'child sensitive' approach. Importantly, only the return conditions- not the child's situation in Norway -are relevant for the assessment of refugee status.[159] A 'child sensitive' approach means that harms may be less objectively severe to qualify for persecution or

156 https://www.regjeringen.no/no/dokumenter/retningslinjer-om-kjonnsrelatert-forfolg/id696289/
157 Ot.prp. nr. 75 (2006-2007) pkt. 7.3.
158 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2018-014. Para 6.3.
159 Norwegian Supreme Court, Rt. 2015 s. 1388 para 86. https://www.domstol.no/globalassets/upload/hret/avgjorelser/2015/avdeling-avgjorelser-desember-2015/sak-2015-203-anonymisert.pdf

serious harm than they would be for adults.[160] Assessment of whether an IPA is available should likewise be done with special consideration of the applicant's age. As noted above, caseworkers must also be attentive to acts and forms of persecution that especially target children (§29 para 2(f)). Country guidelines often mention typical forms persecution may take, and point out categories of children in especially vulnerable situations. In the Afghanistan guidelines, these include, for example, Bacha Bazi (dancing boys), children without a father (yatim), or other male caretakers, as well as street children.[161] Other country guidance singles out girls at risk of harmful traditional practices.

Box 6.1 The Security-vulnerability Nexus in Afghanistan

In Afghanistan, the UDI considers two provinces in Afghanistan to have a security situation so serious that no asylum seeker is to be returned to these as this would be a breach of the European Convention of Human Rights Article 3. A second group of named provinces are considered by the UDI to have such a high level of violence that it does not take much of individual circumstances for there to be a breach of Article 3. A third group of provinces calls for more of individual circumstances to establish a breach of Article 3 as the level of violence is lower. The fourth group of provinces is considered to be safe as the level of violence is too low to establish a breach of Article 3. Still:

> *Applicants from provinces where the security situation alone does not give the right to protection may, based on an individual assessment, still qualify for subsidiary protection. The more serious the situation is, the lower the requirements concerning the individual circumstances." The section lists the following individual circumstances to be relevant: age, gender, health circumstances, network/ family, ethnicity, religious belonging. "The case worker shall assess the individual circumstances in light of the security situation in the applicant's home place.* (UDI, 2014-004 Asylpraksis Afghanistan Section 3.3)

The guideline goes on to discuss the UDI's practice in cases involving children. It underlines that when it comes to returning children to provinces in Afghanistan with a serious security situation, children are first of all at risk of arbitrary violence, but also serious consequences such as limited health services, food supplies, schooling, and the psychological toll of experiencing acts of war. As a starting point, both accompanied and unaccompanied children from provinces with a high level of violence will have a right to protection, whereas when it comes to the provinces with a lower level of violence, they may have a right to subsidiary protection based on a comprehensive assessment of the child's individual situation and the general security of the province.

6.9. Vulnerability and the Internal Protection Alternative (IPA)

According to the Immigration Act, even if a claimant establishes a well-founded fear or persecution or a real risk of serious harm, refugee status will not be recognized if he or she could safely relocate somewhere else in the country of origin. This implied exclusion is justified in Norway by the 'surrogate' nature of international protection vis-à-vis domestic protection. Accordingly, where protection from persecution or serious harm is available *somewhere* within the country of origin, the backup remedy of asylum may not be required.

160 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-007/#1.1._Innledning
161 UDI, 2014-004 *Asylpraksis* Afghanistan 5.3.4. https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014004/#5.4.1.5.3.4_Barn_i_s%C3%A5rbare_situasjon

Until it was amended on October 1, 2016, the Immigration Act framed the IPA exception as follows:

> *The right to be recognized as a refugee under the first paragraph shall not apply if the foreign national may obtain effective protection in other parts of his or her country of origin than the area from which the applicant has fled, and it is not unreasonable to direct the applicant to seek protection in those parts of his or her country of origin.*

It was within the concept of *reasonableness* that the claimant's vulnerability was typically assessed. According to UNHCR guidance, "age, sex, health, disability, family situation and relationships, social or other vulnerabilities…and past persecution and its psychological effects" may render return to an IPA "unreasonable" or "unduly harsh."[162] In Norway, however, the factors considered for the reasonableness test were linked to the criteria for residence on strong humanitarian grounds (§38 Immigration Act). The now defunct §7-1 of the Immigration Regulations, which established further parameters for practice, provided that

> [e]ven if §28 of the Act is applicable when considering returning an applicant to the area from which he/she has fled, it shall only be deemed to be unreasonable to direct the foreign national to seek protection in safe and accessible parts of his/her country of origin if the situation upon return will be such that the person concerned meets the conditions for a residence permit under §38 of the Act. In the assessment of whether the conditions for a residence permit under §38 of the Act are met, the fact that the foreign national has no connection with a safe and accessible part of his/her country of origin is not in itself sufficient.

As described below, conditions for a residence permit under §38 (strong humanitarian considerations) refer to several factors, of which serious health problems, best interests of the child, and social and humanitarian conditions are most relevant for the IPA context. However, the §38 framing of 'reasonableness' not only established a narrow material scope (excluding for example trauma resulting from past persecution), but also a very high threshold of application. Poor social and economic conditions were rarely enough to disqualify a proposed IPA, even for families with young children. A review in 2017 of cases involving Afghan families demonstrated that despite the lack of infrastructure, legal protection, and employment opportunities in 'safe' cities like Kabul, return was deemed reasonable as long as they were unlikely to end up in a squalid IDP settlement (Schultz, 2017). In one case, a Hazara family's reliance on migration as a coping strategy (through Iran and Russia before coming to Norway) was interpreted as an indication that return to yet another situation of displacement would not be unduly difficult.

6.9.1. Removal of the "Reasonableness" Requirement

Following the increase of asylum claims during the autumn of 2015, the Norwegian parliament passed amendments to the Immigration Act intended to signal a restrictive line on asylum. Among these measures was the removal of the reasonableness criterion for IPA practice, so that the only requirement for IPA application is the existence of 'effective protection' in a part of the country of origin. Considerations related to vulnerability that previously might have rendered an IPA 'unreasonable' are now excluded from the protection assessment unless they defeat the possibility of receiving 'effective protection.' The UDI's

162 UNHCR (2003) Guidelines on International Protection #4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees para 25. https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html

IPA guidance does not mention vulnerability, but it does acknowledge that the "effective protection" requirement precludes return to places where the European Court of Human Rights has found that humanitarian conditions would violate basic rights.[163] On the other hand, if return would not breach Article 3 of the European Convention on Human Rights, it is likely to be deemed 'safe' enough for IPA application. Following this logic, even a disabled Afghan lacking a network or resources in Kabul may be found to have a valid IPA there.[164]

6.9.2. Gender and Age-related Assessment of "Effective Protection"

The Gender Guidelines have not been revised following the removal of the reasonableness test in 2016. They underline, however, that social, cultural, and financial conditions can pose challenges for women to re-establish themselves in a new place, especially single women who may be subject to more discrimination and harassment than men.[165] While such considerations were previously part of the reasonableness assessment, they are now assessed as a discretionary matter under the §38 assessment of humanitarian grounds. Therefore, more women are referred to safe IPAs. Some exceptions to this include one UDI case where the fact that a young woman's trafficker was a relative precluded her from contacting her network for help upon return to a potential IPA. This fact, together with her long history of abuse, low level of education, lack of work experience, and trauma, led to the conclusion that an IPA would be unsafe. As a general rule, moreover, women from certain countries may also be deemed to lack effective protection unless they have a male network in the place of return.

In some decisions involving children approaching the age of majority, dependence upon a network is linked to security threats and therefore the safety assessment. For example, in one Appeals Board case, the claimant's illiteracy and his agricultural experience, "together with this vulnerability as a child" meant that he would be dependent on a network to support himself in a proposed IPA. Because of this he would be more visible to anyone with an interest in killing or exploiting him.[166] In another case, the Board of Appeals considered whether an IPA in Baghdad would be safe for a young Sunni-Muslim man from an ISIL-controlled area. In this case, the scales were tipped in the claimant's favour not only because it would be uncertain, given his lack of connection in the city, that he could settle there without a sponsor but also because, given his age, gender, and background, he would be "vulnerable to controls."[167] On the other hand, another decision from UNE emphasised the claimant's long migration history (in addition to his age, which was nearly 18) as an indication of resourcefulness, and referred him to an IPA despite his lack of a network, education, and skills. It was presumed that the relatives who invested in his travel to Europe could and would support him elsewhere in Afghanistan.

Specific vulnerabilities of children in the IPA assessment are highlighted in new guidelines for children's claims, including the child's identity, relationships, and affiliations, care options, health, gender, disability, and family situation. Although the impact of these guidelines will take time to assess, it is presumed that they will support a more robust assessment of children's access to effective protection in a proposed IPA, especially when they are part of a family unit.

163 UDI 2016-019 Internflukt. https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2016-019/#3.1.3.1_N%C3%A6rmere_om_vilk%C3%A5rene
164 *S.H.H. v. The United Kingdom*, Application no. 60367/10, judgment of January 29, 2013.
165 https://www.regjeringen.no/no/dokumenter/retningslinjer-om-kjonnsrelatert-forfolg/id696289/ section 3.5.
166 UNE, N1724620612, May 2017.
167 UNE, N16515039, February 2016.

6.10. Cessation criteria

The Refugee Convention permits cessation of refugee status under certain conditions, including when the refugee "…can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality" or, if the person is stateless, the country of previous residence (Article 1C(5) and (6)).

Although these criteria are incorporated into the Immigration Act (§37), actual cessation practice was, until 2016, limited to a handful of deportation cases involving serious crimes. The high administrative costs involved and the fact that those affected often had a right to remain on alternative grounds were among the reasons why this provision was not prioritized.[168] This changed because of political pressure to intensify return activities following high numbers of asylum seekers in 2015, and the subsequent fall in numbers in 2016, which freed up resources to pursue these cases (Brekke, Birkvad, & Erdal, 2019, p. 18). Cessation activities are part of a broader effort to identify cases where residence may be revoked, including when the initial decision was based on fraud or error. Although voluntary acts of a refugee can underpin a cessation decision (for example by re-establishing themselves in the country of origin), the 'ceased circumstances' provision above is the focus of the discussion that follows. Ceased circumstances can apply when general conditions in the country of origin have improved, but also - at least in Norwegian practice - when an individual protection need no longer exists.[169] The social group category covering age- and gender-related vulnerabilities is particularly exposed to individual cessation, and often a refugee status decision will indicate explicitly that status may be withdrawn if, for example, a homosexual refugee establishes themselves with a partner of the opposite sex, or a single woman without a network upon return is joined by her husband.

In April 2016, the Ministry of Justice and Security issued an Instruction to the Immigration Directorate on cessation of refugee status and revocation of residence permits.[170] While the Immigration Act permits cessation of refugee status, the Instruction *requires* that caseworkers apply the cessation provisions when conditions are met. In addition, they must consider cessation and eventual revocation when processing applications for permanent residence. The Instructions do not apply to refugees who already have permanent residence, are resettled from third countries, or have received collective protection in a mass influx situation. They do, however, apply to all refugees under §28 (a) and (b) who have not yet qualified for permanent residence, including UAMs. The enhanced requirements for permanent residence also passed in 2016 mean that a growing number of refugees may remain in a situation of prolonged temporariness.[171]

168 NOU 2004:20 at 6.6.
169 Rt-2010 s. 658.
170 Ministry of Justice and Public Security, GI-14/2016 (Instruks om tilbakekall av flyktningstatus og oppholdstillatelse når beskyttelsesbehovet er bortfalt, jf. Utlendingsloven §37 første ledd bokstav e og f «Cessation Instructions»), March 31, 2016. https://www.regjeringen.no/no/dokumenter/gi-042016--instruks-om-tilbakekall-avflyktningstatus-og-oppholdstillatelse-nar-beskyttelsesbehovet-er-bortfalt-jf.-utlendingsloven--37-forste-ledd-bokstav-e-og-f/ id2481475/
Revised in September 2016, see GI-14/2016 (Revidert instruks om tilbakekall av flyktningstatus og oppholdstillatelse når beskyttelsesbehovet er bortfalt, jf. utlendingsloven § 37 første ledd bokstav e og f). https://www.regjeringen.no/no/ dokumenter/gi-142016--revidert-instruks-om-tilbakekall-av-flyktningstatus-og-oppholds-tillatelse-nar-beskyttelsesbehoveter-bortfalt-jf.-utlendingsloven--37-forste-ledd-bokstav-e-og-f/id2513169/. These were revised once again in May 2019: GI-03/2019 –revidert instruks om opphør og tilbakekall av flyktningstatus og oppholdstillatelse når beskyttelsesbehovet er bortfalt, jf. utlendingsloven §37 første ledd bokstav e og f. https://www.udiregelverk.no/rettskilder/departementenesrundskriv-og-instrukser/gi-032019/.
171 It should be noted, however, that in the actual Somali cessation caseload, UDI has recently set aside cessation cases where the person most likely has an independent basis for residence, including under §38, for example, for reasons of long residence (between 8–10 years). Email from UDI, November 24, 2020.

In 2016, the Immigration Directorate sent its first warning to approximately 120 Somali refugees that cessation and revocation would be considered in connection with their applications for permanent residence.[172] By way of explanation, it stated that since al-Shabaab's withdrawal in 2012, the situation had appeared to stabilize. The Grand Board of Immigration Appeals reviewed this practice in 2017. It confirmed that the cessation analysis required a 'margin of security,' meaning that the grounds for refugee status disappeared *and* that the improvements in the country of origin appeared to be durable. When applying this standard to the facts in Mogadishu, a majority found that despite the state's inability to enforce the rule of law, adequate protection could be secured from the strong clan system—unless the persons can be regarded as "particularly vulnerable due to their lack of support from their clan or other networks."[173]

The Immigration Act also recognizes a 'compelling grounds' exception to the revocation of a residence permit. This means that a foreign national with strong reasons connected with prior persecution will not be returned to their country of citizenship or former habitual residence. Norwegian guidance provides that children should be given special regard, as they may often be able to invoke 'compelling reasons' for refusing to return.[174] On the other hand, Norwegian authorities are instructed to consider whether, despite having compelling reasons connected to previous persecutions for not returning to the place of previous residence, the refugee can still safely relocate to an IPA.[175] In practice, return to internal displacement is not, in itself, a source of vulnerability. In fact, it is reasoned that it is easier to settle away from the specific location in which persecution took place.[176] So far, most cessation cases have been set aside ("henlagt") because the refugee has other grounds for residence - based on a risk of FGM or forced marriage in Somalia, the lack of a network in Mogadishu, a family member with citizenship or permanent residence, or a child's long residence (4.5 years plus 1 year of schooling) in Norway.[177]

6.10.1. Cessation and UAMs in Particular

The revised Cessation Instructions from 2019 clarified the implications of this enhanced cessation practice for (former) UAMs. It confirmed that adults who received refugee status under §28 at least in part because they were under 18 years old are subject to cessation on the same basis as other (adult) refugees when they apply for permanent residence. In other words, conditions for which refugee status was granted must have changed in a durable manner. However, UDI should not, on its own accord, open a cessation case solely because the refugee has turned 18.[178] From the limited practice we have identified, it appears that in cessation cases involving former UAMs, changes in the security situation of the return area have been considered together with the fact that the refugee is no longer a child.[179] However, it is

172 Meanwhile a total of 1,600 Somalia cases had been identified as possible cessation cases. See https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=67367

173 UNE Grand Board of Appeals decision: Cessation of refugee status and revocation of temporary residence (June 2017). See also Brekke, Birkvad, & Erdal (2019) for an analysis of this caseload.

174 Cessation Instructions, 4.3.

175 Cessation Instructions, 4.2.

176 Ibid.

177 Email from UDI. November 24, 2020. UDI will consider the risk of FGM at its own initiative even if this has not been raised by the family.

178 Cessation instructions para 4.4.4. https://www.regjeringen.no/contentassets/ecdd677f1b094d318cffb8b1ecea9dc0/gi032019-l1050570.pdf

179 On the other hand, reunification with a parent, if the decision to grant asylum hinged on the child's lack of care, can trigger a protection review. See IMDi, Arbeid med enslige mindreårige asylsøkere og flyktninger – en håndbok for kommunene (2020) para 3.2.6.

also conceivable that a (former) child may be returned to an IPA soon after reaching majority. This practice therefore implies a destabilization of status for vulnerable youths, which raises concerns vis-à-vis a child's right to security and predictability under the CRC.[180]

6.10.2. Cessation and the "Single Women" Portfolio

Most decisions regarding cessation at the court level in Norway have concerned refugees with criminal records. However, a remarkable line of cases has developed concerning Afghan women granted status on the basis that they are "single women without a male network" whose husbands later appear in Norway. In the *Abbasi* case, for example, an Afghan woman called "D" in the judgement received notice of revocation when her husband, the father of her children, arrived in Norway.[181] However, there was in fact no evidence that she would receive protection upon return to Afghanistan. Indeed, D had claimed her husband was violent to her, and in any case, he disappeared after a brief period. Although there is wide consensus, given the grave consequences of a cessation decision, that the state has the burden of proof, the Borgarting Appeals Court here applied a shared burden of proof used in asylum decisions and determined, even applying the standard that an asylum claim must be 'somewhat possible,' that "it cannot be assumed that she is single and therefore without sufficient protection in her home country."

Following this decision, the family was deported and had to be returned after D passed out in the plane and Afghan authorities refused to accept the children, in line with a policy not to admit deported women and children without a male network. In this case, a 'child-sensitive' assessment of the return situation discounted D's claims that her husband planned to force their minor daughter into marriage, and - given D's mental health troubles - assigned responsibility for care and protection of the younger children to their older siblings who were no longer minors.

The Norwegian Supreme Court has recently decided two cases involving the cessation of refugee status and subsequent revocation of a residence permit, both involving Afghan women who came alone with young children.[182] As in the *Abbasi* case, the cessation decisions were justified by the fact that their partners had later joined the family in Norway. In other words, the situational vulnerability that gave rise to a need for protection was neutralized by the reestablishment of a male network in the country of origin.

The highly publicized *Farida* case in Norway concerns an Afghan mother and her daughter, Farida, who came to Norway in 2011 via Iran (where the mother and her partner had lived since 2004 and where the daughter was born). The family became separated in Greece on the way to Norway. Farida and her mother were recognized as refugees on the grounds that their home district in Afghanistan, Jaghori, was insecure, and in the absence of a male protector they could not relocate to another safe area of Afghanistan. When Farida's father eventually arrived in Norway in 2012, Farida and her mother received notice that their refugee status had ceased because the conditions on which it was recognized no longer existed. Although the family's area of origin, in Jaghori district, was still insecure, they could be now be referred to an IPA in Kabul. Upon appeal, the Immigration Appeals Board (UNE) found, in contrast to UDI, that the family could be returned safely to their home district - recourse to an IPA was not needed. Multiple petitions for review were refused, and after nearly four years in Norway, Farida and her parents were

180 Convention on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 84. 183 LB-2016-10512, 09.18.2017.
181 LB-2016-10512, 09.18.2017
182 On the "single woman" portfolio, see UNE, "*Abbasi-saken er en blant mange*" Addressa, June 21, 2019. https:// www.une.no/en/see-more-news/archive/2019/abbasi-saken-er-en-blant-mange/ 185 19-028135ASD-BORG/01, June 22, 2020.

deported to Kabul in Afghanistan in 2015, where they continued to live while their case moved through the Norwegian court system. In 2018, it reached the Supreme Court, which held that UNE had failed to assess whether changes in the security situation in Jaghori district were "significant and stable." The IPA was not addressed.

Upon remand, the UNE concluded that improvements in the security situation in Jaghori district were indeed 'significant and stable.' In any case, the family could also be referred to an IPA in Kabul, which was sufficiently safe for returns. This decision in turn has been the subject of multiple appeals. The Borgarting Appeals Court has most recently held that the 'margin of security' required in cessation cases was established despite deteriorating security in Kabul.[183] The fact that the couple was reunited meant that the original protection need 'as a single Afghan woman without a male network' no longer existed. The continuing need for protection vis-à-vis the home area was not relevant to the court's reasoning. In February 2021, the Supreme Court confirmed that consideration of the IPA was appropriate in the cessation context, since the absence of an IPA is a condition for refugee status in Norway.[184]

What does this drawn-out litigation tell us about vulnerability in the cessation context? First, the wide scope for application of the cessation provisions in Norway creates a situation in which refugees in general are exposed to prolonged insecurity of status instead of a 'durable solution' in the form of integration or voluntary return to their previous homes. Second, Norwegian practice exposes women and children to revocation of their status and residence based on private sources of protection —in this case, a male relative. The limited mobility of Farida and her mother in Kabul both in physical and relational terms begs the question of whether the fundamental rights of vulnerable refugees are secured through this practice. UNHCR itself has expressed skepticism about the use of cessation in these cases.[185]

When it comes to children, moreover, it seems that 'child-sensitive' cessation analysis has yet to develop any substantive content. Cessation cases often involve a long period of processing, as well as potentially multiple levels of appeals. The evaluation of the child's best interest, however, is frozen at the final *administrative* decision (i.e., the UNE) and only reviewed by courts to the extent that they are adequately justified. Years can pass—in some cases most of the child's life—before the case is resolved. This not only obscures the fact that best interests evolve, especially as attachments to Norway deepen over the years, but it can also hardly be in a child's best interest to live with that kind of insecurity over extended periods of time.[186]

183 19-028135ASD-BORG/01, June 22, 2020.
184 Norwegian Supreme Court, HR-2021-203-A.
185 UNHCR, Amicus Curiae *Amicus curiae of the United Nations High Commissioner for Refugees1 in case number 19-028135ASD-BORG/01 (represented by lawyer Arild Humlen) against the State/the Norwegian Appeals Board before the Borgarting Court of Appeal (Borgarting Lagmannsrett) on the interpretation of the 1951 Convention Relating to the Status of Refugees,* April 10, 2020 para 31. https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5f808ec04&skip=0&query=cessation&searchin=fulltext&sort=date
186 The Civil Ombudsman has criticized the UDI's long decision-making in a case involving a woman and her eight-year-old child who waited over five years for a decision on permanent residence because of an ongoing revocation assessment. See: https://www.sivilombudsmannen.no/uttalelser/utlendingsdirektoratets-behandlingstid-i-sak-om-permanent-oppholdstillatelse-og-tilbakekall

CHAPTER 7: VULNERABILITY AND HUMANITARIAN STATUS

Asylum seekers who do not qualify for international protection under §28 can nonetheless receive a residence permit according to §38 if strong humanitarian considerations or special connections to the realm apply. This provision is permissive rather than mandatory and immigration-control related considerations are accorded significant weight in determining whether a §38 permit is granted. This chapter explores how the concept of vulnerability is operationalized in the assessment of residence under §38 IA.

To determine whether there are strong humanitarian considerations, §38 provides that "an overall assessment shall be made of the case." Factors that may be considered include those traditionally associated with the concept of vulnerability, for example whether

> *(a) the foreign national is an unaccompanied minor who would be without proper care if he or she were returned,*
> *(b) the foreign national needs to stay in the realm due to compelling health circumstances,(c) there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit, or*
> *(d) the foreign national has been a victim of human trafficking.*

Furthermore, §38 states that the best interests of the child shall be a fundamental consideration in cases involving children. This means that children may be granted a §38 permit for conditions that are less serious than those granted to an adult. It is also here, under consideration of §38, that a formal "best interests" assessment is made, which involves factors related to both the return situation and the child's circumstances in Norway (see Section the Best Interest Assessment). The concept of vulnerability informs the distinct factors that underpin a §38 permit, and it also provides a lens through which to make an overall assessment of complex situations involving many different factors.

An important limit to protection under §38 is the fact that "strong humanitarian circumstances" and "attachment to the realm" must be balanced against countervailing immigration control interests. The Act specifically mentions the following:

> (a) possible consequences for the number of applications based on similar grounds,
> (b) social consequences,
> (c) the need for control, and
> (d) respect for the other provisions of the Act.

A final aspect of §38 status is that it may be *limited* under certain circumstances:

When there is doubt regarding the *identity* of the foreign national, when the *need is temporary*, or when *other particular grounds* so indicate, it may be decided that

> (a) the permit shall not provide a basis for a permanent residence permit;
> (b) the permit shall not provide a basis for residence permits under chapter 6 of the Act for the foreign national's family members;
> (c) the permit may not be renewed, or

(d) the validity period of the permit shall be shorter than one year.[187]

As detailed in section 7.5, the granting of a limited permit under §38 can have a profound effect on the ability of persons with humanitarian status to participate in Norwegian society and rebuild their lives. This particularly affects families with children and UAMs, who may predictably be in Norway for the long term.

7.1. Gender and Humanitarian Residence

In the assessment of a permit based on §38, decision-makers may consider factors that do not amount to persecution, such as a combination of prior violence and the risk of new violence, together with serious health issues. According to the Guidelines on gender-related persecution:

> Since women and women with a responsibility for children may be more vulnerable in many societies compared to single men or women who live in a family, it may be difficult for a woman to get employment, housing or to achieve a dignified life without a social network upon return. In a certain amount of cases single women will be prone to a general risk of abuse, even though there is no basis for granting asylum…[188]

In one UNE decision, for example, an Iraqi woman who was protected from return to an insecure area near the border with KRI was nonetheless denied refugee status because she could safely relocate within the KRI. As a single, young Yezidi woman with only nine years of education and no work experience, however, she was eligible for §38 status because she would be 'especially vulnerable' in relation to return without a network or other links. The fact that her husband and son were Norwegian citizens meant that they could not be expected to go with her.[189] In this case, factors that previously would have rendered an IPA 'unreasonable' in the asylum assessment are now considered under §38 instead. However, the threshold is higher in the sense that humanitarian interests must be weighed against immigration control and equal treatment concerns. For example, since violence against women in marriage is recognized as a widespread phenomenon in some countries, decision-makers are cautioned that granting residence on these grounds could potentially draw a 'substantial' number of claims.[190]

7.2. Minors and Humanitarian Status

As mentioned above, the Immigration Act §38 para 3 is the 'home' of the best interest assessment for protection seekers under the age of 18. This provision not only confirms that the best interests of the child shall be a fundamental consideration in decisions that concern him or her, but it also clarifies that a child-sensitive assessment of strong humanitarian considerations - whether related to health or poor conditions in the home country - means that residence may be granted in situations that do not meet the severity threshold required for adult applicants. The best interest assessment under §38 is not only undertaken in connection with asylum applications, but also importantly in decisions concerning cessation of refugee status or deportation as a consequence of (a parent's) unlawful activity. In these cases, which typically involve children with longer periods of residence in Norway, the provision on 'special attachments to the realm' in Article §38 may be applied.

187 §38 para 5 Immigration Act, our italics.
188 Ministry of Justice and Public Security, G-08/2012 Guidelines on gender-related persecution. https://www.regjeringen.no/no/dokumenter/retningslinjer-om-kjonnsrelatert-forfolg/id696289/ (in Norwegian).
189 Board of Immigration Appeals, N1733661106, October 2017.
190 Ibid., note 150.

7.2.1. The Best Interest Assessment

When evaluating applications involving children, decision-makers are directed to undertake a holistic assessment of the individual child's situation. In particular, the child's attachment to Norway should be accorded 'significant weight': the Immigration Regulations provide that the length of the child's residence in Norway, together with the child's age, should be a fundamental consideration (§8-5). Other relevant factors include:

- The child's need for stability and continuity
- What language the child speaks
- The child's psychological and physical health situation
- The child's attachments to family, friends, and community in Norway and in the country of origin
- The child's care situation in Norway
- The child's care situation upon return, and
- The social and humanitarian situation upon return

Decisions affecting children must indicate that 1) their interests have been identified and 2) how their interests have been weighed against other considerations.[191] Best interests should be a paramount consideration, but it is not the only one, and it is not decisive in all cases. To ensure sufficient competence and consistent practice, new guidance on the best interest of the child for decisions for protection and expulsion was published in October 2020.[192] This guidance thoroughly discusses state obligations in accordance with the international instruments (CRC and ECHR) and the implications of these in different types of cases, including the weight of the child's best interest against other considerations. Courts may review whether administrative decisions have assessed and balanced children's best interests in an adequate manner. However, courts may not re-evaluate the substantive balancing of interests.[193]

7.2.2. Best Interests of Children Versus Immigration Control Considerations

Even if a decision-maker concludes that the child's interest would be best served by the child remaining in Norway, we see in many cases that countervailing factors do prevail in the overall assessment. As mentioned above, concern about attracting similar claims (the "pull factor") can be decisive - a positive decision may therefore emphasise that a person is *more vulnerable* than others in the same return area. The Immigration Regulations also highlight the child's and his or her family's compliance with the law as an important consideration. Of relevance is whether the child's parents have actively resisted establishing their own identity after arriving in Norway, and whether they have committed serious crimes. Less weighty concerns include irregular residence and instances in which the child's parents have been unable to clarify their identities despite trying to do so. In practice, this means that fraud on the part of the parents in an asylum application can outweigh a child's significant attachments to Norway.[194]

191 Immigration Regulations §17-1a.
192 Maltnes, M. (2020). p. 55–56.
193 Norwegian Supreme Court, HR-2012-2398-P, para. 64. https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=50f67d2b2
194 In a recent Supreme Court case concerning the deportation of a woman who lied about her country of origin on her asylum and citizenship application, the best interests of her children, who had never known a life outside of Norway, were outweighed by the severity of their mother's infraction. HR-2019-2286. In deportation cases, which include an explicit proportionality requirement, deportation is only disproportionate if it imposes "unusually large burden" on the child or "exceptional circumstances." Ibid at para 109. In this case, the fact that two of the children were "somewhat vulnerable" was not deemed relevant because their vulnerability was deemed to stem from the insecurity of the impending deportation.

As a point of departure, the UDI considers that a child's best interest is to live with his or her parents and family in the country of origin.[195] The social protection these relations provide help ensure the child's right to family life, and support development of his or her identity in terms of language, culture, religion, and ethnicity. Exceptions apply if, for example, 'fundamental human rights' are at risk in the home country or when the child's attachments to Norway so dictate. Attachments are evaluated through factors such as language, schooling, and extracurricular activities. Frequent or lengthy periods of residence in the country of origin can be a counterweight to the ties developed in Norway.

Compared to the UDI, UNE more often deals with cases involving protection-seeking children who have lived in Norway for a significant length of time. Here, the attachment of the child to Norway is typically considered together with the return situation for the family as a whole.[196] Negative decisions from UNE often emphasised the family's own resources, and the fact that the children will not be among the most vulnerable in the return area—regardless of how poor the humanitarian conditions would be. In cases from Afghanistan, for example, decisions assessed whether basic services such as health and education would be accessible to the extent that they were for other locals (Schultz 2017). However, if a child has 4.5 years' residence in Norway and has gone to school for one year, attachment to Norway alone qualifies as a strong humanitarian consideration.[197] Following changes to the Immigration Regulations in 2014, these attachments are to be accorded more weight now vis-a-vis competing interests than they did before.[198]

As noted above, the administration's determination of a child's best interest is subject to only limited judicial review by the courts. As long as the decision shows that the child's best interest has been assessed and evaluated against competing factors, and given weight as a 'fundamental' consideration, the courts will not go into the substance of the best interest assessment. Courts also extend deference to the administration's choice in how children's perspectives are taken into account.[199] Because the child's best interest is established in the final administrative decision, there may be a significant disconnect between the conclusions reached at that point in time and children's real lives, which of course evolve more quickly than is typically the case for adults. The time lapse for the best interest assessment, the limited oversight by courts, and the requirement to balance best interests against competing factors pose significant challenges to the identification and protection of children's rights in practice.

7.2.2.1.Unaccompanied Minors in Particular

Up until 2016, unaccompanied minors (UAM) from insecure countries like Afghanistan typically received refugee status under §28 because they were recognized to have a need for protection vis-à-vis their home area, and return to an IPA without a caregiver was deemed unreasonable (Schultz, 2017).[200]

195UDI Guidance 2020-007. Unaccompanied minor asylum seekers and age assessment, para 8. www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2020-007

196 UNE Practice Note: Immigration Act §38 and best interests of children in immigration cases, para 2. https://www.une.no/contentassets/3d46c4f7c57046aeaff92434d2dc59b3/15-00289-2-praksisnotat---utlendingsloven--38-og-barmets-beste-i-utlend.. .pdf

197 Department of Justice and Public Security, G-06/2014 Ikrafttredelse av endringer i utlendingsforskriften – varig ordning for lengeværende barn og begrunnelse i vedtak som berører barn, para 1.2.

198 Ibid. See also Immigration Regulations §8-5.

199 Norwegian Supreme Court, HR-2015-02524-P, para 164, in which the Court upheld UNE's decision not to permit a nearly 6-year-old child to give a separate statement at her appeals hearing despite her wish to do so, since her interests were deemed to be sufficiently represented by her parents and their attorney.

200 In 2015, of the 5,480 UAMs who applied for asylum in Norway, 3,537 came from Afghanistan. Source: Ministry of Justice and Public Security GI-02/2017 – Instruks om praktisering av utlendingsloven § 38, jf. utlendingsforskriften § 8-8 – enslige, mindreårige asylsøkere mellom 16 og 18 år som kan henvises til internflukt, para 2.

Two changes in law and policy during 2016 changed the scope of protection for these minors. First, UDI changed its security assessment of Afghanistan, which meant that fewer UAMs from that country were able to establish a protection need vis-à-vis their area of origin (Schultz, 2017). Second, even those who had a protection need vis-à-vis the home area might have had a valid IPA. The removal of the reasonableness requirement to IPA practice meant that the absence of family there no longer rendered return 'unreasonable.' Instead, the question of residence turned on whether these children met the criteria for a permit on humanitarian grounds under §38.

As a point of departure, to be an unaccompanied minor without adequate care in a known and safe area of the home country or another place where reunification can take place qualifies as a strong humanitarian consideration (§38 para 2(a)) and will normally provide a basis for a residence permit. In addition to parents, caregivers can be aunts, uncles, grandparents, or others who have played such a role.[201] However, even if the minor qualifies for residence, if he or she is over 16 years old at the time of the UDI's decision, the caseworker may determine whether a *limited* permit should be granted, which expires at the age of 18 (§8-8 Immigration Regulations). This category of permit, which was introduced in 2008, provides temporary reprieve from removal for older minors for whom the lack of adequate care is the only obstacle to return.[202] It provides no basis for family reunification and may not be renewed, meaning that upon reaching the age of majority the former UAM is required to leave Norway. The main purpose of this provision is to prevent other children without another need for protection apart from the lack of adequate care in their home country from being sent to Norway, perhaps for economic reasons.[203]

After the removal of the reasonableness criteria from the IPA assessment in 2016, decision-makers were suddenly faced with a significantly larger caseload of unaccompanied minors whose only basis for residence in Norway was the lack of adequate care *in an IPA* within their country of origin. The UDI proposed to the Ministry of Justice that decision-makers accord significant weight, in the determination of whether to grant a regular or limited permit, to the lack of a network or resources in an IPA for claimants under 17. The Ministry of Justice rejected this suggestion, reiterating instead the lack of a network and/ or resources to manage in an IPA, together with fact that the social and humanitarian conditions linked to the return situation *cannot alone* justify an ordinary permit under §38.[204]

Current policies with regard to UAMs have been widely criticized for rendering them more vulnerable to physical and mental harm and further exploitation.[205] While UAMs under 15 receive care from Child Welfare Services and UAMs with regular or renewable permits are resettled in local municipalities (although this too may be delayed), UAMs between 15 and 18 with UAM-limited permits receive housing in reception centres run by the Immigration Directorate. As capacities in these centres shift, children may be moved multiple times. The provisional housing solution plus the high rates of disappearances from centres without conclusive investigations have attracted strong criticism on grounds of child protec-

201 UDI 2020-007 Enslige mindreårige asylsøkere og aldersvurdering, para 8.
202 §8-8 Immigration Regulations. This was introduced by the Norwegian government as one of the "thirteen points" for restricting asylum applications from persons without a need for protection in 2008. https://www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/smk/Nyheter-og-pressemeldinger/pressemeldinger/2008/innstramming-av-asylpolitikken/id525565
203 See Rundskriv om ikrafttredelse av ny utlendinglov og utlendingsforskrift fra 1. januar 2010, A-63/2009 Vedlegg 8. https://www.regjeringen.no/contentassets/291203ab61134f17bf22bef8586ede70/vedlegg8.pdf
204 Ministry of Justice and Public Security, GI-02/2017 – Instruks om praktisering av utlendingsloven § 38, jf. utlendingsforskriften § 8-8 – enslige, mindreårige asylsøkere mellom 16 og 18 år som kan henvises til internflukt.
205 See, for example, Lidén et al. (2013), Levekår i mottak for enslige mindreårige asylsøkere, Institutt for samfunnsforskning; Sønsterudbråten, S, G. Tyldum og M. Raundalen (2018) Et trygt sted å vente –omsorgspraksiser for enslige mindreårige, Fafo-rapport 2018:05.

tion principles and discrimination from both national and international actors, including the UN Human Rights Committee,[206] the UN Committee Against Torture,[207] and the Norwegian National Human Rights Institution[208] and civil society groups.

206 UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Norway, CCPR/C/NOR/CO/7, April 25, 2018.
207 UN Committee against Torture, Concluding Observations on the Eighth Periodic Report of Norway, CAT/C/NOR/CO/8, June 8, 2018.
208 Norwegian National Human Rights Institution (Nasjonal Institusjon for Menneskerettigheter), Omsorg for Enslige Mindreårige Asylsøkere, Temarapport 2016. See also their webpage on "Human rights challenges in Norway." https://www.nhri.no/en/2019/human-rights-challenges-in-norway/

Box 7.1 The October Children

The consequences of the two changes in law and policy during 2016 were the topic of public debate in autumn 2017, with the impending return of the so-called "October children": unaccompanied minors who came mainly from Afghanistan in 2015 and were now turning 18. A report published by the Norwegian Organization for Asylum Seekers (NOAS) with other NGOs revealed that limited permits had been granted to youths with serious psychological health problems consistent with PTSD and psychosis; with only weak connections to their home countries and/or no work experience; and with trauma following violence, sexual assault, and/or the murders of close family members (NOAS, 2017). In only a minority of cases were the child's best interests explicitly assessed (NOAS, 2017: 7). As a consequence of their uncertain situation, the report stated that a significant number of their informants had suicidal thoughts as a consequence of their uncertain and desperate situation (NOAS 2017, p. 6–7).

Ultimately, the government decided to soften its policy by re-evaluating the October children's claims, and introducing "vulnerability criteria" in the assessment of whether a time-restricted permit should be granted. In cases where the child's asylum claim was denied on the basis of a safe IPA, the lack of a caregiver, other network and resources to establish oneself were confirmed to be relevant factors in this regard - a clear departure from previous practice. Other criteria to be considered include: the child's age (i.e., barely 16 or close to 18); what language the child speaks; the child's psychological and physical health situation; the child's need for stability and continuity: the child's attachment to family, friends, and the local community in his country of origin or Norway; the child's care situation in Norway; and the social and humanitarian situation upon return. Decision-makers should also consider whether the child has been exposed to trafficking, abuse, or neglect; and the length of time for consideration of the case unless the minor himself or herself has contributed to any delay. Further, any time limits on residence must be defensible from a child's best interest perspective (§8-8).

The instructions also emphasize that a holistic assessment must be taken of each child's situation, so that one single factor will not have decisive impact on what kind of permit is granted. So, for example, while it might be easier in general for a 16-year-old to be granted a regular permit, an individual who is nearly 18 years old may be vulnerable in other ways that justify not limiting residence. It is interesting that the guidance recognizes migratory vulnerabilities: children who have been in flight over a long period of time or have lived in many different places may have an especially strong need for stability and continuity.

From one limit to another

Eighty percent of the "October children" who met the criteria for reassessment of their claim received residence, but only two of those 106 actually received a regular §38 permit without any restrictions. To receive a §38 permit, the normal rule is that the applicant must document his or her identity (§8-12 Immigration Regulations). This proved impossible for most of the Afghan UAMs. In one October child decision, for example, the Appeals Board agreed to give a "regular" §38 permit to an illiterate Afghan boy who lacked either a network and resources upon return to Afghanistan. Because he had no legitimate travel documents, however, it was only given for a one-year (renewable) period (see Section on ID limit, below). Limited permits do not provide the basis for permanent residence or family reunification.

Table 7.1 UAM-limited permit after IR§ 8-8 1, for the year they received this permission

Year	UAM-limit permits
2015	16
2016	324
2017	384
2018	7
2019	5
Total	**736**

Source: UDI statistics

Table 7.1 shows that in 2015–2019, 736 unaccompanied minors were granted a UAM-limit until they turn 18. For 70 percent of these UAM, their locations are unknown as of October 2020. Table 7.2 shows further that 136 are resettled in Norway, 48 have been involuntary returned and four have returned voluntarily with IOM. Some of them live still with a UAM limit (having not turned 18) or an ID limit.

Table 7.2 The situation for persons granted a UAM limit in the years 2015–2019 as of October 2020

	Number	Percentage
Unknown	517	70
Resettled in Norway	136	18
Transported out of the country by the police (PU)	48	7
Registered at private address in Norway	27	4
Stayed in a reception center in Norway	4	1
Returned voluntarily under IOM's VARP program	4	1
Total	**736**	**100**

Source: UDI statistics

7.3. Health and Humanitarian Status

As indicated in the text, *compelling* health circumstances may be the basis for residence under §38. In practice, the threshold is extremely high for physical or psychological health problems on their own to provide the basis for residence.[209] A benchmark in this regard is the protection against return to inhuman and/or degrading treatment in human rights law (Article 3 ECHR).[210] The European Court of Human Rights (EHCR) has found, in some cases, that the deportation of ill foreigners to countries lacking adequate medical treatment can engage Article 3. In *Paposhvili v Belgium*, the Court explained that this threshold is reached when the foreigner

> *although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.*[211]

209 According to UNE practice, in fact, health circumstances on their own do not provide the basis for residence. See UNE, Helsemessige forhold som grunnlag for oppholdstillatelse i medhold av utlendingsloven § 38, para 1. https://www.une.no/globalassets/kildesamling/fv/fv-04.pdf

210 See UDI 2013-020 Helseanførsler i asylsaker para 2. https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013020/

211 *Paposhvili v. Belgium*, Application no. 41738/10, judgment of December 13, 2016, para 183 (Grand Chamber).

The UDI has incorporated the legal requirements set out in Paposhvili in their consideration of serious health conditions. The drafters of the Immigration Act, meanwhile, cautioned that Article 3 need not be a hard floor for health cases - situations that do not quite meet this exceptional threshold may justify residence for humanitarian reasons. [212]

The Article 3 jurisprudence is less specific when it comes to cases involving severe *mental* illness where the claimant does not risk physical deterioration, although it confirms that Article 3 may also apply in these cases.[213] A UDI circular specifies that 'serious psychological disorders' including schizophrenia, paranoid psychosis, and serious forms of bipolar disorder may provide the basis for §38 permit. On the other hand, 'less serious disorders' like depression, angst, compulsive disorders, and ordinary forms of PTSD would normally not.[214] It also states that suicide attempts can be a relevant factor, but only if they are connected to psychiatric diagnosis and not 'only' to depression stemming from the person's uncertain immigration status.[215] Greater leeway is also given to psychological problems connected to past persecution. This is consistent with the intention of the Immigration Act's drafters, who noted that a less restrictive practice vis-à-vis health-related claims is reasonable when the health situation is related to this type of trauma.[216]

As discussed more thoroughly in chapter 5, experts as well as health professionals have long expressed their concern about the following-up of torture victims in Norway. Their estimation is that between 10,000 and 35,000 people with refugee background in Norway today have been subjected to torture prior to their arrival (Red Cross, 2020). The national guidance for health provision for asylum seekers, refugees, and family reunified (IS-1022) refers to the Istanbul Protocol for guidelines for the identification and documentation on torture and its implications. The guidance includes a mapping form with explicit questions about torture experiences, in addition to health problems related to other forms of serious psychological, physical, or sexual violence because of inhuman or degrading treatment. However, the service apparatus lacks the necessary knowledge as well as sufficient resources for investigation, which has significant consequences for the requested documentation of torture, violence, or degrading treatment in the asylum assessment.

Evaluating medical evidence about torture disclosed in an interview or in the health system is not an easy subject, as the case in Box 7.2 shows. As one informant reflected on the assessment of health statements:

> *The hardest thing about these cases, if the doctor says that a person has PSTD diagnosis, based on what the person has said. However, we do not know if the 'causative cause' really happened. The story can be fabricated and then told to the doctor. Also about torture, about human trafficking. We never know, because we have no option to really make an enquiry. If the case they tell is true, it is grave not to acknowledge. But if it is not true, this is at the time [is] very challenging.*

212 NOU 2004: 20, para. 9.6.2.2. https://www.regjeringen.no/no/dokumenter/nou-2004-20/id387326/
213 See, for example, *Savran v. Denmark*, Application no. 57467/15 judgment of October 1, 2019 (Fourth Section, currently on appeal to the Grand Chamber). Here the Court focused on the guarantees that must be made before deportation and not the severity of the illness itself.
214 UDI 2013-020 Helseanførsler i asylsaker, para 4.2.
215 Ibid.
216 NOU 2004:20, para. 9.6.2.2.

In practice, assessing health conditions is typically combined with other factors, for example children's best interests, the absence of caregivers in the country of origin, or the risk of (re)trafficking. For example, in one case decided by the Board of Immigration Appeals, a Shia Muslim Iraqi man who fled from Syria with his daughter was granted residence because, in part, the girl had Down's Syndrome. However, the Board emphasised that this fact alone was not sufficient; instead her care situation in Bagdad, where she would be separated from her stateless Palestinian mother who was still in Syria *combined* with her special needs were given 'decisive weight' in the overall analysis.[217] In another case, a permit was granted to an Afghan family based on their oldest child's relatively long period of residence in Norway (4 years, 5 months), her PTSD diagnosis, and the need for follow-up treatment. [218] Meanwhile, when the parents' ability to care for their children is compromised by illness, decision-makers are instructed to attach 'great weight' to this fact in their assessment.[219]

217 UNE decision N1732241002 (September 2017).
218 UNE decision N157245116 (October 2015).
219 UDI, 2013-020 Helseanførsler i asylsaker, para. 7.1.5.

Box 7.2 Case on Abuse and Torture and the Assessment of Future Protection Needs

The UNE case concerns a girl whose claim to be a minor was not accepted following the results of age testing. However, injuries sustained during torture in her home country were investigated and confirmed by three doctors, and the link between torture and PSD confirmed by two psychiatrists.

As the basis for her application for protection, the complainant stated that she feared persecution from the country's authorities. The girl's father and brother were abducted in 2014, while their mother was killed the following year. The girl's father had been a supporter of a local rebel group, which authorities defined as a terrorist organization. Local representatives of government forces had therefore returned to the family house on several occasions, killing the girl's mother and taking the girl herself to prison afterwards. In prison, the applicant was subjected to abuse and torture by the prison guard, who also said he wanted to marry her. She said she was 15 years old when this happened.

The UDI questioned several parts of her explanation, and concluded that the information did not appear sufficiently credible. The UDI emphasized that the applicant could neither explain the conditions in jail sufficiently nor clarify why the local authorities would react so strongly against her. Regarding her medical certificate, the UDI stated that it was not sufficiently clear that her physical scars were caused by the events she had described. Further, the applicant submitted health statements confirming her PTSD diagnosis.

On appeal, the appeal board reviewed medical evidence that the applicant's visible scars, skin lesions, swelling around her neck, and eye injuries were consistent with torture in the form of beatings and strangulation attempts. It found that these injuries were more likely than not the result of abuse. Although the applicant's explanation of how she sustained the injuries was deemed to be credible, it did not prove her claim of imprisonment. In any case, it was concluded that when the incident took place, and who the actors behind the abuse were, were not of significance for the assessment of the complainant's future protection needs. The events occurred a long time previously, and is was argued that they had an impact on the applicant's potential persecution upon return. The board therefore did not consider when and where the incidents had taken place or who at the time was the abuser. Refugee status was therefore refused.

With regard to "strong humanitarian considerations," the UNE concluded that PTSD is not a serious enough mental disorder to justify a residence permit on mental health grounds. Although the applicant had no work experience, and numerous professionals in Norway attested to her immaturity and inability to care for herself, the UNE decision gave determinative weight to the fact she had travelled alone and had learned some English.

Both physical and mental health issues must normally be documented through a statement from a doctor, psychologist, or psychiatrist in Norway.[220] The severity of the illness alone is not determinative; the (real) possibilities for treatment in the country of origin, together with immigration control considerations, also play a role. For example, in cases involving claimants with HIV/AIDS, whether the person was

220 Health Personnel Act (Lov om helsepersonell – helsepersonelloven), LOV-1999-07-02-64; see also the regulations for implementing this act, Forskrift om krav til helsepersonells attester, erklæringer o.l., FOR-2008-12-18-1486.

aware of their diagnosis before coming to Norway is a relevant factor.[221] So is their ability to access available medicine on par with other nationals' in countries where HIV infections are widespread. Similarly, elderly people with problems typical of their age may be denied residence because so many others are in the same situation.[222] On the other hand, age and health can intersect to create special vulnerability in some cases. For example, an Iraqi man who suffered from Alzheimer's and diabetes complications including hypertension and an amputated leg was granted residence because he needed round-the-clock care, and it was not clear that he had a network willing to provide this given that his wife and three adult children were residents of Norway.[223]

Where the need for medical treatment is temporary, a time-limited permit may be given in accordance with §38 para 5.[224] It is sufficient in these cases that there is a 'real possibility' that the claimant will be healthy or receive adequate care in his or her home country, and that such outcomes are predicted to occur in the not-too distant future.[225] However, in some cases it seems that short-term permits are given in health cases even when it is unlikely that the health problem is one that can be resolved swiftly. The Civil Ombudsman, for example, pointed out in one case where the family's residence for humanitarian reasons was granted solely on the basis of their son's (long-term) health problems, that it was inappropriate to give them a time-limited permit. While immigration control concerns are important, it acknowledged, they should come into play in the threshold for a §38 permit and not, as was the case here, in the decision to limit a permit already granted.[226]

One topic not addressed in circulars is how the condition of pregnant women is to be assessed, as well as the health condition of the child and mother after giving birth. Assessment of the condition of a pregnant woman is situation-specific. Pregnancy in the last phase before delivery is not necessarily seen as a vulnerable condition in the cases we have assessed. Alternatively, it is not given decisive weight, as we will see in a Dublin case in the next chapter. In this case, no assessment of the best interests of the child when born was made, for as long as the child has not been born. It seems that it is required for such cases that the immigration authorities evaluate more thoroughly the intersection of vulnerabilities raised from being a (single) woman, a pregnant woman, and the parent of a newborn child.

221 UNE Grand Board decision, 6307725000, May 2007. https://www.une.no/kildesamling/praksisbase-landingside/2007/6307725000
222 N19171560204
223 UNE, N163060114
224 Ministry of Justice, Rundskriv om ikrafttredelse av ny utlendingslov og ny utlendingsforskrift av 1. januar 2010, vedlegg 8. https://www.regjeringen.no/globalassets/upload/jd/rundskriv/vedlegg-8---oppholdstillatelse-pa-grunn-av-sterke-menneskelige-hensyn-eller-sarlig-tilknytning-til-riket.pdf 226 UDI, 2013-020 Helseanførsler i asylsaker, para 8.
225 UDI, 2013-020 Helseanførsler i asylsaker, para 8.
226 Civil Ombudsman statement of June 20, 2016. https://www.sivilombudsmannen.no/uttalelser/begrensninger-i-oppholdstillatelser-hensynet-til-integrering-og-barnets-beste-mv/ 228 Entered into force in Norway on May 1, 2008.

7.4. Victims of Human Trafficking and Humanitarian Status

If protection is not granted to a victim of human trafficking, the UDI will consider granting a residence permit on the grounds of strong humanitarian considerations. Chapter 8 (Sections §8-1 to §8-13) of the Immigration Regulations complements Section §38 of the Immigration Act.

7.4.1. Reflection Period and Renewable Residence Permits

Section §8-3 of the Immigration Regulations deal specifically with permits to stay for victims of human trafficking. Permits based on Section §8-3 are hence independent of the asylum procedure, yet fall under the scope of Section §38 of the Immigration Act. Section §8-3 para 1 fulfills Norway's obligations according to Articles 13 and 14 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.228 Article 13 of the Convention states that each Party to the Convention shall "provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim."[227] The reflection period granted in Norway is six months, is non-renewable and does not form the basis for a permanent right to stay.[228] An employee from the UDI mentioned that for the reflection periods, the UDI must consider whether these are cases of human trafficking or social/economic dumping. Yet even people in the latter category can still be recognized as "vulnerable" vis-à-vis assisted return.

According to Section §8-3 para 2, a former victim of human trafficking can be granted a one-year limited permit (renewable) when the police have started criminal proceedings in a human trafficking case.[229] The purpose of the permit is to facilitate the criminal prosecution of human traffickers. There are few vulnerability considerations in these two permits, as they are based more on set criteria.

7.4.2. Residence Permit for Witnesses in Human Trafficking Cases

Before considering granting a "humanitarian residence," the decision-maker must assess whether a former victim of trafficking is eligible for a permit based on Section §8-4 of the IR. A former victim of trafficking that has testified as a victim in a court case on human trafficking shall be given a permit based on Section §8-4 para 1 of the IR, unless special reasons speak against it. A credible former victim of trafficking who has given a statement linked to the trafficking situation for the Court or the Police in a criminal case may be given a permit according to para 2. Both provide the basis for a permanent residence permit. As to para 2, a discretionary assessment decides whether a permit is given. In the assessment, the decision-maker may take into consideration threats or future threats, cooperation with the police, and whether the foreign national is "…in a difficult social, health-wise or humanitarian situation because of the statement given." The Ministry of Justice and Public Security specifies that the decision-maker is to weigh the burden the foreign national is exposed to due to the statement given. Claimants who will be faced with especially difficult situations upon return such as social stigma due to sexual abuse may be one example. As to the health situation, the decision-maker must consider whether treatment has been started in Norway, and any consequences upon return.[230] The assessment is hence essentially an assessment of how vulnerable a person has become because of the statement given to the police.

227 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197
228 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-014/ Section 3
229 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2013-014/ Section 4
230 https://www.regjeringen.no/no/dokumenter/gi-112020-instruks-om-oppholdstillatelse-til-vitner-i-sak-ommenneskehandel-mv/id2705200/ Section 4.3.4

In one case from the UDI, a former victim of human trafficking was denied protection, but granted a permit according to the IR Section §8-4 para 2 as she had reported her trafficker to the police. The case was dismissed, however, after the suspect had been interrogated by the police. The victim had received threats from the trafficker. In addition to this, the victim had lived for several years in Norway with temporary permits following multiple meetings with the police. She participated in treatment for trauma and her life situation had deteriorated due to the situation. However, these factors of vulnerability were not deemed relevant to the protection claim, which was denied on the basis that she could relocate safely in her country of origin. The assessment of "effective protection" in the proposed IPA was limited to whether return would breach ECHR Article 3 by posing a risk of inhuman or degrading treatment. The decision-maker emphasised that internal relocation is common in the country, that the applicant had completed her first year of high school, and that she had received training and work experience from Norway. It was also noted that she had no serious health problems, despite the fact that she received treatment of trauma. No link between the impact of this trauma and her return situation was made.

7.4.3. Humanitarian Residence Permit to Former Victims of Human Trafficking

Section §38 para 2 d specifies that in the assessment of a person's need for humanitarian protection, importance may be attached to whether "the foreign national has been a victim of human trafficking." As one employee of the UDI told us, because human trafficking is a statutory commitment, the area receives special focus. The work against human trafficking is "need to do, not nice to do."

Even so, as for the humanitarian permits, it is only the most severe cases of mistreatment that justify granting a permit solely based on someone being a former victim of human trafficking.[231] For most cases, the trafficking is part of an overall assessment based on factors such as serious health issues, social or humanitarian circumstances upon return, or consideration of accompanying children.[232] UDI employees tell us that the threshold for granting a humanitarian permit to former victims of trafficking is very high, as decided by politics and the possible consequences for the number of applications based on similar grounds. An example is Nigeria, where 90 percent of the women who leave the country are victims of trafficking, and as this is a big country, immigration control considerations are given significant weight. This might explain why little is said in the country practice memo regarding the vulnerability of former victims of human trafficking and the humanitarian permit.

In exceptional cases, however authorities will recognize that strong humanitarian considerations apply due to compound vulnerabilities.[233] An example is a UNE decision involving a Nigerian woman, a victim of aggravated human trafficking, who was forced into prostitution at the age of fifteen. Before, during and after her journey to Norway she suffered rape and other abuse that resulted in physical and psychological illness. Even with treatment, it was unlikely that she would ever be able to work again. Despite finding that healthcare in Nigeria would not be available, this alone was not decisive. Instead, the UNE based its decision on the fact that she likely lacked a solid network upon return that could help her access care for her health problems. The assessment found that the aggravated case of human trafficking, the health problems, and the situation upon return together justified a humanitarian permit. Also important was the fact that UNE decision-makers could not find comparable cases in their portfolio, so immigration control considerations were not deemed as weighty as they would be in less extreme claims.

231 Ot.prp. nr. 75 Section 7.6.3.4
232 https://www.udiregelverk.no/rettskilder/udi-retningslinjer/udi-2014-031/ Section 6.2
233UNE N1611201107. Decision included board members

In another Nigerian trafficking case decided before the reasonableness criteria were removed from the IPA assessment in the Immigration Act, UNE found that internal relocation would be both effective and reasonable despite the woman's serious mental health issues. Nonetheless, she received a humanitarian permit based on her challenging position and the fact that she was vulnerable. She had lived in Norway for ten years and had formerly been granted a reflection period as a former victim of human trafficking.

Both cases clearly illustrate how high the threshold is for being granted a humanitarian permit as a former victim of human trafficking from Nigeria. Table 7.3 shows the numbers grated residence in 2017–2019.

Table 7.3 Victims of Human Trafficking Granted Residence in 2017–2019

	2017	2018	2019
Protection (asylum UL§28)	7	2	10
ULF §8-4.3 (witness)	6		5
UL §38	4		2
All trafficking cases	114	71	83

Source: KOM 2019

7.5. Consequences of Humanitarian Versus Refugee Status

The discretionary nature of humanitarian status has consequences for the application of the vulnerability concept in Norwegian asylum practice. In terms of its material substance, vulnerability becomes a relative concept, dependent on the number of others who are similarly vulnerable and the likelihood that they could seek protection in Norway. Even in situations of severe vulnerability, 'undeserving' claimants who have committed fraud or other crimes are unlikely to receive protection. This is true also for innocent family members, including children. Further, as mentioned in the section above on the best interests assessment, administrative decisions under IA§38 (humanitarian status) are subject to less judicial scrutiny than those under IA§28 (refugee status). This means that claimants have little recourse if, for example, assumptions made about the availability of support in the return area are unfounded. Legal security is further weakened by the fact that, in contrast to appeals of negative decisions under IA§28, there is no legal aid for an appeal of a UDI decision concerning IA§38 status.

7.5.1. Different Rights and Benefits in Norway

The rights and benefits granted to persons with refugee status depart from those enjoyed by people with humanitarian visas (both regular and limited). Some of the differences include the fact that refugees enjoy easier family reunification,[234] greater protection against deportation,[235] a right to travel documents, and privileged access to social welfare goods including support to higher education. Until recently, refugees have enjoyed special exemptions to the normal rules for accessing welfare support, including the

234 Refugees do not need to meet an income requirement for family reunification with their spouse, partner, or children under 18. Refugees also benefit from lower fees for family reunification applications. See UDI, "Lavere gebyr for ektefeller samboere og foreldre til flyktninger." https://www.udi.no/viktige-meldinger/lavere-gebyr-for-ektefeller-samboere-og-foreldre-til-flyktninger/?fbclid=IwAR2OMmpy1I6TAT6Is8fpBxzmdUbPoGuNvP_rjbjs39Mf_p_0b5ghhOZv4iY
In addition, when UAMs apply for family reunification under §38, the outcome may be that the family should live together in the country of origin or the country in which the parents currently live. See IMDi, *Arbeid med enslige mindreårige asylsøkere og flyktninger: en håndbok for kommunene*, 3.2.4.2.

235 For example, a refugee can only lose refugee status under §28 of conditions for which he or she received that status have changed in a fundamental and durable way. Norwegian Supreme Court, HR-2018-572-A, judgment of March 23, 2018. For persons with residence under §38, however, no requirement of a durable change is required. It is enough that the reasons for receiving residence no longer exist. See UDI's website on "losing a residence permit" at www.udi.no/ord-og-begreper/ miste-en-oppholdstillatelse/?mist=m

requirement of 40 years' earnings for the right to a full minimum retirement salary.[236] Refugees also benefit from faster access to permanent residence. The normal rule in Norwegian law is that an application for permanent residence may be approved after three years' consecutive residence in the country (IA§62). For those granted refugee status, however, the time of application is determinative—not the time of a decision as is the case for others, including those with a permit on humanitarian grounds (IR§11-2).

7.5.2. Greater Temporariness as a Source of Vulnerability

A foreigner with refugee status *may* have his or her residence permit limited to one year or less out of consideration for identity control or for 'other special reasons' (IR§10-3). In the cases reviewed we have seen this apply when time is needed to investigate a claimant's assertions about the lack of a network in the country of origin or where the claimant's identity is believed but he or she is also expected to confirm it with a passport. When it comes to humanitarian residence, the Immigration Act itself states that residence may be limited when there is doubt regarding the identity of the foreign national, when the need is temporary (for example in health cases) or where 'other particular grounds' so indicate (IA §38 para 5). Other particular grounds can include immigration control interests such as the need to further investigate a claimant's assertions about the lack of a network in the return country. In such cases, it may be determined that the permit should not provide a basis for permanent residence; it should not provide a basis for family reunification; the permit is only given on a (renewable) yearly basis; or the permit may not be renewed at all (for example in the UAM cases) (IA§38 para 5).

The main rule for granting a permit according to IA Section §38 is that the claimant (and any children) has documented his or her identity, preferably with a passport (IR Section §8-12). Exceptions do apply: IR Section § 8-12 (1) a and b stipulate that when the claimant's identity is probable he or she may be exempted from the documentation requirement. This provision applies for example if the home country of the claimant lacks a functioning central administration (a), or the safety of the claimant requires that he or she cannot be asked to contact the authorities of the home country (b). According to IR Section §8-12 (2), exceptions can even be made to the documentation requirement if the identity of the claimant is not probable, yet this is used only in exceptional circumstances.

Even when a person is willing to apply for a passport, he or she may lack the breeder documents required, embassies may not want to cooperate, or it may be difficult to understand what procedures need to be followed. Vulnerable people are clearly at a disadvantage when it comes to meeting such requirements. In one UNE decision, a victim of trafficking who suffers from PTSD and has a limited network in Norway was not exempted from the requirement to procure a passport despite the decision-maker's detailed description of the obstacles she would encounter in doing so, including long waiting periods and having to potentially rely on others in the diaspora to find out when the embassy had borrowed necessary biometric equipment. Persons with a §38 status but without a valid passport or substantiated identity will typically receive a one-year, renewable permit until the missing documentation is presented (Immigration Regulations §8-12). If the person has to travel to an embassy in another country or to the home country to acquire the passport, the person can apply for an immigrant's passport for a single journey from the UDI. Claimants can now also apply for financial support for the travel if they stay in a reception centre. The purpose of this provision is to motivate people to provide reliable proof of their identities,

236 The rights to old-age and disability pensions have traditionally applied to refugees from the month after they received residence. As of 2020, however, some of these special benefits have been removed, with refugees being treated instead on par with other disadvantaged groups. See also Innst. 80 L (2019–2020). https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2019-2020/inns-201920-080l

but around 1/3 of those affected remain with limited permits year after year. Between 2015–2019, 1,688 persons received an ID-limited permission. Of those, 67 percent by October 2020 had their restrictions removed, and now enjoy an ordinary residence permit.

Although these renewable permits have been recognized since the IA came into force in 2009, they are increasingly being applied. In 2019, 36 percent of all humanitarian permits under §38 were families with children given limited permits, compared with 18 percent in 2010 (NOAS 2020a: 11). The percentage of UAMs with a limited permit has increased measurably, from 5 percent in 2014 to 14 percent in 2019.[237] For Afghan youth, meanwhile, the percentage increased from 16 percent in 2014 to 28 percent in 2019 (NOAS, 2020b, p. 14). In a recent review of Norwegian practice, researchers found that 82 percent of decisions resulting in a limited permit for UAMs were made despite the fact that their identity had been substantiated (NOAS, 2020b, p. 53). The current processing time for renewal of ID limit permits - 10 months as of November 2020 - is nearly as long as the permit's duration. Of those who applied as UAM for ordinary residence or renewal of their ID limit, 77 percent received ordinary residence permission per October 2020. Those who got an ordinary residence permit after an ID limit and have been settled in a municipality include those who managed to receive an ID card from their home country, but also those who did not manage to receive an ID despite high effort (e.g., the state authorities did not respond to or rejected their application, their state authorities are not functioning because of war, etc.) and those who did not manage because of their difficult conditions.

This limited status has a profound impact on those who have it - in particular families with children, UAMs, and young adults who came to Norway as UAMs. Although the one-year permits given because of identity doubts are renewable and therefore not 'temporary,' they do not provide the basis for permanent residence or the possibility to apply for family reunification. Until recently, families with limited residence did not have the right to be settled in a local community.

As discussed in chapter 5, without documentation, residents are excluded from vital services, all of which limit opportunities for paid work. The director of Norwegian's tax authority has warned that the inability to prove one's identity means "we risk pushing people in vulnerable situations into the hands of rogue players and maintain the black market."[238] Without a valid residence card and a passport from their country of origin, meanwhile, travel outside of Norway is limited. Children may be excluded from class trips or sports competitions, while migrants of all ages may find it difficult to attend funerals or weddings, go on holidays or even take a shopping trip to Sweden (NOAS, 2020b).[239] The insecurities stemming from the need to regularly apply for a renewal, plus the effects on people's ability to participate in society, negatively affect mental health, motivation, mobility, income, education, and the ability to provide care for children. (NOAS, 2020a, NOAS, 2020b).

237 Of those who applied as a UAM between 2015–2019, 77 percent have ordinary residence permission as of October 2020.
238 H.C. Holte (23.05.2019), The Norwegian Tax Administration (skatteetaten.no): *Utlendinger bør også ha rett til et nasjonalt ID-kort* -
239 https://www.noas.no/wp-content/uploads/2020/05/NOAS_Enslige-mindrea%CC%8Arige_rapport_WEB.pdf

Table 7.4 UAM and Other Applicants with Humanitarian Status and the Year Granted ID limit, 2015–2019

Year	EMA when applied	Other applicants	Total
2015	43	313	356
2016	272	220	492
2017	144	270	414
2018	124	110	234
2019	25	167	192
Total	**608**	**1080**	**1688**

Source: UDI statistics

CHAPTER 8: VULNERABILITY AND THIRD-COUNTRY RESETTLEMENT

As the number of asylum seekers to Norway has dropped significantly since 2015–16, refugees being resettled through the UN-resettlement program comprise an increasing share of the total number of arrivals. From only constituting about 20 percent of all protection seekers coming to Norway during the 2010–2017 period, they have subsequently comprised more than 50 percent. By January 1, 2019, 38,000 resettled UN refugees lived in Norway (SSB, 2020). The size of the annual "quota" for refugee resettlement is set by the Parliament and has fluctuated significantly over time. For the period 2009 to 2013, the annual quota was around 1,100 persons. From then onwards the quota increased to around 3,000 persons in 2019 and 2020. The selection of candidates for resettlement involves several national actors under the auspices of the Ministry of Justice and Public Security. The selection of resettlement refugees is closely coordinated with the United Nations High Commissioner for Refugees (UNHCR).

The formal guidelines for the selection of resettlement refugees are set out in a formal Instruction (G15/2020) from the Ministry of Justice and Public Security to the Directorate of Immigration. The Instruction clearly states the central role of UNHCR: "Norway is to emphasise the recommendations of the UNHCR in its work with resettlement refugees" (G-15/2020, p. 2). More specifically, regarding the selection of certain types or national groups of refugees, the composition of the resettlement quota should take into consideration "the assessments of the UNHCR of which groups are in need of resettlement in Norway" (G-15/2020, p. 2). Since the UNHCR has established a set of criteria for vulnerability, this statement implies that those criteria guide refugees' eligibility for Norway's resettlement scheme and thus merit further treatment here.

The humanitarian objective of helping the most vulnerable is a cornerstone for the UNHCR's work in refugee resettlement. The UNHCR, mandated to conduct refugee status determination in transit countries on the basis of the 1951 Refugee Convention, considers resettlement as an "invaluable tool" for assisting refugees who are vulnerable *either* due to conditions in their country of refuge or due to their personal circumstances. The following excerpt from the UNHCR Resettlement Handbook indicates the logic at play.

> *The identification of resettlement needs is part of UNHCR's ongoing assessments of protection gaps. Refugees are identified as in need of resettlement when they are at risk in their country of refuge or have particular needs or vulnerabilities (…). Refugees without immediate protection risks are also identified in need of resettlement if this durable solution has been determined to be the most appropriate solution for them as part of a comprehensive needs assessment (UNHCR, 2011, p. 245).*

The UNHCR lists seven often overlapping categories of vulnerability in order to facilitate and regulate the selection process.

1. Those with legal and/or physical protection needs in the country of refuge, such as a threat of *refoulement*
2. Survivors of violence and/or torture, in particular where repatriation or conditions of asylum could result in further traumatization and/or heightened risk, or where appropriate treat ment is not available
3. Those with medical needs who lack access to life-saving medical treatment in the country of refuge

4. Women and girls at risk who have protection problems particular to their gender
5. Those in need of family reunification in circumstances where resettlement is the only means to achieve it
6. Children and adolescents at risk where resettlement is considered to be in their best interest
7. Those who lack foreseeable alternative durable solutions, namely local integration or return

While these seven criteria indicate eligibility for resettlement in Norway within the broader population of the world's refugees, Norway also has its own set of criteria that further narrow the population of refugees eligible for resettlement. While "emphasis is to be given to the assessments of the UNHCR," as stated above, Norway also gives priority to *groups* where there is a high share of "vulnerable refugees, for instance women and children at risk and LGBTQI+ individuals" (G-15/2020, p. 5).

At a disaggregated, individual level, Norway has its own seven criteria for guiding the eligibility for resettlement (G-15/2020). For instance, complex medical cases are to constitute two percent of the overall quota. These criteria are transmitted to the UNHCR every year. They designate Norway's 'profile' as a resettlement country and indicate to the UNHCR what kind of 'cases' it is to present.

1. Refugees eligible for resettlement should have a need for international protection. The UNHCR assessment is to be given weight in this regard, but, at the same time, "the assessment of a need for protection should be approximately at the same level as in asylum cases." The same applies for credibility assessments. Norway can, in other words, come to a different conclusion than the UNHCR with regards to the need for international protection.
2. Refugees eligible should have a need for resettlement. The alternative durable solutions, integration or return, should be assessed in the short and medium term. It is not specified how the UNHCR's assessment is to be weighted in this particular case.
3. Families with underage children are to be given priority.
4. Women at risk are to be given priority.
5. LGBTQ+ individuals are to be given priority.

These criteria relate to vulnerability in different ways. The first criterion concerns vulnerability to credible threats of violence or degrading treatment. The second is broader and includes socioeconomic marginalization, for example as non-citizens in the informal sector of a non-inclusive host state. The last three criteria single out demographic characteristics that are statistically associated with vulnerability. Families with underage children are given particularly strong preference, a priority that has been institutionalized over time as opposed to the preference for LGBTQI+ individuals, new as of 2020.

The selection of resettlement refugees from refugee-hosting states in the global South is the result of complex and cross-departmental decision chains. The Ministry of Justice and Public Security has the overall responsibility for refugee resettlement and its subordinate Direction of Immigration (UDI) has the operational responsibility. The latter coordinates especially closely with the Directorate of integration and diversity (IMDi), but also, to a lesser extent with the Ministry of Foreign Affairs and, to a very limited extent, with the Ministry of Health and Care Services. The UDI also invites select NGOs with a strong field presence to voice their perspectives on eligible national groups.

The vast majority of resettlement refugees are interviewed by commissions, led by an UDI employee and consisting of members also from the IMDi, the Police Immigration Service (PU), and, in certain conflict zones and select areas, the Police Security Services. While the UDI makes the final determination, these other commission members also conduct interviews with refugees and voice their perspectives to the UDI afterwards in an advisory capacity. The following discussion draws on analysis and empirical data from a recently published study by Brekke et al. (2021), which compares selection criteria for refugee resettlement in Norway, Sweden, Germany, the Netherlands, France, the UK, Canada and Australia. The study draws on interviews with national experts in each of these countries, and is particularly rich in data on the operational and strategic dilemmas that arise in the selection process, especially regarding the case of Norway.

Interviewed members of the Norwegian selection mission refer to time pressures as one restraining factor complicating interviews during selection missions. Another challenge is the assessment of Norway's local absorptive capacity, especially for refugees with complex health needs. A circular specifies that if the target municipality for resettlement lacks the capacity to resettle and provide necessarily municipal services (e.g., medical treatment, child welfare services, literacy training, vocational training, etc.) this "should be taken into consideration before resettlement is provided" and should "as a general rule lead to a dismissal of the case" (G-15/2020, p. 6-7). There is in other words at least a potential tension between the notion of helping the most vulnerable and at the same time ensuring that there is sufficient absorptive capacity in Norway's many sparsely populated municipalities. This is most clearly expressed in a reference to refugees' possibilities for integration, which is meant to be taken into consideration.

> *One should seek to facilitate that the various sub-quotas should ensure a balanced composition of the refugees. One is also to take into consideration the possibilities for integration, including the type of competence that the refugee brings (G-15/2020, p. 5).*

It is worth mentioning that the decision to resettle is voluntary for Norwegian municipalities. This means that IMDi, mandated to coordinate resettlement with municipalities, has negotiating power even if the UDI formally heads the process of resettlement and the selection commissions. One former UDI employee phrased it thus: "We considered the vulnerability criterion as more important than integration prospects, and I think it is." Another former UDI employee, who had taken part in and led commissions to various countries, noted that the concept "vulnerability" is not clearly defined in national guidelines.

At the other end of the continuum, it is also possible to qualify as vulnerable and in need of protection but still not be eligible for resettlement. The most clearly worded exclusion clause refers to those found guilty of crimes against peace, a war crime, or a crime against humanity, a serious non-political crime, a particularly serious crime, or similar, "and for this reason constitutes a threat to Norwegian society," with reference to the Immigration Act Section 31. Finally, another grounds for exclusion is "undesired conduct and attitudes" (G-15/2020, p. 6). This is not elaborately defined, and gives ample room for discretionary flexibility—or personal and cultural biases—but the example given is "persons who have a known criminal record or use hard drugs," who should as a general rule not be offered resettlement in Norway.

Summing up, there is little available research on this subject matter, but there appears to be some tension between the humanitarian rationale of the resettlement policy and more pragmatic considerations. The resettlement scheme is typically cast as a way of 'helping the most vulnerable,' in public policy discourse, as in media discourse. Politically, there has been a long history of consensus among the main political parties that refugee resettlement is a humanitarian tool to help those who need it the most, and that Norway should resettle. Yet there is a lack of research both on the politics and bureaucracy of selection and a lack of field-based accounts on the actual work of commission members (see, however, Sandvik, 2011).

What is clear is that the policy connects various scales, bridging global geopolitics with the most minute of local municipalities. It involves long and complex decision-chains where Norwegian resettlement policy is translated into actual outcomes first in the profile Norway presents to the UNHCR, then in the prioritization of certain UNHCR regional hubs as select partners, and, perhaps most importantly, commission members in the field, conducting decisive interviews with refugees designated as vulnerable.

CHAPTER 9: VULNERABILITY AND RETURN

In this chapter, we discuss vulnerabilities in three types of return: for those returned to another European country due to the Dublin Regulation, for those who are deported out of the country, and those who apply for a return with the IOM return program. The focus is on how vulnerability is addressed and assessed.

9.1. Vulnerability and Dublin Transfer Decisions

Norway is part of the Dublin Regulation,[240] which implements an EU regulation for determining the state responsible for examining an application for international protection lodged by a third-country national or a stateless person. The main Dublin rule is that the first member state through which an applicant travels has responsibility for evaluating the applicant's claim on its merits. Nonetheless, exceptions do apply. For example, an unaccompanied minor without family members in another European state should in general be assessed by the state in which he or she lodges a claim.[241] States should also "normally bring or keep together" applicants who are dependent on a child, parent, or sibling because of pregnancy, the recent birth of a baby, disability, serious illness, or old age (the 'dependency clause').[242] Finally, Article 17's discretionary clause permits Member States to take responsibility even if they are not required to do so under the explicit Dublin criteria (§17(1), the 'sovereignty clause'). As noted by UNHCR, the reasons for invoking this clause mostly relate to the health and vulnerability of the applicant and/or conditions in the responsible Member State, in addition to family and efficiency or cost effectiveness reasons.[243]

In §32 of the Immigration Act, Norwegian law specifically provides that Norway consider applicants with a connection in Norway that makes it a logical destination. Besides these family unity cases, only "special reasons" can justify a departure from the normal Dublin rules (§7-4 IR).[244] Health-related issues should not, in general, be considered a 'special reason.'[245] Nor are 'strong humanitarian considerations,' as defined in §38 Immigration Act, enough to warrant application of the sovereignty clause.

UDI instructions do, however, acknowledge that health considerations can be one factor in a holistic and concrete assessment. Serious/critical mental illness, where there is a need for immediate treatment, can underpin a decision to assess the claim in Norway. With somatic illnesses, the decision-maker must assess the degree to which there is an acute, life-threatening sickness with a high risk connected to any break in medical treatment (Article 3 ECHR). Other factors relevant to the 'special reasons' assessment include long case processing times and status as a victim of trafficking (including the potential for support in the return country).[246]

240 The Dublin IV Regulation. The objective of the Dublin Regulation is to ensure quick access to asylum procedures and the examination of an application on the merits by a single, clearly determined Member State.
241 Dublin Article 8 (4); UDI.
242 Dublin Article 16.
243 https://www.refworld.org/pdfid/59d5dd1a4.pdf, p. 8.
244 https://lovdata.no/dokument/SF/forskrift/2009-10-15-1286/KAPITTEL_7#KAPITTEL_7
245 §7-4 Immigration Regulations.
246 UDI 2014-001, 5.2.2.

Where children are involved, the UDI is obliged to undertake a 'concrete holistic assessment' of a child's individual situation when deciding whether or not evaluation of the claim in Norway is justified.[247] In accordance with Article 6(3) of the Dublin Regulation, Norwegian authorities must consider the possibilities for family reunification; the child's social development; security issues in particular if there is a risk that the child is a victim of trafficking; and the child's own opinions depending on his or her age and maturity. In addition, case workers may also give weight to factors like the child's age; the need for stability and continuity; physical and psychological health; residence time and connections to Norway, including measures already taken by Child Protection authorities; the child's residence time and connections to the country responsible under Dublin; and the reception conditions in the responsible country.[248]

9.1.1. Systemic Failures of Protection in the Return Country

Article 3 ECHR is a touchstone for the "special reason" exception. In addition to the health cases mentioned above, case law recognizes that families arriving from overcrowded entry states in Europe may face 'inhuman or degrading treatment' if returned there. For example, in 2010 Norway suspended all Dublin transfers to Greece after the European Court of Human Rights confirmed in the M.S.S. vs. Greece and Belgium judgment that the humanitarian conditions for asylum seekers would breach Article 3 ECHR.[249]Several years later, following the Tarakhel vs. Switzerland judgment in 2014 by the European Court, the Ministry of Justice instructed UDI to secure an individualized guarantee from Italy that children will be housed together with their families, and in child-appropriate conditions, before the transfer of families with children or unaccompanied minors could take place.[250] This instruction followed the European Court of Human Right's assessment that the reception centres in Italy are overcrowded and pose a risk of degrading treatment—particularly for asylum-seeking children. Despite the UDI's proposal to extend the same guarantee to other vulnerable persons to be transferred to Italy, not just children and families, the Ministry declined to recognize vulnerability in any broader sense. The requirement for individualized guarantees was lifted just five months later, after Italy announced its commitment to ensure child-appropriate housing for all families and children returned there.[251] Meanwhile, in 2017, the Ministry of Justice and Security once again opened to the possibility of Dublin transfers to Greece.[252] The UDI was instructed to assess, in each case, whether individual guarantees for adequate treatment would be needed from the

247 UDI 2014-042 Enslig mindreårig asylsøker i Dublin-prosedyre
248 UDI 2014-042, 7.2
249 Instruks GI-21/2010. 15. October 2010
250 Ministry of Justice and Security, xy. https://www.regjeringen.no/no/dokumenter/gi-032015-instruks-om-tolkning-av-utlendingsloven--32--overforing-av-barn-og-barnefamilier-til-italia-i-henhold-til-dublin-iii-forordningen/id2396771/ . 19.02.2015 https://www.regjeringen.no/no/dokumenter/gi-092015-instruks-om-tolkning-av-utlendingsloven--32--overforing-av-barn-og-barnefamilier-til-italia-i-henhold-til-dublin-iii-forordningen/id2426184/
251 In exceptional cases, the asylum seeker's vulnerability can still warrant relief from transfer to Italy (see N167848114, 10.2015, involving a single young Somali woman with no network in Italy, suffering from trauma from rape, as well as complications from FGM and latent tuberculosis. In contrast to the case involving return of a traumatized Somali woman to Hungary, the fact that conditions in Italy were recognized as bordering on a breach of Article 3 seems to be determinative.
252 Ministry of Justice and Public Security instruks GI-07/2017.

Greek authorities or whether certain vulnerable persons, including unaccompanied minors, should be excluded from return.[253] For UAMs with family in Greece, a 'vulnerability assessment' should be made to determine whether a departure from the Dublin rules may be warranted.[254]

Immigration authorities also recognize that although there is no general protection from a Dublin transfer to Bulgaria, vulnerable asylum seekers may be exempted from return in certain conditions. For example, one young pregnant woman from Syria, whose common-law husband was in Norway, was deemed vulnerable as a 'young and single mother' by UNE. Neither the UDI nor UNE had accepted that her family relationship to her child's father - in the absence of a formal marriage - could provide a basis for the asylum assessment in Norway. The UDI had also dismissed the woman's claims of being abused by police and poorly treated in a Bulgarian hospital. If that were the case, it suggested, the claimant could simply complain to the authorities there. With regard to best interests of the baby, the UDI concluded these could be met either with the father in Norway or with the mother in Bulgaria.

UNE, however, determined that the child's best interest was clearly to be together with both parents. Further, it stressed that 1) there were no mechanisms in Bulgaria to identify vulnerable people and that 2) the only reception centre for vulnerable asylum seekers had recently been closed. These factors, considering that the applicant belonged to a vulnerable group as a young and single mother, established "special grounds" for assessing her claim in Norway. In another case, a single woman from Afghanistan came to Norway after having her case refused by Bulgarian authorities. Here, the UNE determined that return would violate Immigration Act §73, which embodies the duty of non-refoulement (protection from return to persecution or serious harm). Information about conditions in Bulgaria indicated that the applicant would likely be placed in a crowded, dangerous detention facility before eventually being driven to Bulgaria's border without any support to get home. In addition, asylum claims from Afghans in Bulgaria were almost always deemed 'groundless,' so it is most likely that her application had not been adequately assessed. Therefore, her claim was passed on to UDI for a new hearing.[255]

A final example from the UNE illustrates the link between children's best interests, poor reception conditions, long periods of waiting, and repeated displacement. This case involved a young Afghan boy who came through Bulgaria with his older brother. The boy's representative argued that the reception conditions and poor access to asylum procedures in Bulgaria, combined with psychological problems exacerbated by contact with his brother, qualified as a 'special reason' for assessing the claim in Norway. While a majority of the Board confirmed that conditions in Bulgaria did not block Dublin transfers in general, and that the claimant's older brother could be returned there, the claimant himself should have his application considered in Norway. The Board emphasised the claimant's young age (16 years old), the long case processing time, and the fact that he had already been moved several times in Norway. Removing him to yet another country with another language and culture would be difficult for him.[256]

253 See https://www.regjeringen.no/no/dokumenter/gi-072017-instruks-om-tolking-av-utlendingsloven--32--overforingav-asyl-sokere-til-hellas-i-henhold-til-dublin-iii-forordningen/id2555258. June 1, 2017. In a later Instruction, the Ministry clarified that any exception for unaccompanied minors should not include those whose family members are in Greece, given that the minor can reunite with his or her family there and it is in their best interest. https://www.regjeringen.no/no/dokumenter/gi-172018-ansvar-iht.-dublin-iii-forordningen-for-mindrearige-asylsokere-med-familie-i-hellas-jf.-utlendingsloven--32/id2620513/

254 GI-17/2018 Ansvar iht. Dublin III-forordningen for mindreårige asylsøkere med familie i Hellas, jf. utlendingsloven §32. https://www.regjeringen.no/no/dokumenter/gi-172018-ansvar-iht.-dublin-iii-forordningen-for-mindrearige-asylsokere-med-familie-i-hellas-jf.-utlendingsloven--32/id2620513/?q=GI-17/2018 260 03.2019 (N19182860902)

255 N19182860902.

256 N1724430612

9.1.2. Vulnerability and Return to EU Member States where Protection has Already Been Granted

When an applicant has already received residence or asylum in another European country, the general rule is that protection should be enjoyed there. These are not Dublin cases *per se*, but are treated under the same general rules.[257] The high threshold needed to overturn the presumption of return is illustrated in a Supreme Court decision from 2016. In this case, a Somali woman who had already received asylum in Hungary fled to Norway to escape traffickers who had forced her into prostitution in several countries. She was deeply traumatized, experienced unpredictable fainting spells, and struggled regularly with suicidal thoughts. Her representatives argued that return to Hungary would not only leave this vulnerable woman without the medical assistance she needed, but would also expose her to mistreatment by her traffickers and others.

While the Appeals Court accepted that her physical and psychological condition was consistent with a life of violence and abuse, it declined to direct a reexamination of her claim in Norway. The Supreme Court agreed that such an exceptional measure would only be justified if return to Hungary posed a threat of torture or inhuman or degrading treatment in breach of Article 3 ECHR. The threshold for such a breach in health cases could be met, it suggested, if her condition was concretely life-threatening (para 46). The threshold was not met in this case.

9.1.3. Procedures for Assessing Vulnerability

One of the biggest challenges with regard to Dublin procedures is the fact that there is no legal right to a personal interview in these cases—even those involving children. The Dublin III Regulation provides that states should conduct a personal interview with applications unless (among other exceptions) the applicant has already given the information that is relevant to make an assessment (Art. 5). In Norway, this is interpreted to mean that states should only grant a personal interview if there is insufficient information from the initial meeting with the police to clarify where the claim should be assessed. While legal aid is available to challenge a Dublin decision, it is widely recognized as inadequate for the job.

The absence of personal interviews makes it difficult to fully understand the nature of a person's vulnerability, including whether he or she is in good enough health to tolerate the trip to another Dublin Regulation country, or potentially poor reception conditions (Lie, Sveaass, & Vevstad, 2014). Harms arising from previous stays in the 'responsible state' may never come to light. Finally, in cases involving children, the absence of a right to be heard undermines the opportunity to have their best interests properly determined.

In 2015–2019, Norway sent 2,141 requests for a return to another European country related to the Dublin Regulation where this request was not accepted or not answered. Of these, 39 percent were requests to Greece and 14 percent to Italy. More than half of the applicants in these Dublin cases assessed in Norway (57 percent) were granted protection as of October 2020. See tables in Annex 4.

257 https://www.une.no/sakstyper/dublinsaker/

9.2. Vulnerability and Return of Rejected Protection Seekers

A substantial percentage of protection seekers are not given protection and are legally obliged to return. This section deals specifically with the legal and administrative guidelines targeting international migrants who have been legally obliged to return. During the last decade, the Norwegian government has strengthened its focus on returning rejected asylum seekers and irregular migrants to their country of origin. Norway's political and financial investments in return reflect a broader European trend. Return policy was established as a cornerstone of European immigration control in the EU Return Directive (2008/115/UE) and incorporated into national legislation in Norway in 2010. A restrictive turn in Norwegian asylum policy since the turn of the millennium and across four governments was intensified at around the same time, evident in the steep increase in deportations during the decade from 2005 to 2015, peaking at 7,825 deportees in the latter year.[258]

Next to deportations, another pillar of Norwegian return policy is the programs often referred to as Assisted Voluntary Return Programs (AVRs). AVRs programs, or just 'assisted return,' incentivize return in various ways. Among other things, they offer incentives to return, primarily in the form of organized transport free of charge and either material support, a cash grant, or a combination thereof, to be provided upon return to the country of origin. Norway's AVRs are implemented by the International Organization for Migration (IOM).

9.2.1. Legal Basis for Forced Return

The decision to return the foreign national is legally based on Section 17 of the Immigration Act and the Immigration Regulation subsection 5-3. If the foreign national is to be removed on the basis of Section 17 (a) ("When the foreign national fails to produce a valid passport or another recognized travel document when this is necessary"), the removal must be effectuated before the foreign national has resided in Norway for six months. If the foreign national is removed on the basis of 17 (d) ("When the foreign national lacks the necessary permission under the Act"), or 17 (e) ("cannot show evidence of the stated purpose of the stay") the removal must be effectuated before the foreign national has resided in Norway for three months.

The legal basis for return, or 'expulsion,' of rejected asylum seekers and irregular migrants on administrative grounds, is Chapter 8 Section 66. While a few exceptions are provided to Section 66 in Section 70, as a general rule a foreign national without a residence permit may be expelled

> *when the foreign national has grossly or repeatedly breached one or more provisions of this Act, has with intent or gross negligence provided materially incorrect or manifestly misleading information in a case falling under the Act, or evades implementation of an administrative decision requiring him or her to leave the realm.*

258 https://www.politiforum.no/nyheter/aldri-for-har-flere-blitt-uttransportert/127920

Expulsion is moreover called for in Section 66 (d) if another Schengen state has "made a final decision on rejection or expulsion of the foreign national due to failure to comply with the country's provisions on foreign nationals' entry or residence," and in Section 66 (f) "when the foreign national's application for protection has been refused examined on its merits under Section 32, first paragraph (a) or (d), and the applicant's application has also previously been refused examined on its merits, and the application appears to represent misuse of the asylum system."

9.2.2. Detention of Vulnerable Persons

Trandum Detention Centre (Trandum Utlendingsinternat) is the only centre specially designed to legally detain migrants who will be deported from the country. Those who are returned to another European country under the Dublin Regulation are included in this practice. In Dublin cases as well as in other deportations out of the country, the National Immigration Police unit (PU) transports the person from the reception centre to Trandum as a first stop when a direct transference to the country is not possible or the travel documents are not ready. The time spent at Trandum varies, from hours to several days. IA Section 107 on use of detention does not refer to vulnerability, ref. EU Reception Condition Directive Article 11. The police make a risk assessment in advance of a planned arrest, based on the information they receive. In the PU instructions for the detention centre, it is emphasised that consideration should be given to vulnerable groups, such as children, elderly people, persons with disabilities, and persons with physical or mental health problems.[259] Gender is not an issue raised in the instructions related to vulnerability.

A Visiting Report conducted by the Civil Ombudsman (2017) shows that the detention centre has taken measures to prevent the use of force and to reduce the placing of detainees in the security section of the detention centre. Largely, the staff treats detainees in a professional manner. At the same time, increased use of long-term stays in the security section caused concern. A disturbingly large proportion of the stays in the security section were caused by the detainee's mental health problems, including practices of self-harm or the risk of committing suicide. The Ombudsman raised concern about the fact that the health personnel at Trandum are not sufficiently independent of the Police Immigration Unit. Findings made during the visit underpinned that this contributed to vital problems. The health service also appears undersized for ensuring the health of all detainees in a satisfactory manner.

A study from 2020 based on interviews and field observations discusses temporality and the experiences of "empty" time from the detainees' point of view, as the days are characterized by uncertainty and waiting (Gashi, Pedersen, & Ugelvik, 2020). The detainees' experience of the stay is painful, with the situation of unpredictability and meaninglessness triggering negative thoughts. Equally striking was the use of creative techniques: doing everyday chores in 'slow motion,' resistance against all form of control and commands, as well as the use of medication and drugs. A greater commitment to religion was also observed.

259 https://www.politiet.no/globalassets/dokumenter/pu/om-pu/hovedinstruks-for-politiets-utlendingsinternat.pdf

9.2.2.1. Children and Detention

IA Section 106 c, Special rules on the arrest and detention of minors, specifically addresses children, stressing that detention of a child can only be conducted in extraordinary situations where the measure is absolutely necessary as a last resort. The section also emphasises that the best-interests principle of the CRC's Article 3 no. 1 and the CRC provisions regulating the deprivation of children's liberty must be taken into account.

In 2015, a total of 330 children, including 10 unaccompanied minors, stayed at Trandum. In 2016, 12 unaccompanied minors and 143 children in families had a stay at Trandum (Lidén, 2017).[260] Several researchers and lawyers have strongly argued that the conditions at Trandum were not in accordance with Norway's obligations under the CRC and other human-rights conventions, especially the best interests principle. Further, UNICEF, Save the Children, and the Children's Ombudsman had strong reactions to the practice of detaining families and UAM at Trandum.

In June 2017, the Borgarting Court of Appeal concluded that Norwegian authorities had violated the ECHR Article 3 by keeping a family at Trandum for too long (20 days of detention for a family with four children 7–14 years old). Also in 2017, the National Police Immigration Service (PU) initiated a project aimed at defining police practices that safeguard children's needs, including the arrest, detention, and deportation of minors and families with children. The project has defined child-specific principles for police action and developed new police guidelines for asylum cases involving children. In early 2018, the Police Foreign Unit (PU) opened a new detention unit for children and families with children, Haraldvangen, replacing the detention of children and families at Trandum.

9.3. Vulnerability in Assisted Return

While the Immigration Act clearly specifies the circumstances under which a foreign national shall be expelled, and refers to exceptions where vulnerabilities (e.g., young age) may prevent a legal expulsion, it is notably silent on how the vulnerabilities of a foreign national are to be taken into account in the administrative process of return. This is described in more detail in circulars from the Ministry of Justice and Public Security. One circular (G-02/2016), for instance, which regulates the practice of assisted return, states that "Norwegian authorities seek to facilitate return to the home country for as many persons without legal residence as possible, either on their own or with assistance, as fast and effectively as possible." Reference to vulnerability is arguably implicit in the designation of "an organized, secure and dignified possibility to return for asylum seekers and foreign nationals without legal residence in Norway," since it requires extra resources to reach that objective for vulnerable protection-seekers. More specifically, the mentioned circular (G-02/2016 para 2.3) states the administrative procedures for the assisted return of children in split households. Underage minors whose parents or legal custodians are in Norway can only apply for assisted return together with them. If an underage minor has more than one parent in Norway with legal custody of the child, the other parent in Norway must issue written consent for the child to return together with the other parent and the UDI must holistically assess appropriateness and give its

260 The average time spent at Trandum in 2016 was approx. one and a half days for EMA and approx. two and a half days for children in families.

approval. If both parents apply for assisted return without their child in Norway, the application is to be rejected. The dual objective here seems to be to prevent the parents from leaving their child behind in Norway but also to prevent return serving as a form of kidnapping by one of the parents.

The circular further specifies that the foreign national must be capable of participation in assisted return. "This will primarily rest on an assessment of whether the person can travel unaccompanied and whether or not he or she is involved in unsettled criminal prosecutions in Norway" (G-02/2016 papa 3.3). While the latter could potentially pose a risk to other passengers and airline crew, the assessment of whether a person is able to participate in assisted return necessarily also includes an assessment of his or her own wellbeing. This is also regulated by the Convention on International Civil Aviation (the Chicago convention). Factors to take into account include psychiatric and mental health, behaviour and conduct over time, ability to collaborate and adjust before and during the transportation, and drug addictions.

A few national groups have specific country programs for assisted return, and the Norwegian authorities cooperate with various service-providers who implement the programs on their behalf. This can result in a few slightly different guidelines and circulars regarding vulnerable protection seekers. It is interesting to note that, as a general rule, The circular notes that persons with "serious health issues" and persons "who do not have a social network in the home country" are not eligible for assisted return to Somalia (where the Danish Refugee Council implements the return program) but are not similarly excluded from assisted return to Afghanistan (where the IOM implements transportation and the legal office Shajjan & Associates provides financial reintegration support (G-02/2016 para 6.3).

Appendix I to the mentioned circular lists those eligible for return through the Vulnerable Groups program and its comparatively generous reintegration assistance. It states that vulnerable groups include victims of human trafficking; victims of violence, coercion, and exploitation; persons with particular medical needs; single and elderly people; and persons between 18 and 23 years of age who arrived in Norway as unaccompanied minors. However, the UDI website notes that if an applicant does not belong to either of these groups, "the UDI can assess whether other circumstances mean that the person is in a vulnerable position and should be allowed to take part in the program."

Those considered eligible for this program receive up to 42,000 NOK, depending on the caseworker's discretion, for rent, daily expenses after return, education, establishing a business, occupational training, job placement with subsidized salary, and medical needs. By comparison, rejected asylum seekers who return through the universal Financial Support for Reintegration (FSR) program may receive up to 20,000 NOK, provided that they apply within a given period after they receive their final letter of rejection.[261] Protection seekers from some national groups, for example nationals from Belarus and Bangladesh, are exempted from eligibility for assisted return. It is somewhat unclear from G-02/2016 if vulnerable protection seekers from such groups are nonetheless eligible.

The two studies that most directly focus on vulnerability in assisted return are Paasche and Skilbrei (2017) and Paasche et al. (2018). The former study deals with how return programs for rejected asylum seekers and irregular migrants construct and create vulnerabilities in the context of Nigerian victims of human trafficking. Few studies have explored the role of assistance provided through such programs for the sex worker returnees and victims of trafficking who return through them. The paper also stands out as a rare

261 Families who return through the FSR program may moreover receive up to 10,000 NOK per child if they apply within the given period. This, however, is not counted in terms of vulnerability.

examination of a return program through data elicited in both destination (Norway) and origin (Nigeria) locations, before and after return. The authors conclude that there is a legal-bureaucratic hierarchy of vulnerabilities in Norway, where the vulnerability of female victims of human trafficking for prostitution appears on top. They also note the difficulty of operationalizing vulnerability as an elusive concept. The UDI lists some forms of vulnerability on its website. These include being a victim of violence, force, or exploitation; having special health needs; and being single and above the age of 60. While this list offers a roadmap for IOM in its work to single out those eligible for the additional support of VG programs, the IOM staff members interviewed described the evaluation of vulnerability as complex. Supposedly, one individual may be disadvantaged in multiple ways, and it is the sum of these challenges that must be assessed holistically to determine eligibility. However, at the time of the interview with IOM staff members in 2015, the VG program had almost exclusively been used for female victims of trafficking for the purpose of prostitution. Victims of trafficking for other purposes had not been offered assistance to the same degree.

The study of actual service provision to returnees in Nigeria raised concerns about excessive bureaucratic delays and poor service-mindedness on the part of the national IOM office there. The authors conclude that

> *this study, together with the broader research within this field, indicates that poor service delivery can in fact exacerbate vulnerabilities rather than help returnees overcome them. On the other hand it is clear that there is a need for reintegration assistance. (Paasche et al., 2018, unpaginated)*

In another study, Paasche and Skilbrei (2017) use the same data to explore the institutional construction of vulnerability in the context of assisted return. Again noting that the label "vulnerable" is used more or less interchangeably with "victims of sex trafficking," the study also discusses how this serves to reflect and consolidate highly gendered ways of thinking about vulnerability. Both studies reflect and consolidate conceptual blind spots regarding male vulnerabilities. They trace this to international legal developments where the predominantly female population of victims of sex trafficking has been targeted for interventions.

As we have discussed in chapters 6 and 7, victims of sex trafficking have been firmly established as a vulnerable group in international legislation. Male victims of trafficking typically receive less attention. Masculinity, the authors hold, "is not associated with vulnerability and its associated connotations of passivity and helplessness, neither among Norwegian professionals nor among Nigerian migrants." Moreover, the institutional landscape in which VG support is embedded likewise does little to shift attention to alternative vulnerabilities. The Norwegian immigration authorities simply subsumed a pre-existing return program for victims of trafficking under the existing VG program and its theoretically more comprehensive category of the vulnerable. This opens up for a more pluralist understanding of vulnerability theoretically, but comes with much institutional baggage and a ready-made bureaucratic infrastructure for highlighting a particular vulnerable group at the expense of others.

Many of the organizations that collaborate closely with the IOM, and recommend particular migrants for consideration for the VG program, are specialized in working with women who work in prostitution and may have been subjected to trafficking. While social workers who work with victims of trafficking are trained in catering to their needs, those who work at reception centres are not similarly sensitized to the needs of other groups that could potentially qualify as 'vulnerable.'

Even if a protection seeker is not considered vulnerable in a way that makes him or her eligible for protection, there is an explicit acknowledgement that a rejected asylum seeker can nonetheless be vulnerable. Norway offers comparatively generous reintegration support for those considered eligible for return through the 'vulnerable groups' program, which is said to "help vulnerable migrants in Norway who wish to return to their home country." Vulnerable protection seekers are here categorized as follows:

- Victims of human trafficking (adults and children)
- Unaccompanied minors (children who came to Norway without a parent or a guardian)
- Over-age migrants (who came to Norway as unaccompanied minors and are now between the ages of 18 and 23 years
- Migrants with extensive medical follow-up needs in the home country
- Other vulnerable migrants (for instance, victims of violence, exploitation, and abuse; victims of domestic violence; victims of forced marriage; and older migrants without a family network in their home country)

Implicit in this categorization is a notion of threshold levels, since protection-seeking migrants are here acknowledged as "vulnerable" but not to the extent or in a way that makes them eligible for protection. For instance, being a victim of trafficking is one of the categories. Being recognized as such does not necessarily warrant asylum or a residence permit on humanitarian grounds. Having been trafficked, according to a legal memo, does not in itself constitute grounds for protection because "an individual assessment must be made of the risks an applicant faces upon return." As we have discussed earlier, Norway is legally obliged to protect victims of trafficking. The Council of Europe Convention on Action against Trafficking in Human Beings specifies in Article 16.2 that the return of victims "shall preferably be voluntary" and that it "shall be with due regard for the rights, safety and dignity of that person…"

CHAPTER 10: MAIN FINDINGS AND CONCLUSION

All asylum seekers in Norway are in a vulnerable situation, our informants in the immigration administration consistently pointed out. Refugees do not know the language, the cultural codes, or the asylum system, and many have survived traumatic experiences in their countries of origin or on their journey to Norway. Nonetheless, our informants stressed, the identification of *particularly* vulnerable people is significant for the purposes of proper assessment of their claims for protection and demarcating individuals who face distinct needs to be followed-up when staying in Norway.

As discussed in previous chapters, there is a legal obligation to assess and address vulnerabilities, and these requirements are implemented in Norwegian immigration law as well as in the regulations of the welfare system. The obligations stem from both international instruments as well as national legislation. The incorporation of international conventions such as the CRC, CEDAW, and the ECHR in Norwegian jurisdiction with the Human Rights Act of 1999 strengthens the position of these international instruments.[262] Further, obligations are set by the ratification of legal measures such as the Istanbul Convention, [263]the Convention on the Rights of Persons with Disabilities (CRPD),[264] Palermo protocol,[265] and the Convention against Torture (CAT).[266] Actions such as FGM, forced marriage, and human trafficking are punishable offences in the Norwegian Criminal Act.

In the study we use "vulnerability" as an *analytical* tool to define and limit the scope of the lived experiences we are investigating. In our analyses, when referring to the intersections of various conditions and both subjective concerns and objective factors, we find it useful to use the concept *situational vulnerabilities*. We also examine how new vulnerabilities are *administratively produced* by the legislation or administrative decisions. In this way, we highlight the political character of the concept. At the same time, the scope of the analysis is the *emic use and interpretation* of vulnerability: to what extent and how the concept vulnerability is used as a descriptive term, to identify needs and circumstances of certain individuals and groups, and which vulnerable groups are identified, in policy documents, the legislation, by caseworkers, and in decisions. We find that the broad connotation of the concept is seen both as a problem and an advantage.

In the analysis of the legislation, we have explored the *institutional practices* to meet the special needs of protection seekers exposed to migratory vulnerability; the reception system and the follow-up in the health and welfare system; the Immigration Authorities' procedural adjustments; and last, but not least, the substantive assessment of vulnerabilities in the asylum proceedings. One main finding is that the legal obligations are not always straightforward; the implementation of obligations owed to protection seekers facing migratory vulnerability remains limited; due to their status, the available resources, the mandate, awareness and skills of the street level bureaucracy, as well as political intentions to process a strict immigration policy. Vulnerability becomes a useful point of departure for reflection in most cases"

262 The Norwegian Human Rights Act of 1999 includes CRC, CEDAW, ICCPR, ICESCR, and the ECHR
263 The Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul convention) https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e
264 Convention on the Rights of Persons with Disabilities (CRPD) https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html
265 Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx
266 Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CAT) https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

one informant stresses. The outcome of the cases may not necessarily meet the needs and precarious situation of the protection seekers. In the following section, we point out some of the main findings of this report.

Despite the uneven attention given to various vulnerability factors in Norwegian practice, our informants found the concept of vulnerability to be useful for highlighting the complex and often interrelated factors that expose people to harm –in their countries of origin, in transit, as well as in Norway. More systematic efforts to promote contextual understandings of vulnerability – in contrast to simplified categories - may help ensure that people's protection needs are met in a more consistent manner.

10.0.1. Identification Mechanism

Addressing the predicament of vulnerable individuals seeking protection presupposes an understanding of who they are and what they need. Identification of the actual type of migratory vulnerability of the individual protection seekers is therefore the first step to specify means to meet extra needs.

The EU's Reception Directive Article 22 *Assessment of the special reception needs of vulnerable persons* states that Member States shall within a reasonable period of time assess whether the applicant has special reception needs, and indicate the nature of such needs. Once identified as vulnerable, applicants enjoy specific rights in the asylum process under EU law (ECRE, 2017). In Norway, there is no separate initiated procedure for identifying vulnerable persons with special needs. A study from 2010 (Brekke et al., 2010) found that, when detected, special needs were handled on a case-by-case basis. This is still true today. The ad hoc nature of the assessment procedure is in particular problematic in situations where the vulnerability is not obvious and visible and when there may be strong feelings of shame, trauma, and social stigma associated with vulnerability and special needs. The 2010 report recommends a systematic identification, documentation, and guidelines for follow-up of vulnerable individuals.

Instead of a single dedicated identification mechanism, the responsibility to identify extra needs is included in ordinary registration and asylum procedures run by different institutions, as we described in Chapter 4. The initial registration by the National Police Immigration Unit (PU) and the compulsory health consultation may identify the applicants' extra needs under the examination. Further, vulnerability related to the asylum claims is expected to be addressed under the asylum interview and in the child conversation with accompanied minors. Staff members at the reception centre conduct an initial interview of new residents upon arrival, with the aim to identify special needs as one of many objectives. Further, in the health consultations at the local health service providers, somatic health problems and former experiences causing trauma are considered, however only if the applicant discloses such experiences.

Although there are advantages to an identification procedure including different actors being responsible for identifying a person's special needs, there are also certain deficiencies: vulnerability is a peripheral aspect of these actors' main duties. Actors may lack sufficient competence - and time - in order to identify and address invisible and less obvious vulnerabilities, their multiple forms and the intersectionality of these.

Solid routines for communication and documentation must be in place when information flows across institutional and sectorial units. The communication flow involves different units of the Immigration Authorities as well as actors in the welfare institutions. Communication relies on consent from the protection seeker and the documentation meets certain barriers related to the Personal Data Act. In addition

to electronic information, which will give only partial information due to the data restrictions, personal communication across various units of the Immigration Authorities is often still needed. In addition, the local and specialist health providers have an important role, feeding relevant data about health, trauma, and experience of torture into the proceedings of the asylum cases. We find that the Regional and Reception centre's (RMA) regional offices are central hubs and facilitators in the flow of information between the many different actors. Although we find an awareness of the need for robust routines, the communication relies heavily on the involved persons' commitment to follow-up on issues they are worried about.

Another issue we want to raise related to the identification mechanism is the use of bureaucratic categories, which make other forms of individual vulnerability less noticeable. One such category is unaccompanied minors, recognized as vulnerable with certain priorities. When turning the age of 18, they may still be in need of care and treatment of trauma, however, no longer having a privileged status. Human trafficking is similar. Certain forms of human trafficking, such as prostitution, are mainly associated with women. Sexual exploitation is therefore less addressed when interviewing men. In institutional practices, there is always a danger of biased understandings and an implicit moral hierarchy of vulnerabilities, making some types of vulnerabilities and needs more obvious and highly ranked than others from the start. Because of the fragmented identification mechanism not necessarily having dedicated expertise, there is a risk for an identification process to be tailored mainly to fixed groups.

We find it necessary to improve the identification mechanism early in the arrival procedure. There is a need for information about precarious conditions prior to the asylum interview for both the "recognized" and the "overlooked" vulnerable groups. The new arrival procedures improve the possibilities to address and observe extra needs, due to three weeks' stay in the arrival centre. Nevertheless, a dedicated examination of vulnerabilities is needed. A possible measure would be to include a voluntary diagnostic interview[267] in an extended health consultation of the day's tuberculosis screening. The aim of the diagnostic interview is to map migration-related experiences of exploitation, torture, and other forms of inhuman treatment, to follow up by the health system and to ensure adjusted reception conditions. This early health consultation with trained health professionals would document physical and psychological factors and issue health attestation to simplify the task of the caseworker to assess the availability of effective protection. The consultation can also give the option to feed information about health and welfare services related to their specific experiences and needs (Lie, Sveaass, & Vevstad, 2014, Tyldum et al., 2015).

Although placing responsibility on different agencies and stages in the asylum proceeding has certain advantages, the system lacks a standardized procedure and a responsible authority for identifying vulnerable persons, including those outside the specific groups considered as vulnerable. We see three main challenges: insufficient attention, information disappearing in the information flow, and no main responsible party. An improved identification mechanism including the suggested health consultation will be cost-effective for two reasons. Firstly, receiving treatment for psychological and physical illnesses as early as possible increases the prognosis for recovery. Secondly, a well-informed case makes for a correct assessment of the need for protection with the inclusion of vulnerabilities. This again leads to less investigations and appeals after a first decision.

267 Lie, Sveaass, & Vevstad (2014) recommend a diagnostic interview using existing tools of triage. See Directorate of Health (2010) National guidance for health promotion to asylum seekers and refugees, IS-1022.

10.1. Reception Conditions and Access to Welfare Services

In Chapter 5, we questions to what extent protection-seekers living in reception centres have rights and access to sufficient provisions. In the assessment, the societal institutions and their capacity and responses to meet extra needs come to the fore (Fineman, 2008).[268] The welfare state and public sectors are the main providers of social welfare, education, and health; this is also the case for asylum seekers. In reception centres, the concept of vulnerability is used broadly, without a sharp definition, to describe individuals at risk. We find that the attention on vulnerabilities is first and foremost pragmatic, emphasizing the management of assistance, care, and resources to ensure that the accommodation needs, required extra provisions, and safety standards are met.

10.1.0.1. Vulnerabilities in Arrival Centre

Regarding the *arrival centre*, internal and external reports have raised concerns related to the security situation and material conditions for vulnerable persons and child families (Schultz & Langballe, 2017, PUMA report, 2020). When assessing the conditions in the arrival period, we find that there is a certain awareness of the problem of vulnerabilities. Adjustments are made for certain types of vulnerably, offering separate sections for families with children and single women, and alternative accommodation for those expected to be most in need for increased security and help (unaccompanied minors, trafficking victims, LGBTQI+ persons). Even so, the stay in a tent hall over time may be challenging for anyone. The living conditions in the arrival centre may *increase the stress level* for applicants with trauma or other health problems, which may impact on the asylum interview. The new procedure intends to speed up the arrival procedure and asylum assessment, resulting in shortening of the asylum procedure and the time spent in reception centres. If this is the case, it will be an improvement for those with a more standard application, however, this will not include those with more complex causes for applying for asylum.

We see the need for a *coordinating instance* that ensures that vulnerabilities identified both in the tent hall and by the different actors in the arrival procedure are documented and passed on to the right party. We therefore support that such a mandate is given to a specific team (PUMA, 2020) with established channels to RMA, UDI asylum units, and other vital welfare instances responsible for following up on extra needs.

10.1.0.2. Vulnerable Groups Giving Alternative Accommodation

Unaccompanied minors stay in separate care (under 15) or reception centres (16–18). The care facilities for the eldest group have been criticized over time for being substandard. The circulars relating to unaccompanied minors seldom address vulnerability; the emphasis is mainly on young people's capacities for adjustment. Still, staff members express their concerns about insufficient resources to follow up minors' needs. The situation is particularly challenging for those who spend extended periods of time in the centres, because of a prolonged appeal process or having been granted UAM limit or ID limit. Since 2016, administration-produced insecurity, due to the increased use of UAM and ID limits, and the prospect that their permit can be withdrawn, have generated confusion about what the granted permit means. The insecurity continues also after they have settled in a local community, and affects their attentiveness in school and aspirations for the future.

268 See e.g., Fineman (2008, 2010) and her discussion on the societal institutions' response to vulnerability.

Victims of human trafficking are most likely not living in reception centres; instead they receive support from dedicated NGOs and a social welfare service unit. Minors with pending threats from offenders are transferred to a dedicated unit under the child welfare authorities. Research identifies gaps between the complexities of the lived experiences of trafficked persons and the more clear-cut categorizations that are required to receive assistance within the anti-trafficking system in Norway (Brunovskis, 2019; Tyldum et al., 2015). For victims of human trafficking, the challenges include the uncertain length of the stay in Norway and strong expectation from the authorities to report the crimes of their offenders and to be a witness in a trial.

10.1.0.3. Vulnerabilities in Ordinary Reception Centres

The duty of the ordinary reception centres to follow up on extra needs is mainly related to adjusting material conditions for those, for example, with physical disabilities, or for protecting the accommodation facilities for example for single women and LGBTQI+ persons, and to ensure sufficient information and communication measures for all residents, for example, for deaf people. The staff identify vulnerabilities mainly in the formal interview when the protection seeker arrives at the centre and in communication with residents about their everyday life. Further, the reception centre staff is expected to assist the residents in the communication with the municipal health service.

Vulnerability is very much a socially embedded process that affects people differently depending on where they are 'situated within webs of social relations.' For children, social support from school and staff can foster resilience in children and families; however, relationships in and outside families and centres may also increase their vulnerability. In reception centres, the lack of privacy may increase conflicts and the feeling of insecurity.

The contrasting conditions for children and adults are instructive to understand the reception centre as a waiting zone. Adults are deprived from work, meaningful activities, and social status, leading to longtime passivity. Children, on the other hand, are expected to attend ordinary schools, day care institutions, and leisure activities when moving to an ordinary reception centre and when settling in a municipality. The emphasis is on normalizing the everyday life of the child. This may also help the family to stick to daily routines. For most, however, the experience of waiting is exhaustive, stressful, and exacerbates existential insecurity. The setting, then, is challenging for all residents; however, even more for those in a particularly difficult position or in need of extra support.

Living in a residence centre for years. As other researchers have stressed, waiting in reception centres is a fundamental aspect of the immigration system (Whyte, 2011; Weiss, 2020). For quite a few, living in a reception centre last for many years. In September 2020, only one third of those living in a reception centre had their application under processing in the UDI or at the appeal board. For most, the time spent in reception centres is after refugees either have been granted residence (one of four), or have received a definite rejection (more than one third). Among those over 60 years, nearly three out of four persons have received a negative decision, and have stayed overtime in the centre with a pending return to the home country.

Use of ID limit. Residents living in reception centres with limited residence permission (IA §38 para 5), add various new problems. Their status gives reduced access to basic rights, such as bank accounts, travel papers, etc. In September 2020, one fifth of those living in a residence centre who were unaccompanied minors when they applied (125 persons) continue to live in the reception centre due to their ID limit.

These young persons do not have the access to education, care, and support they would receive if they had been settled. For all, the indefinite situation of living with an ID limit is contrary to the processes of resilience and integration, and impacts negatively on their psychosocial health.

Some residents have serious health problems when living in the reception centre. The treatment of these problems (drug problems, mental disabilities) may be very limited when living in ordinary reception centre, and increase if they are not granted international protection. Our informants, as well as other studies, stress that the resources to meet such increasing and complex needs are limited, both for the residents and for the staff (Lillevik et al., 2017; Lidén et al., 2013; Berg & Tronstad, 2015).

10.1.0.4. Following Up Serious Cases by Special Sections

The reception system includes some significant institutions to meet special needs that cannot be met in ordinary reception centres. With the help from staff and the RMA regional office, a resident can apply for a stay in a specialized unit linked to a reception centre when the situation becomes unsuitable in ordinary centres. The reasons are manifold; some are seriously ill from cancer, some may have drug problems, some face increasing mental health problems, some with certain disabilities find it difficult to live in ordinary centres. We find that the four centre units and the care institution (Særbol) are very much needed, also to ensure that the ordinary centres are run with limited resources. The facilities, then, are significant for the whole reception system to meet substantial needs. These units and the care institution are staffed day and night, with a higher ratio of staff per residents and with more qualified team members. The units rely heavily on the treatment given by the ordinary health and welfare system.

10.1.1. Access to the Ordinary Health and Welfare System

Various forms of vulnerabilities may not be identified as such, but categorized as health issues. For the centre staff, their responsibilities are restricted to providing information on rights and available services, and to facilitate contact with these types of services. The ordinary health and welfare service are obligated to follow up additional needs related to health, family, and child welfare issues. Serious health problems affect not only the individual, but also their family members and co-residents. Rehabilitation may include several measures, including medical, physical, and psychological services, and sometimes services aimed at the family as a whole. Health resources are limited, and the resident's legal status impacts on the access to health service as well as the type of treatment they will get. In particular, access to specialist mental health institutions is a challenge.

A recent study shows that the average prevalence of Post-Traumatic Stress Disorder (PTSD) among Syrian refugees is 35 percent, compared to 1 percent in the Norwegian population (Fjeld-Solberg et al., 2020). PTSD can ignite depression, substance abuse, psychosis, and neurobiological and personality changes. (Varvin, 2018). Even though some persons are resilient to PTSD, a new traumatizing event can lead to the onset of the condition many years later.

The NKVTS study found that 35 percent of the men had experienced torture, whereas 18 percent of the women reported on this (Fjeld-Solberg et al., 2020).[269] The ordinary health service is accountable for the rehabilitation of torture victims, although the system lacks the necessary resources and competences to meet specific rehabilitation needs. A recent Red Cross study (2020) emphasises the lack of a systemic

269 https://www.nkvts.no/content/uploads/2020/10/NKVTS_Rapport_1-20_REFUGE.pdf, p.18.

approach, and national plan, to identify and follow up victims of torture and other cruel, inhuman, or degrading treatment or punishment. There is no consistent implementation of measures that the Istanbul Protocol compels the states to apply, and an absence of health practitioners with sufficient competence to document torture. The guidance for promotion of health for asylum seekers and refugees includes instructions for such cases.[270] As of now, there is no guideline or circular for assessing torture in asylum cases.[271] Furthermore, the ordinary health service lacks a clear mandate and adequate routines for documenting and informing the UDI of health issues relevant to the asylum application, including torture.

Even though many health professionals are genuinely interested in mental health, the needs are not sufficiently met in the asylum phase. The reasons are many. One main reason is insufficient capacity in the general mental health system and a lack of competence related to migratory and cultural issues. The use of interpreters in consultations and therapy is also a challenge. The uncertainty about their rights to health care as protection seekers is another reason, and so is the indefinite time perspective of the stay, which make the health professionals reluctant to start treatment (Brekke, Sveaass, & Vevstad, 2010, Red Cross, 2020).

Still, the staff in reception centres find that the health and welfare system accepts persons with serious illness and other severe problems when needed, although the protection seeker is not entitled to such treatment. For long-run reception centres and units, the cooperation with local health services, child welfare services, and education system seem to work quite well. However, new reception centres in municipalities that are not familiar with such centres face more negotiations and problems related to residents' rights and access of ordinary welfare services.

The Norwegian Directorate of Health (2015) recommends all municipalities hosting protection seekers to create "multidisciplinary health teams where specialist health services are included." It is up to the municipalities to organize their individual healthcare. Even though such teams and centres have existed, these have been downsized with less protection seekers arriving in Norway.

10.1.2. Settlement

For municipalities to settle refugees arriving in Norway or resettle quota refugees is a voluntary task. Most refugees with a residence permit are settled after some extra months in reception centres, waiting for the transition to a municipality. The time it takes depends mainly on the numbers of individuals and families waiting for settlement. There are good examples of how responsibilities for persons with resource-consuming health conditions have easily been transferred to a municipality. However, a substantial number of persons with extra needs due to health problems or disabilities are living in ordinary reception centres or in facilitated sections for many years at a time. Municipalities may be reluctant to settle the person or family because of the extra costs of their special needs for treatment or for adjusted accommodation in heath or care institutions, etc. This is a well-known challenge over time, and produces problems both on the individual level, for reception centres, and on the political level.

270 Attachment to *Guidance for health promotion of asylum seekers, refugees and family reunited*. IS-1022 (2011).
271 An UDI-initiated research project started in September 2020 to lay the groundwork for strengthening the identification and follow-up of torture victims in the asylum process (communication with Sveaass, November 2020).

Our informants on the conditions in reception centres emphasise how important the period in a reception centre may be to prepare the person with extra needs for life on their own in a local society. The information they receive in the centres and the options they are offered to become familiar with the health and welfare system is significant for managing the systems on their own. The informants therefore worry about the resettlement of quota refugees without such experiences, and about the capacity of the local health and integration system to meet their need for information and support.

We find that the mainstreaming of support of extra needs provided by the welfare system is not straightforward. Research stresses that limited capacity and competence in the welfare system contributes to delay or overlooked needs for treatment. Another issue is that those granted international protection have more rights than those with humanitarian status. One core difference is the right to family union, which may cause continuous worries and problems, worsening their disadvantaged situation. Family reunion is a long and complicated process for all. For those granted humanitarian status, the prospect of reunion with family members will take several years, and even prolonged by an ID limit before being settled.

The Norwegian welfare state is described as generous to citizens, providing institutions, measures, and support for those with extra needs. However, it is not available to those without holding legal status (Brochmann & Hagelund, 2010; Olwig, 2011; Bendixsen et al., 2015). When the state and public sectors are the main provider of social welfare, education, and health, as is the case in Norway, the alternative options for support, from families and voluntary individuals and organizations, are few, although not totally absent (Khosravi, 2010; Kjærre, 2015). The inclusive exclusion (Agamben, 2008) related to restrictions in status and rights increase the migrants' marginality. The asylum seekers as well as those living with an ID limit are legitimate members of the society, but are excluded when living in a reception centre over time due to limited recognition from the local society. The asylum system then contribute to create vulnerabilities, at the same time as the reception system needs to meet and govern the precarity.

10.2. Procedural Aspects of the Asylum Process

The Immigration administration has access to numerous guidelines and circulars on how to identify claimants from certain vulnerable groups during the asylum interview and throughout the decision-making process. Even so, there are certain shortcomings in the asylum hearing.

Principles of administrative law and practice, for example "effectiveness" and efficiency, understandably compel decision-makers to choose the most obvious basis for residence. However, this means that in some cases, vulnerabilities remain hidden, or underexplored. For example, claimants who have deserted military service in Eritrea receive protection in Norway because they risk arrest, mistreatment, and torture upon return to their country. Previous experience of torture, meanwhile, may not be investigated. Similarly, a Syrian woman will almost always receive protection in Norway by virtue of her nationality. However, she may also face other risks—for example on account of sexual orientation or domestic violence - that are never assessed. Male victims of trafficking may not identify as "vulnerable" or consider their mode of arrival to be relevant to their claim. Other limitations may be that women who apply for protection with their husbands may not dare talk about domestic abuse when the husband is sitting in the waiting room. The fact that the risk factors are not established from the beginning may make it difficult, for example, to raise them as later defenses to revocation of residence. Other shortcomings are:

- The asylum interviews in Norway are thorough, Still, the time allocated to the asylum interview leaves limitations in the options to examine migration-related vulnerability, such as the effects on traumatizing events that have occurred pre-, peri-, and post-flight.
- Moreover, in times of large arrivals of asylum seekers, interviews tend to be shorter and even more focused on whether a person has a well-founded fear of persecution, often leaving the question of vulnerability behind. Added to this, asylum seekers move more frequently from one reception centre to another, making it more difficult for personnel at the reception centres to identify vulnerable persons.
- The asylum interviews include accompanied children, yet under limited hearing conditions.
- For unaccompanied minors, the age test is used, consisting mainly of the medical component. Its acknowledged limitations have significant implications for the minors not assessed to be a minor.
- Furthermore, some claimants are not interviewed by the administration at all, such as claimants with Dublin cases. Children who apply for derivative protection status from their parents are not generally interviewed, and a risk of FGM or some other harm may remain hidden.
- For most protection seekers, the asylum interview is the only time they speak to someone from the Immigration authorities in person. Though most asylum seekers go through an obligatory asylum interview, only eight percent of claimants have an oral hearing in the Immigration Appeals Board.[272]

The current system of legal aid only grants legal aid with a negative decision, with the exception of unaccompanied minors.[273] Having access to a lawyer during the asylum application process could alleviate the challenge of vulnerabilities being left unveiled prior to a decision being made in the first instance (UDI), as the lawyer could guide the person in what topics to bring up. For example, a lesbian woman might deem her sexual orientation irrelevant to her case, or a grown man might not think of himself as a victim of human trafficking and will not bring this up during the asylum interview.

Even with legal representation at the appeals stage, the limited number of hours may be insufficient for the legal representative to get a thorough grip on the case. Furthermore, a claimant granted humanitarian status by UDI receives no legal aid for an appeal if he or she believes that refugee status was wrongly denied. In addition, a permit may be limited, but renewable every year. People with limited permits, typically on the basis of identity doubts, may not understand the reasons underpinning this limit, or what she or he needs to do to remove it. Legal aid is not available for these cases either. Consequently, it is not uncommon for people to remain year after year with a limited permit, with restricted opportunities to participate in society (chapters 5 and 7).

A final way in which procedures may undermine a robust vulnerability assessment relates to the passage of time in the appeals process. Under Norwegian law, judicial review of an administrative decision is limited to facts as established in the final decision. This has consequences most obviously for children, whose "best interests" may have been fixed months or years before the actual hearing. This creates an inherent risk of disconnect between current vulnerabilities and legal outcomes for protection seekers.

272 https://www.riketstilstand.noas.no/2019/rettssikkerhet
273 NOU: 2020-5, p. 236.

10.3. Assessing the merits of a claim for asylum

In the protection assessment itself, the concept of vulnerability plays two distinct roles: first, it serves as a heuristic device to create legible groups who face 'prejudice, stigma, and social-disadvantage' that expose them more routinely or acutely to serious harms, or compromise their ability to access effective state protection (Peroni, 2013, p. 1075).[274] Because refugee law explicitly acknowledges certain sources of vulnerability - for example based on ethnic or religious identity - it is in the catch-all category of "social group" where the concept of vulnerability does the most work. Here, a vulnerability lens can sharpen focus on groups at heightened risk of persecution or serious harm in any given context. In other words, it makes legible categories of protection seekers whose exposure to risk might otherwise go unrecognized. It can also, importantly, inform the threshold of harm needed to establish a claim for protection (Peroni & Timmer, 2013).[275] The assessment of both a claimant's *credibility* and the *objective* risks that they face upon return may be affected by factors such as age, gender, marital status, mental and physical health, and experience with trafficking or sexual violence.

However, vulnerability also plays a role in the proportionality assessment required at different points of a protection assessment. Essentially, the principle of proportionality requires a certain balancing between the state's interest in migration control against individual human rights and humanitarian interests. For example, before the 'reasonableness' test was removed from IPA practice, vulnerabilities related to health, age, gender, and the ability to find work were balanced against the state's interest in denying international protection to people with a haven in their countries of origin (Schultz, 2019). Similar balancing is undertaken in IA §38 assessments, and following the grant of §38 status, the decision of whether or not to limit it (for example to the ages of 18 and over in the case of UAMs). In proportionality assessments, both group and individual notions of vulnerability come into play in what is often a complex and composite assessment.

This report highlights not only the ways in which migrant vulnerabilities are accommodated in the protection assessment, but also how the scope of protection for vulnerable asylum seekers and refugees is limited by 1) procedural aspects that make it difficult to identify vulnerable people and/or properly assess their vulnerabilities, and 2) narrow readings of Norway's obligations under the 1951 Geneva Convention and the European Convention on Human Rights.

10.3.1. Vulnerability and the Scope for International Protection

Norwegian law and practice recognize that vulnerabilities related to age or gender may reduce the threshold for establishing a well-founded fear of persecution or real risk of serious harm. They also inform the grounds for persecution, particularly within the category of 'social group'. Within this category, different forms of vulnerability – connected to age, gender, marital status, harmful traditional practices, sexual orientation, gender identity, trafficking, etc. – are relevant as factors exposing an individual to a threat of persecution or serious harm. For persons whose claims do not meet the criteria under IA§28, vulnerabilities related to health, age and status as a victim of trafficking, can justify a positive decision for residence on the basis of strong humanitarian considerations (IA§38). In §38 cases, vulnerability is also used more

274 This reflects a relational view of vulnerability, which focuses attention on the social, historical, and institutional forces that create or sustain it. Ibid., p. 1064.

275 M.S.S. v. Belgium and Greece, App. No. 30696/09, 53 Eur. H.R. Rep. 2, 1232 (2011). In a Separate Opinion, Judge Sajo remarked that the severity of harm caused by the short-term detention of asylum seekers was comparable to much longer stays of persons who are deemed to be less vulnerable (Separate Opinion, Sajo J. at 101).

broadly as a lens through which to assess the overall situation for individuals upon their return. While vulnerability can sharpen the focus on risk in various contexts, this lens is blurred by competing dynamics in Norwegian law and practice. For example, Norwegian legal doctrine asserts that because refugee law is designed as a back-up to home state protection, the availability of domestic protection can be the basis for denying or withdrawing refugee status. There is no need to ensure that relocation to a presumed place of safety is reasonable, either in the inclusion or cessation assessments.

This understanding of refugee law's surrogate role shifts the focus of refugee status determination away from the individual asylum seeker's risk of persecution or serious harm to the possibility of protection *somewhere* – by someone. In Norwegian practice, non-state actors, including family members, have been recognized as protection providers for the purpose of denying or revoking refugee status. Both IPA and cessation practices extend the vulnerabilities associated with internal displacement. Further, the increased focus on protection reviews has a disproportionate impact on people with gender-based claims, who are often considered vulnerable: women at risk of forced marriage, girls at risk of FGM, etc. It is difficult for these refugees to prove their continued need for protection five or more years down the line when they apply for permanent residence. And finally, this model of refugee protection excludes from its scope those persons who, because of past persecution are "*unwilling*, owing to a well-founded fear, to avail themselves of state protection" (Article 1A(2) of the Refugee Convention).[276]

10.3.2. Gender Differences in Terms of How Vulnerability is Defined

Vulnerability plays out differently for asylum-seeking men and women both before, during, and after the flight from the home country, a fact also stated in the empirical cases we have analyzed. The assaults refugees experience are often gender-related, and their gendered identity shaped in the social and cultural interaction between people (Varvin, 2018).[277] What role, then, does gender play in the narrative of a (vulnerable) refugee?

Pre-flight, when there are wars and conflict in a country, women are used as tools to frame and harm men, commonly by rape, imprisonment, and torture (see e.g., Skjelsbæk, 2012). Depending on the social circumstances in the home country, a woman may receive little social support and can be further penalized by her network after having been subject to sexual assaults. Even so, it is more common for men to have experienced imprisonment with torture, including sexualized torture. Torture attacks "the most vulnerable in the personality and the self-esteem, that later in life can create extensive difficulties in close relationships," also in the role as a parent.[278] Women are especially exposed pre-flight, as they, in addition to the assaults due to war and conflict, may endure marriages with an elevated level of violence and sexual assault. In addition to this, many have been subject to forced marriage, negative social control, and FGM, traumatizing events.

276 See Schultz, 2019 at https://eumigrationlawblog.eu/understanding-the-internal-protection-alternative-part-ii/.
277 Flyktningers psykiske helse. Varvin, 2018, p. 195.
278 Flyktningers psykiske helse. Varvin, 2018, pp. 199, 200.

During flight, asylum seekers face multiple dangers such as human trafficking, physical attacks, rape, and slave-like working conditions. As Europe tightens its immigration policies and border control becomes increasingly rigid, asylum seekers are forced to enter Europe by routes that are more dangerous. Refugees are stranded in Turkey and provisionary camps in Greece in poor conditions. The result is an increase in traumatizing events and violence for people fleeing their home countries. Girls and single women (with and without children) are particularly at risk.

Post flight, the gendered roles are redefined as the refugees arrive in new social and cultural contexts. Women are still vulnerable in reception centres, but they may experience an increased control of the self as host countries are more egalitarian, whereas men may confront increased shame as they are less able to support their family financially. In the study on Syrian refugees in Norway, the stressors most linked to psychological health were the financial situation and feeling of loss of respect.[279]

As shown earlier, women are more prone to developing PTSD, while men are more likely to experience traumatic events. In addition to this, when a woman develops PTSD, she has a higher probability for this to become chronic than a man. Although research does not fully explain why this is so, the explanation might be that women are more often subject to sexualized traumatic events than men, and these events touch upon the most vulnerable sides of the self or identity.288 Also young men report on sexualized traumatic events.

Refugees who suffer from PTSD may develop other conditions such as depression and anxiety that makes it hard to function in everyday life right from the beginning in a new country. Others, however, may appear to function well and show resilience. Even so, a new trauma in their life can cause them to become re-traumatized many years after their arrival in Norway. As women and men react differently to trauma, it is important to be aware of, and convey more research on this in order to start treatments and facilitate their recovery as soon as possible upon arrival.

10.3.3. Humanitarian Versus Legal Responses to Vulnerable Protection Seekers

In Norwegian law and practice, vulnerability is primarily addressed through the 'politics of compassion,' related to the state's sovereign right to decide who is worthy of care (Demetriou, 2019). The tendency to address vulnerability through discretionary, humanitarian responses subject to political control (humanitarian status, resettlement quotas, criteria for establishing whether or not to grant UAMs a time-limited permit) means first that many protection seekers with profound vulnerabilities, including physical and mental health problems, are refused residence because their situation does not meet the extraordinary threshold needed to establish a claim under IA §38. This is particularly true when the protection seeker comes from a country with many similarly situated people (for example, trafficked women in Nigeria, or unaccompanied minors from Afghanistan) or if they or a family member had committed fraud in their application. In these cases, even vulnerabilities that Norwegian authorities are compelled, by legal obligation, to identify and follow up on may yield to priorities of immigration control. When it comes to the best interests of children, meanwhile, it is clear that the weight given to this "fundamental consideration" varies widely depending on the competing state interests.

279 See https://www.nkvts.no/content/uploads/2020/10/NKVTS_Rapport_1–20_REFUGE.pdf, p. 19. 288 Flyktningers psykiske helse. Varvin, 2018, p. 198.

A second consequence is that avenues for review of decisions to refuse residence on humanitarian grounds are limited. This means that vulnerable protection seekers have less legal security, and fewer opportunities to challenge the administration's understanding of material facts in their claims.

We have found that only a select subset of international legal sources and instruments are applied to specific court cases and bureaucratic practice: the ECHR, the CRC, and the Refugee Convention. We were not able to find specific references to, for example, the International Convention on the Elimination of Racial Discrimination (ICERD), Convention against Torture (CAT), or Convention on the Rights of Persons with Disabilities (CRPD). These instruments, we believe, may be useful to highlight specific challenges that vulnerable people - victims of torture or disabilities, for example - might face upon return, in particular to access protection. Since the Immigration Act is to be applied in accordance with human rights conventions when they intend to strengthen the position of the individual, a more systematic approach to this body of law may contribute to a more robust return assessment.

10.4. Administrative vulnerability

Migration control by its very nature - by deterring entry, containing people in detention centres or refugee camps, imposing return - intensifies and creates specific forms of vulnerability. This is true not only of measures aimed at keeping people out, but also of post-hoc immigration policies that destabilize residence for those who are already inside. Migration theorists have described refugees and other legal migrants as "quasi-citizens": while their human rights are protected in some respects, they are also continuously threatened in other respects by the state charged to protect them (Baumgärtel, 2020, pp. 19–20; Nash 2009, Lind, 2020). The increased bureaucratization of the asylum process may facilitate practice for caseworkers themselves (although even they struggled to maintain an overview of relevant sources), but it creates a barrier to clear communication with claimants. Sick or traumatized protection seekers may not be able to satisfy documentation requirements, and even educated, healthy adults may have trouble understanding the reasoning behind their decisions. In reports about time-limited permits, an important finding is how difficult it is for families and UAMs to make sense of their decisions and what they have to do to get any limits repealed. The fragmentation of statuses makes things even more complicated: current and former UAMs for example have expressed confusion over whether timelimits on their residence relate to their ID or their age. The UDI and UNE are aware of this challenge and are taking steps to improve information at least to young people, for example through www.asylbarn. no. However, there appears to be a profound need for individualized guidance not only to ensure that people understand their rights and obligations, but also to build trust in the system.

In this report we point to the link between limited residence permits under IA §38 and increased precarity for protection seekers granted the right to remain in Norway - in particular youths and families, but also people with sickness, trauma, and other vulnerabilities. People with limited permits do not have the right to permanent residence or family reunification. Daily challenges include exclusion from key banking services, which in turn affects access to the labor market and housing. Other obstacles relate to the possibility for travel, for getting a driver's license, and for financing one's higher education. Research suggests that the effects of continued uncertainty on income and mental and physical health are considerable and can affect the ability of some parents to adequately care for their children. Essentially, these time-limited permits for people who will likely remain in Norway for the long-term deny agency to vulnerable migrants and exclude them from key social and economic activities.

For persons granted one-year permits because of doubts concerning their identity, a national ID card has been proposed - which would also be accessible to foreigners. This is only a partial solution to the insecurity created by limited permits. It would solve the most obvious practical problems, for example access to basic banking services, but would not provide a path to permanent residence or family reunification.

In addition to this, both persons with refugee status and limited renewable permits lack access to adequate mental healthcare. As discussed earlier, four out of ten Syrians have experienced five or more potentially traumatic events before fleeing Syria, and the prevalence of PTSD among those who had experienced more than five potentially traumatic events was at 52 percent.[280] This means that there is a large number of refugees in Norway living with PTSD as this is clearly not exclusive to Syrian refugees. On the other hand, refugees who receive protection in Norway often work very hard in order to earn enough money to fulfill the income requirement for family reunification. They may also be in need of extensive psychological help, yet focus instead on making a living. It would be beneficial both for the mental health of both groups—refugees with ordinary status as well as those with limited permits—and cost effective for the state, to provide targeted mental healthcare from the very beginning as a way to build resilience and promote inclusion.

10.4.1. Political discourses on vulnerability and immigration

Our analysis of the Norwegian immigration policy revealed the interaction between policy discourses, legislation and practices. We have found two main trends. First, public opinion against restrictive immigration policies has focused on populations widely considered to be particularly vulnerable, including children in families and unaccompanied minors. This has resulted in parliamentary interventions and eventually to changes in regulations and practice. Examples include giving greater weight to children's attachments to Norway, introducing 'vulnerability criteria' for the so-called 'October children', and the follow-up practice for children who are victims of human trafficking). A competing trend is the political discourse in favour of a more restrictive immigration policy, often with the justification that asylum policy must be sustainable over the long term. In 2016, the Solberg government received got support from Parliament for new and stricter regulations in the Immigration Act, which led to substantial changes, including the interpretation of IPA, as we have discussed earlier (chapter 6). The last decade's regulatory changes illustrate the dynamic between policy discourses and adjusted legislation, with implications for vulnerable persons.

10.5. The Timespace of Vulnerable Protection Seekers

This report highlights how 'vulnerability', like other aspects of refugee status assessment, transcends the nation-state and current moment of time as centres of analysis. Temporally, the time spent in reception centres increases the transitory precarity, and the asylum assessment process projects a perceived current vulnerability (and risk) into the future. Spatially, migrants may face different forms of vulnerability as they move across countries. A resettled refugee may cherish the absence of persecution in Norway, for instance, but face new forms of racism and alienation there. An asylum seeker may experience administratively induced vulnerability in Norway that interact with and frequently exacerbate his or her pre-ex-

280 https://www.nkvts.no/content/uploads/2020/10/NKVTS_Rapport_1-20_REFUGE.pdf, p. 12.

istent vulnerability. Put very simply, tensions arise when legal-bureaucratic assessments of vulnerability take place within states and at a given time, while supposedly vulnerable migrants move across states and across dynamically changing forms and situations of vulnerability.

In the chapter on refugee resettlement, we discussed how vulnerability assessments included a complementary assessment of presumed integration prospects in Norway. Those considered vulnerable 'there' will find themselves in different circumstances in Norway, which will likely help them overcome certain types of vulnerability but may also produce new forms.

The challenge is how to promote a more systematic approach to capture vulnerability related to the experience of forced migration, including forced return to internal displacement. The need to explore the intersectionality of internal displacement with other forms of vulnerability has become more pronounced following changes in the Immigration Act providing a broader scope for IPA application in both the asylum and cessation assessments. As Baumgärtel points out, a migration-lens on vulnerability would direct attention to how displacement and the process of migration itself affects universalized understandings of resilience (2020): how do receiving states provide the services needed to meet the material and psychological needs of individuals 'returning' to their country of nationality or to the first 'safe country' through which they have moved? What does *effective* protection require with regard to supporting resilience? Attention to migratory vulnerability would also promote decisions that 'do no harm' in the sense that they avoid aggravating existing or creating new vulnerability. Such an approach is not only desirable from a humanitarian or ethical perspective but is compelled by Norway's commitment to the UN Global Compact for Safe, Orderly, and Regular Migration (Objective 7).

While the existence of family networks is frequently reviewed vis-a-vis the return area, the ability to travel to Europe is commonly seen as a sign that someone would have resources upon return, even in the absence of a physically present network. The vulnerabilities imposed by internal displacement are not routinely considered, despite emerging evidence. For example, child labor is more common among returnees flying internally (IDPs) in Afghanistan (24 percent compared to 16 percent of IDPs who are not returnees). Researchers on the ground suggest that "cross-border and repeated internal displacement heightens household vulnerability," leading to negative coping practices such as child labor and also child marriage.[281]

10.6. The Main Gaps Between International Law and Norwegian Practice

Related to the findings above, we have identified the following areas in which Norwegian practice departs from international standards in terms of identifying, assessing, and addressing vulnerabilities:

- Some vulnerable refugees with special needs wait for years to be settled in a municipality. *The Convention on the Rights of Persons with Disabilities* (CRPD) obliges state parties, including Norway, to take all appropriate measures to modify or abolish existing practices that constitute discrimination against persons with disabilities.
- Best interests of children are excluded from the protection assessment (IA §28). Instead, they are evaluated when considering a discretionary permit on humanitarian grounds (IA §38). The consequence is that children's best interests are frequently sacrificed to immigration control interests.

281 See NRC, IDMC, Samuel Hall. Escaping War: Where to Next? Available at https://static1.squarespace.com/static/5cfe2c8927234e0001688343/t/5d5d3b039af98c0001166adc/1566391069737/NRC-IDP_Afghanistan_FINAL.pdf

- The Istanbul Protocol for the identification and documentation on torture and its implications is implemented as part of *The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment* (CAT). However, the guidelines are not sufficiently made known and used in the health service and in rehabilitation of torture victims.
- The IPA ('internal protection alternative') excludes an assessment of whether 'return' to internal displacement is unreasonable for the claimant, who has already established a protection need visa-vis his or her home area. There is broad consensus among states, UNHCR, and other experts that IPA application must be conditioned by the following safeguards: relocation must be accessible, safe, and reasonable. Norway's position not only violates the 1951 Convention but also undermines the durable solutions agenda most recently reinforced by the UN Compact on Refugees.
- Cessation practice relies on non-state actors of protection and IPA practice to justify the withdrawal of refugee status. Severe past persecution does not, on its own, relieve a refugee from potential cessation of status.
- The extensive use of temporary residence permits undermines children's rights (CRC) to stability and development, and infringes the rights of refugees of all ages to participation and inclusion in the country of residence (Articles 2-34 Refugee Convention).

10.7. Reflections on COVID-19

The COVID-19 pandemic has led to restrictions in border passing, temporary closure of the arrival centre, prolonged asylum and resettlement procedures, and slowdown of the proceedings of assisted and forced returns. The implication is prolonged stay in reception centres, with certain restrictions on social events and access to services. The increased use of video interviews has both positive and negative sides when it comes to the identification and assessment of asylum claims from vulnerable people. On the one hand, people in vulnerable situations may benefit from not having to travel for their interviews with the UDI and UNE. They also may find comfort in conducting interviews in known surroundings, with adults that they are familiar with. On the other hand, our informants expressed concern that certain vulnerable people may find the interview more difficult, as opportunities to establish contact and trust are necessarily limited by the distance created by a screen.

ANNEX

Appendix 1

Key Institutions in the Asylum System

Ministry of Justice and Public Security

The Department of Immigration within the Ministry of Justice and Public Security is responsible for drafting government-decided legislation and policies on asylum seekers and refugees. The UDI implements the policies of the government in power. The current coalition government rules on the basis of a political platform that also serves as the primary reference for the government's asylum policy.

National Arrival Centre

All asylum seekers crossing the Norwegian border are sent to the National Arrival Centre situated near the southeast border (Råde, Østfold).11 The applicant will undergo the initial phases of the asylum procedure here, starting with an electronic registration and registration interview by the National Police Immigration Service (PU), an information program conducted by the NOAS, and a medical/tuberculosis examination and asylum interview conducted by UDI caseworkers.

At the arrival centre, the applicants are lodged in tent halls, which they share with other applicants. The meals are brought to the camp and served in a separate hall, and there are zones in the camp for social activities. The administrative registrations and interviews take place in the camp's office building.

The National Police Immigration Service (PU)

The PU is responsible for the registration of asylum seekers at the National Arrival Centre, during which it investigates asylum seekers' travel routes and ascertains their identities. The PU also plays a role at the end of the asylum procedures, when it implements final rejections in asylum cases. The PU coordinates and provides quality assurance on all deportations from Norway and is also in charge of the detention centre at Trandum.

The Directorate of Immigration (UDI)
The UDI implements the government's immigration and refugee policy and is the determining authority responsible for applications pursuant to the IA, such as applications for international protection, visitors' visas, family immigration, residence permits for work and study purposes, citizenship, permanent residence permits, and travel documents. In 2019, the UDI proceeded with approximately 98,000 cases.

The UDI's Asylum Department is responsible for conducting the asylum interview, examining applications for international protection, and taking the decisions at first instance. In 2019, the UDI proceeded with approximately 2,000 asylum cases and the resettlement of 3,200 quota refugees. The Managed Migration Department makes decisions on rejection and expulsion.

Administrative decisions made by the UDI in the first instance may be appealed to the UNE, as outlined in the IA, section §76 (1). Administrative decisions under the IA made by the police, the foreign service missions, and other public administrative agencies may be appealed to the UDI.

The UDI's Region and Reception Centre Department (RMA)

The UDI is in charge of the reception centres in Norway. The RMA, an administrative part of the UDI, is responsible for the housing facilities, financial support, and information programs for applicants living in reception centres. The RMA consists of five regional offices, each responsible for the reception centres in their specific region and monitoring the contracted operators (see chapter 4). The RMA collaborates with the IMDi in the settlement process of refugees with resident permission. In 2020, more than 2,200 persons stayed in reception centres.

The Norwegian Country of Origin Information Centre (COI)

The COI obtains and analyzes information about social conditions and human rights in countries about which the UDI and UNE need information. The centre is an independent expert body but is administratively affiliated with the UDI.

The Immigration Appeals Board (UNE)

The UNE is a court-like autonomous administrative body, founded in 2001, and its board chairs are judges in all functions, except for the title. In 2020, there were 18 board chairs, who considered all kinds of cases. They are independent decision makers who cannot be instructed in individual cases. The secretariat comprises four case processing departments, which are divided according to case types and land areas. In cases of doubt, the decision is made by a board chair and two board members.12 In 2019, about 1,800 cases proceeded with.

The Ministry of Justice Social Security cannot instruct the UNE, and the UNE is not legally bound by the practice of the UDI. The UNE is also not guided by political signals unless codified in the IA and IR.[282]

A limited number of cases are referred to a seven-member "Grand Board" hearing. These include cases in which the Ministry has decided that an administrative decision made by the UDI in favour of a foreign national shall be reviewed by the UNE, according to the IA section §76 para 3. The Grand Board may take on cases that raise principled questions and cases in which administrative practice tends to differ. If the administrative practice is contrary to formal country-specific recommendations from the UN Refugee Agency (UNHCR) concerning protection or such a practice is in the making, the main rule is for at least one representative case to be decided by the Grand Board.[283] The Ministry and the UDI can demand that such a case be decided by a Grand Board, whereas a board leader can only request this. The UNE has currently held 20 Grand Board hearings since its founding.

In addition to state actors, the asylum system includes the service of two key NGOs, as described below.

282 Between 2015 and 2017, the IA was temporarily amended to enable the Ministry to instruct the UNE.
283 However, this is unnecessary if the practice is coherent with instruction from the Ministry to the UDI, see the IR section §16-4.

The Norwegian Organization for Asylum Seekers (NOAS)

The Norwegian Organization for Asylum Seekers (NOAS) is an independent membership organization working to advance asylum seekers' rights in Norway. The organization assists asylum seekers at different stages of the asylum process. A separate division of the NOAS offers information and advice to newly arrived asylum seekers in Norway. The information program advises on the rights and obligations of asylum seekers in Norway, the process of seeking asylum, criteria for protection, and what to expect during and how to prepare for the asylum interview. The program offices are located at the National Arrival Centre and the transit centre for unaccompanied minors.

International Organization for Migration (IOM) voluntary return programs

IOM provides services and advice to governments and migrants. IOM's main task in Norway is to assist migrants who choose to return from Norway to their home countries in an organized and safe manner. Before the IOM can assist an individual with his or her return, approval from the Norwegian authorities (UDI) is needed. The Voluntary Assisted Return Program (VARP) is a return assistance program. It aims to provide assistance for those planning to return voluntarily to their home countries, and reintegration counselling and support in the home country after return. Vulnerable migrants receive extra reintegration support.

The Norwegian asylum system consists of two main fields: the actors processing the asylum claims and the reception system. In Figure 2.1, these fields are marked in red and blue, respectively. The asylum system includes two non-government organizations (NGOs) in central roles (NOAS, IOM), marked in light red, and the ordinary court system, marked in green. The reception system leans heavily on the ordinary health and welfare system (such as health institutions and local schools for asylum-seeking children), which are also marked in green. The resettlement of quota refugees and settlement of those who attain international protection involve the integration authorities on the state and local levels, which are marked in violet.

Appendix 2

Protection Decisions

Table 2.1

Protection Decisions in First Instance (UDI), in the Appeal Instance (UNE), and Quota Refugees, by Citizenship and Outcome, 2010–2019

Decisions Protection (asyl) 2010–2019

Type of Decision[1]		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
	I Protection seekers										
UDI	Protection (asyl)	2974	2811	3667	4523	3588	5411	11560	3832	1333	1647
	Other protection grounds	1565	766	1184	1003	1140	673	399	149	52	47
	Humanitarian grounds	751	444	328	292	180	168	492	404	68	95
	Rejection realitetsbehandlet	7714	3843	3764	3148	2371	2103	5966	1807	548	589
	Rejection Dublin-forordningen or safe third country	2539	1878	1734	2822	2314	2710	1954	549	528	373
Appeal instance (UNE)[3]											
UNE	Protection (asyl)	167	287	281	347	240	199	132	145	113	83
	Other Protection grounds	71	91	293	175	110	107	61	79	27	25
	Humanitarian grounds	173	336	369	485	620	594	227	275	158	126
	Rejection included Dublin	11629	10012	8808	11248	9256	6570	6882	5752	2482	1440
II Quota refugees											
		1130	1370	1055	1078	1659	2544	3170	3097	2124	3100
III Sum accepted (I+II)											
	Protection	4271	4468	5003	5948	5487	8154	14862	7074	3570	4830
	Other protection grounds	1636	857	1477	1178	1250	780	460	228	79	72
	Humanitarian grounds	924	780	697	777	800	762	719	679	226	221
	SUM	6831	6105	7177	7903	7537	9696	16041	7981	3875	5123

Source: UDI stats

Table 2.2

Protection decisions for UAM by the Norwegian Directorate of Immigration (First Instance) by Outcome, 2010–2019

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Asylum	111	172	150	252	513	715	1028	202	79	100
Other protection grounds	718	285	215	154	132	307	314	54	15	18
Humanitarian grounds	84	75	31	50	50	49	270	141	17	27
UAM limited	41	30	35	17	21	15	316	361	6	4
Rejection	92	45	36	23	34	27	150	98	4	14
Dublin II Convent	149	107	128	53	15	14	23	6	4	0
Safe third country	9	1	8	3	5	6	3	3	3	1
Withdrawn/ dismissed	21	43	52	37	44	32	135	32	6	3
Total	**1226**	**758**	**655**	**589**	**814**	**1 165**	**2 239**	**897**	**134**	**167**
% awarded residency						**89**	**66**	**46**	**92**	**85**

Source: UDI statistics

Appendix 3

Human Trafficking

Table 3.1

Decisions by the Norwegian Directorate of Immigration on Human Trafficking on Protection (IA§§ 28+38) and on IR§8-3

	2017	2018	2019
Reflection Period permitted IR§8-3	8	13	5
Limited permission to stay IR§8-3	15	11	14
Rejected	26	17	8
All applicants IR§ 8-3	49	41	27
Protection (asylum IA§28)	7	2	10
IR § 8-4.3 (witness)	6		5
IA § 38	4		2
Rejected, eg. Dublin	16	5	8
Return IOM	32	23	32
All cases	114	71	83

Source: KOM 2019

Table 3.2

Different Groups of Applicants, Human Trafficking, On Protection (§§ 28+38) and on ulf.§8-3

	2017	2017	2018	2018	2019	2019
	§28+§38	ulf.8-3	§28+§38	ulf.8-3	§28+§38	ulf.8-3
Minors	5	1		2	1	1
Women	20	37	6	25	19	16
Men	8	11	1	14	4	11
Europe	3	6		10	1	11
Asia	11	7	1	10	3	11
Africa	19	34	6	19	15	3
Latin America		2		2	5	1

Source: KOM 2019

Table 3.3

Types of Exploitation

	2017	2017	2018	2018	2019	2019
	§28+§38	ulf.8-3	§28+§38	ulf.8-3	§28+§38	ulf.8-3
Forced labor/service	8	15		23	6	17
Prostitution/sexual exploitation	25	35	7	28	21	7
Forced labor/sexual exploitation				1		2
Unknown type						1

Source: KOM 2019

Appendix 4

Applicants under the Dublin Regulation: Requests to EU countries

Table 4.1 shows that in the period 2015–2019 Norway sent 2,141 requests to EU countries that were not accepted. Nearly half of them were requests on return to Greece (39 percent) and Italy (14 percent).

Table 4.1

Requests for Dublin Returns Sent by Country (October 2020)

Country	Numbers	Percent
Greece	834	39
Italy	307	14
Hungarian	285	13
Germany	129	6
Austria	91	4
Sveden	84	4
Spain	77	4
Bulgaria	66	3
Other	268	13
Total	**2141**	**100**

Source: UDI statistics

Table 4.2 shows that of those not returned because of the Dublin return request was not accepted, 1,212 (57 percent) were grated protection in a UDI decision.

Table 4.2

Status of Cases where a Dublin Return Request was not Accepted (October 2020)

	Numbers	Percent
Granted recidency	1,212	57
Rejection	600	28
Not proceeded in Norway	172	8
Withdrawn/dismissed	99	5
Under assessment	58	3
Total	**2,141**	**100**

Source: UDI statistics

Bibliography

Aasen, B., Dyb, E., & Lid, S. (2016). *Forebygging og oppfølging av enslige mindreårige asylsøkere som forsvinner fra mottak og omsorgssentre.* [UAM disappearing from care centers/reception centers]. NIBR rapport 2016:17. NIBR Oslo University College.

Agamben, G. (2008) *Midler uten mål. Notater om politikk*. Cappelen

Barne-, ungdoms- og familiedirektoratet (Bufdir) (2016) 01/2016 *Barnevernets håndtering av saker der mindreårige kan være utsatt for menneskehandel*

Baumgärtel, M. (2020). Facing the challenge of migratory vulnerability in the European Court of Human Rights. *Netherlands Quarterly of Human Rights*, 38(1) 12–29.

Bendixsen, S.K., Jacobsen, C.M., Søvig, K.H. (2015) *Eksepsjonell velferd? Irregulære migranter i det norske velferdssamfunnet*. Gyldendal juridiske

Bendixsen, Synnøve K. N. & Lidén, H. (2017). Return to wellbeing? Irregular migrants and assisted return in Norway, In Zanna Vathi & Russel King (ed.), *Return migration and psychosocial wellbeing: discourses, policy-making and outcomes for migrants and their families*. Routledge. ISBN 9781138677500. Chapter 2. s 21–38

Berg, B. (2012) Mottakssystemets: historikk og utviklingstrender. I Valenta, M. & Berg, B. (red) *Asylsøker i velferdsstatens venterom*. Universitetesforlaget

Berg, B., & Tronstad, K. R. (2015). Levekår for barn i asylsøkerfasen. [The living conditions of asylum-seeking children in Norway]. NTNU Samfunnsforskning AS.

Berg, M. S., Straition, M. L., Vikum, E. F., Myhre, S. L., Danielsen, A. S., & Gopinathan, U. (2020). Asylsøkeres helse og bruk av helsetjenester i Norge. *Tidsskrift for Den norske legeforening, 140*(4). doi: 10.4045/tidsskr.19.0470

BioAlder (2018): *Et verktøy for bruk av biologiske undersøkelser i aldersvurdering av enslige mindreårige asylsøkere*. Avdeling for rettsmedisinske fag, Klinikk for laboratoriemedisin | Oslo universitetssykehus. 2th version 2018

Bjørndahl, U. (2020) *Alltid på vakt - 30 menn forteller om sine erfaringer med å selge sex*. Pro-senteret.

Brekke, J. P. (2004). *While we are waiting. Report* 2004:010. Institute for Social Research

Brekke, J.-P. (2015). *Why go back? Assisted return from Norway*. Report 2015:08 Institute for Social Research

Brekke, J.P. & Vevstad, V. (2007) *Reception conditions for asylum seekersin Norway and the EU. ISF rapport* 2007:003. Institute for Social Research

Brekke, J. P., Sveaass, N., Vevstad, V. (2010). *Sårbare asylsøkere i Norge og EU. Identifisering, organisering og håndtering.* Report 2010:014. Institute for Social Research

Brekke, J.-P.; Grønningsæter, A. G., & Larsen, K. M. (2018). *Tilbakekall: Rettssikkerhet og kontroll ved tilbakekall av tillatelser etter søknad om beskyttelse.* Rapport 2018:006 Institute for Social Research

Brekke, J.-P.; Birkvad, S. R.; Erdal, M. B. (2020). Losing the Right to Stay: Revocation of Refugee Permits in Norway. *Journal of Refugee Studies* doi: 10.1093/jrs/feaa006 Full text in Research Archive.

Brekke, J.P., Paasche, E., Espegren, A., Sandvik, K. (2021). *Selection Criteria in Refugee Resettlement Balancing vulnerability and future integration in eight resettlement countries*. ISF Report 2021:3 Oslo: Institute for Social Research

Brekke, J.P., Paasche, E., Sandvik, K. (2020). *Overføringsflyktninger*. Research Project 2020-2021 Institute for Social Research

Brochmann; G., & Hagelund A. (2010) *Velferdens grenser: Innvandringspolitikk og velferdsstat i Skandinavia 1945-2010*. Universitetsforlaget

Brown, K. (2017) *Vulnerability & Young People. Care and social control in policy and practice*. Policy Press

Brunovskis, A. (2016) Special rights within universal welfare: Assistance to trafficking victims in Norway. *Journal of Comparative Social Work*. 2016/1

Brunovskis, A. (2019) *Illuminating and blinding. The searchlight effect of human trafficking policies on anti-trafficking practice*. PhD. Dissertation. Institutt for sosiologi og samfunnsgeografi. Oslo: University of Oslo.

Brunovskis, A., & Skilbrei, M.-L. (2018). Individual or Structural Inequality? Access and Barriers in Welfare Services for Women Who Sell Sex. *Social Inclusion,* 6(3), 310-318. https://doi.org/10.17645/si.v6i3.1534

Brunovskis, A., & Ødegård, A.M. (2019). *Menneskehandel i arbeidslivet*. Fafo-Rapport 2019:35. Fafo.

Bråten B. & Sønsterudbråten, S. (2017) *Veiledningserfaringer. Forsøk med veiledning (ICDP) av foreldre med radikaliseringsbekymringer og foreldre i asylmottak*. Fafo-rapport 2017:02. Fafo

Butler, J. (2020) *Rethinking vulnerability, violence, resistance*. Blogg, Verso www.versobooks.com/blogs/4583-judith-butler-on-rethinking-vulnerability-violence-resistance

Committee Against Torture. (2012) Concluding observations on the combined sixth and seventh periodic reports of Norway, adopted by the Committee at its forty-ninth session (October 29–November 23, 2012), para 22).

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

Committee of the Rights of the Child (CRC) (2010). Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: CRC/C/NOR/CO/4.

Crawly, H. (2007); *When is a Child Not a Child? Asylum, Age Disputes and the Process of Age Assessment*. Immigration Law Practitioners' Association (ILPA)

Daniel, B. (2010) Concepts of adversity, risk, vulnerability and resilience: a discussion in the context of the "Child Protection system". *Social Policy and Society*, 9 (2):231-241

Dawson, J. & Gerber, P. (2017). Assessing the Refugee Claims of LGBTQI+ People: Is the DSSH Model Useful for Determining Claims by Women for Asylum Based on Sexual Orientation?, *International Journal of Refugee Law*, Volume 29, Issue 2, June 2017. Pp. 292–322.

Demetriou, O. (2019) "Complementary protection and the recognition rate as tools of governance: ordering Europe, fragmenting rights," *Journal of Ethnic and Migration Studies*.

Eide, K., Lidén, H., Haugland, B., Fladstad, T., & og Hauge, H.A. (2018b). Trajectories of ambivalence and trust: Experiences of unaccompanied refugee minors resettling in Norway. *European Journal of Social Work*. DOI: org/10.1080/13691457.2018.1504752.

Einarsen, T. (1997) *Flyktningers rettsstilling i Norge*: Fagbokforlaget.

Einarsen, T. (2013) Plenumsdommene om domstolsprøving: Kan barnets beste interesser være underlagt forvaltningens frie skjønn? *Jussens Venner* 48.

EU Directive 2011/95/EU *Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted*

EU Directive 2013/32/EU *Common procedure for international protection*

EU Directive 2013/33/EU *Standards for the reception of applicants for international protection*

EU Regulation (EU) No 604/2013 *The Dublin III Regulation: establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*

Fazel, M., Reed, R. V., Panter-Brick C., & Stein A. (2012). Mental health of displaced and refugee children resettled in high-income countries: Risk and protective factors. *Lancet, 379*(9812), 266–282. https://doi.org/10.1016/S0140-6736(11)60051-2

Fineman, M. (2008). The Vulnerable Subject: Anchoring Equality in the Human Conditions. *Yale Journal of Law and Feminism* 20 (1):1–23.

Fineman, M. (2010). The vulnerability subject and the responsive State. *Emory Law Journal* 60(2): 251–276.

Fjeld-Solberg, Ø., Nissen, A., Cauley, P., & Andersen, A. J. (2020). *Mental health and quality of life among refugees from Syria after forced migration to Norway: Main findings from the REFUGE Study*. Report nr. 1/2020. Oslo: Norwegian Centre for Violence and Traumatic Stress Studies.

Garvik, M., Paulsen, V., & Berg, B. (2016). Barnevernets rolle i bosetting og oppfølging av enslige mindreårige flyktninger. [The role of the Child Welfare Service in resettlement of UAM] Trondheim: NTNU Samfunnsforskning.

Gashi, L., Pedersen, W., Ugelvik, T. (2020). Kronikk, Morgenbladet January 31, 2020. https://morgenbladet.no/ideer/2020/01/den-innsattes-tapte-tid

Directorate of Health (2011) IS-1022 (2011) *Guidance for health promotion of asylum seekers, refugees and family reunited*.

Directorate of Health (2011) FOR-2011-12-16-*1255 Forskrift om rett til helse- og omsorgstjenester til personer uten fast opphold i riket*

Directorate of Health (2015). Nasjonal veileder for helsetjenestetilbudet til asylsøkere, flyktninger og familiegjenforente IS-1022.

Directorate of Health (2017a). Skjema for helseundersøkelse for asylsøkere, flyktninger og familiegjenforente. Tilgjengelig fra: https://www.fhi.no/contentassets/c6429c7/skjema-helseundersokelse-fyktninger-asylsokere.pdf

Directorate of Health (2018). Evaluering av Nasjonal strategi om innvandreres helse 2013–2017. (Unpublished)

Høgberg, A.P. & Sunde, J.Ø. (eds) (2019) *Juridisk metode og tenkemåte.* Universitetsforlaget

Høyvik, A. C., Lie, B., & Willumsen, T. (2019). Dental anxiety in relation to torture experiences and symptoms of posttraumatic stress disorder. *European Journal of Oral Sciences* 127, 65–71. doi: 10.1111/eos.12592.

IMDi (2017). *Arbeid med enslige mindreårige asylsøkere og flyktninger. En håndbok for kommunene.* https://www.imdi.no/globalassets/dokumenter/andre-filer/arbeid-med-enslige-mindrearige-asylsokere-og-flyktninger---en-handbok-for-kommunene-2017.pdf

IMDi (2020b) Website. *Tildeling av bosettingskommune*. https://www.imdi.no/planlegging-og-bosetting/slik-bosettes-flyktninger/familier-og-enslige-voksne/

Jakobsen, M., Sveaass, N., Johansen, L.E.E., & Skogøy, E. (2007) Psykisk helse i mottak: Utprøving av instrumenter for kartlegging av psykisk helse hos nyankomne asylsøkere. Nasjonalt kunnskapssenter om vold og traumatisk stress. Tilgjengelig fra: https://forskning.no/innvandring/det-haster-med-a-kartlegge-fyktningers-psykiske-helse/457446

Jakobsen, M., Meyer DeMott, M. A., & Heir, T. (2014). Prevalence of psychiatric disorders among unaccompanied asylum-seeking adolescents in Norway. *Clinical Practice and Epidemiology in Mental Health*, 10(1), 53–58.

Jahnsen, S. Ø. (2014). Prostitusjon og menneskehandel. Innestengt eller utestengt? Norsk prostitusjonspolitikk og kampen mot menneskehandel. PhD dissertation. Bergen: Universitetet I Bergen

Jahnsen, S. Ø. & Rykkja, L. H. (2019). Coordinating Against Work-related Crime in Norway. *International Public Management Review*.

Jensen, T. K., Skar, A.-M. S., Andersson, E. S., & Birkeland, M. S. (2019). Long-term mental health in unaccompanied refugee minors: Pre- and post-flight predictors. *European Child & Adolescent Psychiatry, 28*, 1671–1682. https://doi.org/10.1007/s00787-01901340-6

Jensen, T. K., Skårdalsmo, E. M. B., & Fjermestad, K. W. (2014). Development of mental health problems—A follow-up study of unaccompanied refugee minors. *Child and Adolescent Psychiatry and Mental Health*, 8(29), 1–10.

Justisdepartementet (2020) NOU 2020 5 *Equality before the law: Act on financial support of legal aid (Act on legal aid)*

Kjelaas, I. (2016). Barns deltakelse i institusjonelle samtaler. En studie av samtaler mellom enslige asylbarn og miljøarbeidere på omsorgssenter. [Conversations with children in care centres] PhD. dissertation, Doktoravhandling ved NTNU 2016, 3.

Kohli, R. K. S. (2007). *Social Work with Unaccompanied Asylum-seeking Children*. Hampshire: Palgrave Macmillan.

Khosravi, S. (2010). *Illegal. Traveller: An Auto-Ethnography of Borders*. Palgrave Macmillan.

Kjærre, H. A. (2015) Kontrollvelferd i det norske mottakssystemet: mottakstilværelsen og livet utenfor. I Bendixsen, S.K., Jacobsen, C.M., Søvig, K.H. (2015) *Eksepsjonell velferd? Irregulære migranter i det norske velferdssamfunnet*. Oslo: Gyldendal juridiske

Kommunehelsetjenesten Råde (2018) *Ankomstsenter Østfold*. Rapport.

Lidén, H. (2012). Det vanskelige asylintervjuet In Eide, K. (Eds.) Barn på flukt. Psykososialt arbeid med enslige mindreårige flyktninger. [The very challenging asylum interview. In *Children on the move. Psychosocial practices among unaccompanied refugees*]. Pp. 118–143. Gyldendal Akademisk.

Lidén, H. (2017). Barn og Migrasjon. Mobilitet og tilhørighet. [Children and migration. Mobility and belonging]. Universitetsforlaget.

Lidén, H., & Rusten. H. (2007). Asylum, Participation and the Best interests of the Child: New Lessons from Norway. *Children and Society* 21(4), 273–283.

Lidén, H, Seeberg, M. L., & og Engebrigtsen, A. (2011): *Medfølgende barn i asylmottak – livssituasjon, mestring, tiltak*. ISF rapport 2011:010 Institute for Social Research

Lidén, H, Eide, K., Hidle, K., & Nilsen, A. K., Wærdahl, R. (2013). *Levekår på mottak for enslige mindreårige asylsøkere.* [Living conditions for UAM in reception centres]. ISF-rapport 2013:002. Institute for Social Research

Lidén, H., & Salvesen, C. (2016). «De sa du måtte.» Mindreåriges erfaringer med menneskehandel. [Minors' experiences of human trafficking]. ISF rapport 2016:005. Institute for Social Research

Lidén, H., Aasen, B, Seeberg, M. L., & Staver, A. B. (2020). Fra bosetting til voksenliv. Den kommunale tjenestekjeden for enslige mindreårige flyktninger. Rapport 2020:1. Oslo: Institutt for samfunnsforskning.

Lie, B., Sveaass,N., Vevstad, V. (2014). Identifisering, tilrettelegging og oppfølging av sårabre asylsøkere med særskilte behov i ankomsttransitt: Erfaringer & anbefalinger fra prosjektprosjekt 2013-2014. (unpublished).

Lillevik, R., Sønsterudbråten, S., Tyldum, G. (2017). Evaluering av tilrettelagt avdeling i asylmottak Et tilbud til asylsøkere med helseproblemer. Fafo rapport 2017:22. Fafo

Lingaas, C. Haugland, B. & Skjeggestad, E. (2020). *Menn utsatt for tvangsarbeid i Norge - en rapport om deres erfaringer og juridiske situasjon.* VID Rapport 2020/1 Vid videnskaplige høgskole

Lind, J. (2020) *The Politics of Undocumented Migrant Childhoods. Agency, Rights, Vulnerability.* PhD dissertation. Malmø University.

Liodden, T. M. (2017). The Burdens of Discretion. Managing Uncertainty in the Asylum Bureaucracy. Ph.D., University of Oslo

Liodden, T. M. (2019). Making the Right Decision: Justice in the Asylum Bureaucracy in Norway. In N. Gill and A. Good (eds.), *Asylum Determination in Europe*. Palgrave Socio-Legal Studies, https://doi.org/10.1007/978-3-319-94749-5_12

Lynnebakke, B., Pastoor, L., de W., & Eide, K. (2020) *Young refugees' pathways in(to) education*. Cage 3A report. NKVTS

Mackenzie, C., Roger, W., Dodds, S (2013) *Vulnerability. New Essays in Ethics and Feminist Philosophy.* Cambridge University Press.

Maltnes, M. (2020). *Barnets beste I utlendingssaker. Barnerettslig veileder for vedtak om opphold og utvisning* (upublisert).

Ministry of Children and Equality. (2016). *Høringsnotat: Forslag til ny lov om omsorgssentre for enslige mindreårige asylsøkere (omsorgssenterloven*) [Hearing document: Proposal for a new act of care centres for unaccompanied asylum-seeking minors (the Care Centre Act)].

Ministry of Justice (1998) *Retningslinjer for nye asylkrierier*, 13 January 1998.

Ministry of Justice (2004) NOU 2004-20 *Ny utlendingslov*

Ministry of Justice (2007) Ot. Prp. nr. 75 (2006–2007) *On the Immigration Act*.

Ministry of Justice (2010) GI-21/2010 *Instruks om realitetsbehandling og prioritering av asylsaker der Hellas er ansvarlig Dublin-land*

Ministry of Justice (2012) G-08/2012 *Retningslinjer om kjønnsrelatert forfølgelse* [Gender guideline]

Department of Justice and Public Security (2014) G-06/2014 *Ikrafttredelse av endringer i utlendingsforskriften – varig ordning for lengeværende barn og begrunnelse i vedtak som berører barn*

Ministry of Justice and Public Security (2016) Meld. St. 30 (2015–2016) *From reception center to the labor market: An effective integration policy*

Mnistry of Justice and Public Security (2016) Prop. 90 L (2015–2016) *Endringer I utlendingsloven (inntramninger)*

Ministry of Justice and Public Security (2016b) G-02/2016 *Retningslinjer for arbeidet med assistert retur*

Ministry of Justice and Public Security (2017) GI-07/2017 *Instruks om tolking av utlendingsloven § 32 – overføring av asyl-søkere til Hellas i henhold til Dublin III-forordningen*

Ministry of Justice and Public Security (2017b) GI-02/2017 *Instruks om praktisering av utlendingsloven § 38, jf. utlendingsforskriften § 8-8 – enslige, mindreårige asylsøkere mellom 16 og 18 år som kan henvises til internflukt*

Ministry of Justice and Public Security (2020) Prop. 80 L (2019–2020). *Lov om Etterretningstjenesten.*

Ministry of Justice and Public Security (2020) NOU 2020-5 *Equality before the law: Act on financial support of legal aid* (Act on legal aid)

Ministry of Justice and Public Security (2020) *Høringsnotat: Forslag til endringer i utlendingsloven og-forskriften–oppholdstillatelse på grunnlag av subsidiært beskyttelsesbehov ved en betydelig økning i asyl-søkertilstrømningen,* 27 May 2020.

Ministry of Justice and Public Security. (2020b). G-15/2020: *Retningslinjer for arbeidet med overføringsflyktninger* jf. Utlendingsloven § 35.

Montgomery, E. (2011). Trauma, exil, and mental health in young refugees. *Acta Psyciatrica Scandinavia* 24: 1–46.

NGOU (2006) *Først og fremst barn. Overføring av omsorgsansvaret for enslige, mindreårige asylsøkere til barnevernet.* 2006/1

NOAS Norsk organisasjon for asylsøkere (2016). *Over eller under 18. Aldersvurdering av enslige mindreårige asylsøkere.* [Over or under 18. The age assessment of unaccompanied minors.] NOAS.

NOAS Norsk organisasjon for asylsøkere (2017). *«Jeg har ikke gjort noe galt». Barn og foreldres opplevelse av tvangsretur.* ["I haven't done anything wrong." Children's and parents' experience of forced return.] NOAS.

NOAS Norsk organisasjon for asylsøkere (2018). *Strengest i klassen? En kartlegging av Afghanistan-praksis i vesteuropeiske land.* NOAS

NOAS Norsk organisasjon for asylsøkere, Redd Barna and Fellesorganisasjonen. (2017). *En gjennomgang av midlertidig opphold til enslige mindreårige asylsøkere.* NOAS

NOAS, Redd Barna, Norsk Folkehjelp. (2020a). *Med livet på vent: Erfaringer fra lengeværende barnefamilier med begrensede oppholdstillatelser*. NOAS.

NOAS, Redd Barna, Norsk Folkehjelp (2020b) *«Hvert år må jeg søke på nytt» Enslige mindreårige som får begrenset oppholdstillatelse fordi de ikke kan legge frem pass som dokumentasjon på identitet.* NOAS.

Nash, K. (2009). Between Citizenship and Human Rights. *Sociology* 43 1067.

NRC, IDMC, Samuel Hall (2018) *Escaping War: Where to Next?: A Research Study on the Challenges of IDP Protection in Afghanstan.*

Olwig, K. F. (2011) Integration: Migrants and Refugee between Scandinavian Welfare Societies and Family Relations. *Journal of Ethnic and Migration Studies* 37(2): 179–196.

Office of the High Commissioner for Human Rights. (2004). *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.* Tilgjengelig fra: https://www.ohchr.org

Opaas, M. (2019). Med traumer i bagasjen. Vanskeligheter de første årene i Norge. I L. Lien, R. Dybdahl, H. Siem, I. Julardzija & H. H. Bakke (Red.), *Asylsøkere og flyktninger. Psykisk helse og livsmestring*. Oslo: Universitetsforlaget.

Paasche, E, & Skilbrei, M-L (2017). Gendered Vulnerability And Return Migration. *TEMIDA* 20(2), s 149–166. doi.org/10.2298/TEM1702149P

Paasche, E; Skilbrei, M-L & Plambech, S. (2018). Vulnerable Here or There? Examining the vulnerability of victims of human trafficking before and after return. *Anti-Trafficking Review*. s 34–51.

Pastoor, L.d.W. (2015). The mediational role of schools in supporting psychosocial transitions among unaccompanied young refugees upon resettlement in Norway. *International Journal of Educational Development*, 41, s. 245–254.

Pastoor, L.d.W. (2016). Rethinking refugee education: Principles, policies, and practice from a European perspective. I Wiseman, A.W. (red.): *Annual review of comparative and international education 2016* (s. 107–116). Emerald Group Publishing Limited. DOI: 10.1108/S1479-367920160000030009.

Paulsen, V., Michelsen, H., Brochmann, M. (2014). *Barnevernets arbeid med barn i asylsøkerfasen. Faglige utfordringer og barrierer i mottaksapparatet*. NTNU.

Paulsen, V., Thorshaug, K. og Berg, B. (2014). Møter mellom innvandrere og barnevernet. *Kunnskapsstatus.* NTNU Samfunnsforskning AS, Trondheim.

Peroni, L. (2018). The protection of women asylum seekers under the European Convention on Human Rights: Unearthing the gendered roots of harm. *Human Rights Law Review*, 18 (2), 347–370.

Peroni, L., & Timmer, A. (2013). Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law, 11(4) *Int'l J. Const. L.*, pp. 1056, 1075.

Press. (2017). *Vi kan ikke reise tilbake. Rapport om barn som forsvinner fra asylmottak 2017.* Rapport. Press.

Rambøll Management Consulting. (2018). *Sluttrapport. Ofre for menneskehandel. Helhetlig og brukersentrert tjeneste.* Rambøl, Halogen

Rambøll Management Consulting og Oslo Economics (2020) *Oppdragsnavn Statlige virkemidler ved bosetting av flyktninger med særlige behov.* Rapport. IMDi.

Red Cross. (2020). *Torturert og glemt?Identifsering og rehabilitering av torturutsatte i Norge.* Oslo: Røed Kors.

Sandvik, K. B. (2011). Blurring boundaries: Refugee resettlement in Kampala—between the formal, the informal, and the illegal. *PoLAR: Political and Legal Anthropology Review*, 34(1), 11–32.

Schultz, J. (2017). "The Internal Flight Alternative in Norway: the law and practice with respect to Afghan families and unaccompanied asylum-seeking children" (2017). https://www.unhcr.org/neu/wp-content/uploads/sites/15/2017/11/SchultzIFAStudyJune2017-1.pdf

Schultz, J. (2019). *The internal protection alternative in refugee law*. Brill Nijhoff.

Schultz, J. (2020) TemPro Research project 2020-2024, Chr. Michelsen Institute

Schultz, J.H. and Langballe. Å. (2019). *Ankomstsenter og barn.* Rapport NKVTS

Sivilombudsmannen. (2017). *Politiets utlendingsinternat på Trandum, sikkerhetsavdelingen. Politiets utlendingsinternat på Trandum, sikkerhetsavdelingen.* www.sivilombudsmannen.no/wp-content/uploads/2017/09/Besøksrapport-2017-Politiets-utlendingsinternat-på-Trandum.pdf

Skjelsbæk, I. (2012). Responsibility to Protect or Prevent? Victims and Perpetrators of Sexual Violence Crimes in Armed Conflicts, *Global Responsibility to Protect* 4(2): 154–171.

Solberg, Ø., Vaez, M., Johnson-Singh, C. M., & Saboonchi, F. (2020) Asylum-seekers' psychosocial situation: A diathesis for post-migratory stress and mental health disorders? *Journal of Psychosomatic Research,* Volume 138, November 2020, p. 110254 https://doi.org/10.1016/j.jpsychores.2019.109914

Statistics Norway (2020) Overføringsflyktninger 2019. SSB.

Stang, E. G. (2008). *Barn, tortur og retur. Den rettslige betydningen av barnespesifikk tortur, umenneskelig eller nedverdigende behandling eller straff i asylsaker, herunder barns returvern* [Children, torture and return. The judicial impact of child-specific forms of torture, inhuman or degrading treatment or punishment in asylum cases, hereby the right to non-refoulement]. Faculty of Law, Skriftserie no. 4/2008. Oslo: University of Oslo.

Stang, E. G. (2012). Barn stilling i utlendingsloven. In Eide, K. (Eds.) *Barn på flukt. Psykososialt arbeid med enslige mindreårige flyktninger.* [Children's status in the Immigration Act. In Children on the move. Psychosocial practices among unaccompanied refugees]. pp102-117. Gyldendal Akademisk.

Stang, E. G., & Lidén, H. (2014). *Barn i asylsaker*. [Children in asylum cases. Reviews of how children's conditions are assessed in the Immigration Appeals Board, including assessment of children's participation rights]. NOVA rapport 02:2014. NOVA.

Staver, A., & H. Lidén. (2014). Unaccompanied minors in Norway: Policies, practices and data in 2014. ISF rapport 2014:014. Oslo: Institutt for samfunnsforskning.

Strand, A., Bendixsen, S. K. N., Lidén, H., Paasche, E., & Aalen, L. (2016). Programmes for assisted return to Afghanistan, Iraqi Kurdistan, Ethiopia and Kosovo: A comparative evaluation of effectiveness and outcomes, Report, 2016: 2.

Sveaass, N. (2013). Norge må ha en nasjonal plan. Aftenposten. 26. juni 2013 Tilgjengelig fra: www.aftenposten.no/meninger/debatt/i/xP3R8/Norge-ma-ha-ennasjonal-plan

Sveaass, N., Gaer, F., & Grossman, C. M. (2018). Rehabilitation in Article 14 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. *The International Lawyer* 51(1), 1.

Sveaass, N. & Weiss, N. (2021, forthcoming) *Torture survivors in the Norwegian Asylum Procedure*. Fafo report. Oslo: Fafo

Svendsen, S., & og Berg, B. (2017). *Enslige mindreårge – på vei mot voksenlivet*. NTNU. Svendsen, S., & og Berg, B. (2018). *Kunnskapsoppsummering av om bosetting av flyktninger.* NTNU

Svendsen, S., Berg, B., Paulsen, V., Garvik, M., & og Valenta, M. (2018a). *Kunnskapsoppsummering om enslige mindreårige asylsøkere og flyktninger*. Trondheim: NTNU Samfunnsforskning.

Sønsterudbråten, S. (2013). *Bistand og beskyttelse til ofre for menneskehande - Tverretatlig samarbeid i Oslo og Bergen*. Rapport. Fafo.

Sønsterudbråten, S., Tyldum, G., & Raundalen, M. (2018). *Et trygt sted å vente. Omsorgspraksiser på asylmottak for enslige mindreårige.* Fafo-rapport 2018:05. Fafo.

Tarvainen L. (2019). Embodiied and Embedded Vulnerable Subject: Asylum Seekers and Vulnerability Theory. *Politics of Knowledge* NOFO 17 (2019).

Thorshaug, K., & Svendsen, S. (2014) *Helhetlig oppfølging: Nyankomne elever med lite skolebakgrunn fra opprinnelseslandet og deres opplæringssituasjon*.

Tyldum, G., H. Lidén, Skilbrei, M. L., Dalseng, C. F., & Kindt, K. T. (2015). *Ikke våre barn. Identifisering og oppfølging av mindreårige ofre for menneskehandel i Norge.* [Not our children. Identification and following up victims of human trafficking]. Fafo rapport. Fafo

Tyldum, G. (2016). Oppfølging av mulige mindreårige ofre for menneskehandel i Norge. Fafo-notat 2016.09. Fafo

UDI Directorate of Immigration (2018) IM 2018-001 *Organisering av UDIs arbeid mot tvangsekteskap, barneekteskap, vold i nære relasjoner og kjønnslemlestelse*.

UDI Directorate of Immigration (2020) PUMA report. UDI

United Nations High Commissioner for Refugees (UNCHR) (2003) *Guidelines on the Internal Flight/Protection/Relocation Alternative*

United Nations High Commissioner for Refugees (UNHCR). (2011). *UNHCR resettlement handbook.*

Valenta, Marko; Garvik, Marianne. (2019) Enslige mindreårige asylsøkere - opplevelser og mestring av midlertidighet. *Tidsskrift for velferdsforskning,* Vol. 22 (2).

Varvin, S. (2018) Flyktningers psykiske helse. Universitetsforlaget.

Vollebæk, L. R. (2014). Sosialt arbeid med sårbare migranter. Mindreårige og voksne asylsøkere, papirløse, EØS-borgere og mulige ofre for menneskehandel. Oslo kommune, Velferdsetaten.

Weiss, N. (2013). Normalitet i limbo: Asylbarn med endelig avslag. Fafo-rapport 2013: 47.

Weiss, N., Duve, A. B., Hamelink, W., & Zhang, H. (2017) Opphold I asylmottak. Konsekvenser for levekår og integrering. FAFO.

Weiss, N. (2020) The trauma of waiting. Understanding the violence of the benevolent welfare state in Norway. In *Refugees and the violence of the welfare bureaucracies in Northern Europe*. Chapter. https://doi.org/10.7765/9781526146847.00020

Wessmann, H. (2017). *Rimelighetsvurderingen ved internflukt*. Masteroppgave. Juridisk fakultet. Universitetet i Oslo.

International Conventions, Treaties, Comments & EU instruments

Council of Europe Convention on action against trafficking in human beings (2005)

Palermo protocol (2000) Protocol to prevent, suppress and punish Trafficking in persons, especially women and children

UN (1963) International Convention on the Elimination of Racial Discrimination (ICERD),

UN (1979) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

UN (1989) Convention on the Rights of the Child (CRC)

UN (2004) Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (CAT).

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. (2004)

UN (2006) Convention on the Rights of Persons with Disabilities (CRPD)
The Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul convention) (2011)

UN Global Compact for Safe, Orderly, and Regular Migration (2016)

Committee Against Torture. (2012) Concluding observations on the combined sixth and seventh periodic reports of Norway, adopted by the Committee at its forty-ninth session (October 29–November 23, 2012), para 22).

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

Committee of the Rights of the Child (CRC) (2010). Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: CRC/C/NOR/CO/4.

Committee of the Rights of the Child (CRC) (2013) General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration

UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Norway, CCPR/C/NOR/CO/7, April 25, 2018.

UN Committee against Torture, Concluding Observations on the Eighth Periodic Report of Norway, CAT/C/NOR/CO/8, June 8, 2018.

EU Directive 2011/95/EU Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

EU Directive 2013/32/EU Common procedure for international protection

EU Directive 2013/33/EU Standards for the reception of applicants for international protection

EU Regulation (EU) No 604/2013 The Dublin III Regulation: establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

Norwegian Laws

Ministry of Justice and Public Security LOV-1999-05-21-30 *Menneskerettsloven* (Norwegian Human Rights Act)

Ministry of Children and family LOV-1981-04-08-7 *Lov om barn og foreldre* (The Children's Act)

Ministry of Health and Care Service, LOV-2011-06-24-30, *Lov om kommunal helse og omsorgstjenester* (Act on Health and Care Service)

Ministry of Health and Care Service, FOR-1988-11-14-932 *Forskrift om rett til helse og omsorgstjenester for personer uten fast opphold i riket*

Ministry of Health and Care Service (2012) 2012-08-29-842.*Forskrift om fastlegeordning i kommunene*

Ministry of Justice and Public Security LOV-2005-05-20-28 *Lov om straff* (The Criminal Act)

Ministry of Justice and Public Security LOV-2008-05-15-35 *Lov om utlendingers adgang til riket og deres Opphold her* (Immigration Act)

Ministry of Justice and Public Security FOR-2009-10-15-1286 *Utlendingsforskriften* (Immigration Regulation)

Policy documents

Ministry of Children and Equality. (2016). *Høringsnotat: Forslag til ny lov om omsorgssentre for enslige mindreårige asylsøkere (omsorgssenterloven)* [Proposal for a new act of care centres for unaccompanied asylum-seeking minors (the Care Centre Act)].

Ministry of Justice (1998) *Retningslinjer for nye asylkrierier*, 13 January 1998.

Ministry of Justice (2004) NOU 2004-20 *Ny utlendingslov*

Ministry of Justice (2007) Ot. Prp. nr. 75 (2006–2007) *On the Immigration Act*.

Ministry of Justice (2007) St.prp. 2 (2007–2008) *European Convention on Action against Trafficking in Human Beings*

Ministry of Justice (2009) St. meld 9 (2009–2010) *Norwegian Refugee and Migration Policy in a European Perspective*

Ministry of Justice and Public Security (2016) Meld. St. 30 (2015–2016) *From reception centre to the labor market: An effective integration policy*

Ministry of Justice and Public Security (2016) Prop. 90 L (2015–2016) *Endringer I utlendingsloven (innstramninger)*

The Government (2016, 2019) *Granavolden-plattformen*

Prop 12S (2016–2017) *opptrappingsplan om vold og overgrep.*

Ministry of Justice and Public Security (2016) *The Government's Action Plan against Human trafficking*

Ministry of Justice and Public Security (2017) *The right to decide over your own life: Action Plan against negative social control, forced marriage and female genital mutilation* (2017–2020).

Ministry of Justice and Public Security (2017), *Safety, Diversity, Transparency: The Government's Action Plan against Discrimination Based on Sexual Orientation, Gender Identity and Gender Expression* https://www.regjeringen.no/no/dokumenter/trygghet-mangfold-apenhet/id2505393/

Ministry of Justice and Public Security (2020) H*øringsnotat: Forslag til endringer i utlendingsloven og-forskriften–oppholdstillatelse på grunnlag av subsidiært beskyttelsesbehov ved en betydelig økning i asyl-søkertilstrømningen*, 27 May 2020.

Innst. 80 L (2019–2020). https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2019-2020/inns-201920-080l

Ministry of Justice and Public Security (2020) Prop. 80 L (2019–2020). L*ov om Etterretningstjenesten*

Ministry of Justice and Public Security (2020) NOU 2020-5 *Equality before the law: Act on financial support of legal aid (Act on legal aid)*

Ministry of Justice and Public Security guidelines

Ministry of Justice (2010) GI-21/2010 *Instruks om realitetsbehandling og prioritering av asylsaker der Hellas er ansvarlig Dublin-land*

Ministry of Justice (2012) G-08/2012 *Retningslinjer om kjønnsrelatert forfølgelse* [Gender guideline]

Ministry of Justice and Public Security (2014) G-06/2014 *Ikrafttredelse av endringer i utlendingsforskriften – varig ordning for lengeværende barn og begrunnelse i vedtak som berører barn*

Ministry of Justice and Public Security (2016b) G-02/2016 *Retningslinjer for arbeidet med assistert retur*

Ministry of Justice and Public Security, GI-14/2016 *Instruks om tilbakekall av flyktningstatus og oppholdstillatelse når beskyttelsesbehovet er bortfalt, jf. Utlendingsloven §37 første ledd bokstav e og f*

Ministry of Justice and Public Security (2017) GI-07/2017 *Instruks om tolking av utlendingsloven § 32 – overføring av asyl-søkere til Hellas i henhold til Dublin III-forordningen*

Ministry of Justice and Public Security (2017b) GI-02/2017 *Instruks om praktisering av utlendingsloven § 38, jf. utlendingsforskriften § 8-8 – enslige, mindreårige asylsøkere mellom 16 og 18 år som kan henvises til internflukt*

Ministry of Justice and Public Security (2019) GI-03/2019 – *Revidert instruks om opphør og tilbakekall av flyktningstatus og oppholdstillatelse når beskyttelsesbehovet er bortfalt, jf. utlendingsloven §37 første ledd bokstav e og f.*

Ministry of Justice and Public Security. (2020b). G-15/2020: *Retningslinjer for arbeidet med overføringsflyktninger jf. Utlendingsloven § 35.*

Directorate of Immigration (UDI) Circulars and guidelines

Accessible on UDI regelverk; www.udiregelverk.no

UDI 2008-031 *Krav til innkvarteringstilbud i ordinære asylmottak*

UDI 2008-035 *Retningslinjer om ytelser til beboere i asylmottak (Pengereglementet)*

UDI 2009-006 *Krav til differensiering av beboerrettede tiltak i asylmottak,*

UDI 2009-006V *Tiltakskort Seksuelle- og kjønnsminoriteter*

UDI 2010-094V *Kvalitetsstandard - Beskyttelse - innvilgelse/avslag for enslige mindreårige asylsøkere*

UDI 2010-075 *Høring av medfølgende barn i saker om beskyttelse*

UDI 2010-085 *Forebygging og håndtering av overgrep mot barn i asylmottak*

UDI 2010-183 *Retningslinjer for aldersvurdering av enslige mindreårige asylsøkere*

UDI 2010-187 *Dekning av kostnader til ekstraordnière tiltak i asylmottak*

UDI 2010-196 *Krav til oppfølging av beboere på tilrettelagt avdeling*

UDI 2011-002 *Asylpraksis Nigeria*

UDI 2011-007 *Utlendingsforvaltningens ansvar for å legge til rette for å identifisere og gi oppfølging av mulige ofre for menneskehandel.*

UDI 2011-034, *Omsorgsarbeid for enslige mindreårige i asylmottak*

UDI 2011-041 *Krav til arbeid med barn og unge i asylmottak*

UDI 2011-043 *Bruk av plasser i tilrettelagte avdelinger*

UDI 2012-001 *Asylpraksis Sri Lanka*

UDI 2012-012 *Individuell kartlegging og tiltaksplan*

UDI 2012-037 *Kartlegging og tiltaksplan for enslige mindreårige i asylmottak*

UDI 2013-005 *Tvangsekteskap*

UDI 2013-011 *Intervju i søknad om beskyttelse*

UDI 2013-011V4 *Tiltakskort – fysisk og psykisk sykdom*

UDI 2013-011V5 *Tiltakskort - Kjønnslemlestelse*

UDI 2013-011V6 *Tiltakskort -Menneskehandel*

UDI 2013-011V7 *Tiltakskort - Tvangsekteskap*

UDI 2013-013 *Alternativ mottaksplass*

UDI 2013-014 *Oppholdstillatelse for utlendinger som antas å være utsatt for menneskehandel*.

UDI 2013-020 *Helseanførsler i asylsaker*

UDI 2013-024 *Region- og mottaksavdelingens arbeid med enslige mindreårige*

UDI 2014-001 *Behandling av saker omfattet av Dublinforordningen*

UDI 2014-006 *Enslige kvinner*

UDI 2014-007 *Standardsskjema for å trekke søknad om beskyttelse*

UDI 2014-10 *Asylpraksis Afghanistan*

UDI 2014-014 *Barn som fødes i, eller ankommer Norge, etter at foreldrene har søkt om beskyttelse*

UDI 2014-015 *Opplysningsplikt til barnevernet.*

UDI 2015-029 *Sårbare beboere i asylmottak*

UDI 2014-031 *Ofre for menneskehandel i søknader om beskyttelse*

UDI 2014-032 *Asylpraksis Usbekistan*

UDI 2014-042 *Enslig mindreårig asylsøker i Dublin-prosedyre*

UDI 2015-001 *Asylpraksis Albania*

UDI 2015-009 *Enslige mindreårige som forsvinner fra asylmottak*,

UDI 2015-009V2 *Bekymringsmelding til barnevernet om enslig mindreårig som har forsvunnet fra asylmottak*

UDI 2015-029 *Identifisering og oppfølging av sårbare beboere i asylmottak*

UDI 2015-029V1 *Tiltakskort-Menneskehandel*

UDI 2015-029V2 *Tiltakskort-Vold i nære relasjoner*

UDI 2015-029V3 *Tiltakskort-Barneekteskap*

UDI 2015-029V4 *Tiltakskort utlevering av opplysninger om menneskehandel, vold i nære relasjoner eller barneekteskap*

UDI 2015-029V5 *Tiltakskort – Rapportering i menneskehandelsaker*

UDI 2016-002 *Asylpraksis Iran*

UDI 2016-011 *Asylpraksis Iraq*

UDI 2016-019 *Internflukt*

UDI 2017-002 *Krav til informasjonsarbeid i ordinære mottak*.

UDI 2017-005 *Varsling mellom UDI og asylmottak ved alvorlige hendelser*

UDI 2017-007 *Asylpraksis Tyrkia*

UDI 2017-014 *Varsling fra asylmottak til UDI ved kriminalitet, uro og alvorlige hendelser*

UDI 2018-001 *Familieinnvandring fra Afrika sør for Sahara*

UDI 2018-004 *Seksuell orientering og kjønnsidentitet i søknader om beskyttelse*

UDI 2018-004V4 *Tiltakskort for søkere som kan være utsatt for overgrep i Norge på grunn av seksuell orientering eller kjønnsidentitet*

UDI 2018-014 *Asylpraksis Somalia*

UDI 2018-015 *Arbeid mot menneskehandel i UDI*

UDI 2018-015V *Rapporteringsrutiner i menneskehandelsaker*

UDI 2019-002 *Krav til dialoggrupper i asylmottak for å forebygge vold*

UDI 2020-005 *Alternativ mottaksplass*

UDI 2020-007 *Enslige mindreårige asylsøkere og aldersvurdering*

UDI 2020-012 *Retningslinjer for å gjennomføre intervju via skjerm*

VULNER

The VULNER consortium consists of 9 academic partners from 6 different countries.