



The UN Committee on the Rights of the Child
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Submission to the Children's Rights Committee 81st session – Day of General Discussion on “Children's Rights and Alternative Care” – September 16th – 17th 2021

The Norwegian Organisation for Asylum seekers (NOAS) welcome the Committee on the Rights of the Child's invitation for submissions in relation to the forthcoming discussions on Children's Rights and Alternative Care. We thank you for the opportunity to provide our submission.

NOAS is an independent membership organisation working for respect and security under the law for asylum seekers and refugees in Norway. We offer information, guidance and legal aid to asylum seekers, and engage in political debates. We have 35 years of experience providing legal aid to asylum seekers and refugees in matters of asylum. Since 2019 we have also engaged in family immigration and expulsion matters.

Considering that the purpose of the Day of General Discussion is, amongst other, to discuss particular areas of concern with regard to the unnecessary separation of children from their families, we would like to highlight two themes of particular concern using Norway as example.

- Children being separated from family in family reunion cases
- Children being separated from family in expulsion cases

- Children being separated from family in family reunion cases

In recent years, Norway has tightened regulations and practices for family reunification, leading to refugees in certain cases being kept separate from their immediate family members. According to the UN High Commissioner for Refugees (UNHCR), there are *insurmountable obstacles and barriers that a refugee encounters in an application process for family reunification in Norway*¹.

In 2019, NOAS published the report “Realizing Refugees' Right to Family Unity”, highlighting some of the challenges that refugee families that want to reunite experience due to strict policies and requirements in Norway².

¹ <https://www.vl.no/nyhet/feller-hard-dom-over-norge-1.26380>.

² NOAS, *Realizing Refugees' Right to Family Unity*, 2019 (tilgjengelig fra: <https://www.noas.no/wp-content/uploads/2019/11/Skjermbilde-52.png>).

In Norway applicants are required to pay an application fee in order to be reunited with a refugee. The amount is described by UNHCR as the highest fee of its kind in the world and is often difficult, if not impossible, to reach for refugees that have recently arrived in the country³. Only applicants under the age of 18 are exempted from the fee. Because of the six-month time frame where applications for family applications must be lodged in order to be exempted from the income requirement, refugees have to pay the fee within a short period of receiving their status. Many refugees have to resort to illegal work or very expensive loans in order to be able to pay the administrative fee in time. Applicants who do not have sufficient means to pay the processing fee have no legal remedy at disposal to request an exemption.

Family members of refugees are exempted from the income requirement if applications are submitted within a set time limit. This will only apply for families that were established pre-flight. The application must be registered online within six months, and all necessary documentation must be submitted in person within one year.

The reference persons in Norway are generally denied the possibility of applying on behalf of the applicant. The applicant must submit the application from the home country or in a neighbouring country. Norwegian authorities have designated foreign service missions or application centres where applications should be submitted in person. The place of application is often situated far from where the applicants are residing. This could result in applicants having to make costly and dangerous travels in order to submit necessary documentation, including illegal crossing of borders and illegal stay in the country where the application is submitted. For many it is difficult to meet the time limit to be exempted from income requirements.

Documentation is a general requirement to obtain residence permits. Proving identity and family links may be difficult where documents as passports, birth certificates, or marriage certificates are missing or are hard to access. Strict time limits make it hard to meet the documentation requirement. Exemptions can be made if the applicant originates from a country where it is difficult to provide documentation of identity and family relationships, or where documentation is not considered reliable. For this group, it is necessary to make the identity probable, through DNA-tests which confirm family ties, and/or coherent information in the application and interviews. Norway requires a letter of consent if the custody of a child is shared by both parents and the child applies to be reunited with one parent while the other parent remains in the home country.

The waiting time after having applied for family reunion is in general estimated to 18 - 20 months, which is a long processing time for a child waiting to be reunited with a parent. The Norwegian Ombudsman has criticized the long processing time⁴.

³ 7 800NOK (appr. EUR 780) if applied within 6 months after refugee status has been given. 10 500NOK (appr. EUR 1050) in other cases.

⁴ <https://www.sivilombudsmannen.no/wp-content/uploads/2021/02/Undersokelse-Utlendingsdirektoratets-behandlingstid-og-prioritering-av-barn-i-saker-om-familieinnvandring.pdf> (in Norwegian)

Family reunification is generally reserved to members of the nuclear family; spouses, unmarried partners, minor children, and parents of unaccompanied children. The strict practice regarding “other” family members does not appear to be in line with the position of UNHCR in its Guidelines on Reunification of Refugee Families⁵. In addition, Norway may reject family reunification if the family as a whole has stronger aggregate ties to a safe third country than it has to Norway.

In Norway, according to Section 40 (residence permits for spouses) of the Immigration Act both parties must be at least 24 years of age before an application for a residence permit as the sponsor’s spouse or cohabitant may be granted. This requirement also includes couples with children. The requirement does not apply if the marriage was contracted or the cohabitation established before the sponsor’s entry into Norway, or where the parties have contracted their marriage or established a cohabitation in Norway while both had a resident permit or a Norwegian or Nordic citizenship. Exemption may also be made if it is evident that the marriage or cohabitation is entered into voluntarily by both parties. It is important to note in this regard that the Immigration Appeals’ Board decisions appear to be drafted in a stereotyped manner without details of the reasons for the decisions being given, hence raising issues under Article 8 of the ECHR and Article 13 which impose an obligation on Norway to carry out an individual assessment and refrain from formalistic attitudes which have the potential to unjustifiably hinder the applicant’s use of an otherwise effective domestic remedy to enforce the substance of the Convention rights and freedoms. NOAS will challenge some of these decisions in Court during autumn 2021.

In general, NOAS experience that the immigration authorities do not thoroughly assess children’s situation and that the immigration authorities do not systematically hear the children orally. In Norway refugees are not entitled to free legal aid in family reunification cases. Those cases are often complex and require special legal assistance to safeguard legal certainty.

Recommendations:

- In order for refugee families to have their right to family life fulfilled there should not be any application fee for refugees, nor deadlines for submitting an application. If waiving the application fee is not possible, it should be reduced to a level where it does not constitute an insurmountable obstacle.
- It should be possible for the reference person (i.e. the refugee him/herself) to apply on behalf of the applicant, in particular in situations where the designated foreign service mission or application centre is far from where the applicants are residing and/or where children otherwise will be separated from a parent.
- Flexible application procedures should be in place, to enable applicants to submit an application to a place that is approachable, and where the applicant does not need to put him- or herself at risk.

⁵ <https://www.refworld.org/docid/3bd3f0fa4.html>

- The absence of documents that prove identity or the existence of family life should not in itself lead to rejection of family reunification. The requirement of a letter of consent from a parent in the home country when a child is reuniting with the other parent in the host country is important to avoid child abduction. Such documentation may be difficult to provide where one parent remains in a conflict zone. A country should not apply such requirement where the child may risk living without either parents.
 - Authorities should process cases in an expeditious manner, according to Article 10 (1) of the Convention on the Rights of the Child
 - All persons in need of protection, regardless of their status, should be given the same access to family reunification as Convention Refugees.
 - It should not be possible to reject family reunification if the family as a whole has stronger aggregate ties to a safe third country than it has to the host country.
 - Authorities should assess a child's situation thoroughly and facilitate to ensure that the child is given the opportunity to express his or her own views.
 - Authorities should provide free legal assistance in complex cases
- Children being separated from family in expulsion cases

In expulsion matters, NOAS experience numerous and worrying examples where children are deprived of one parent for a longer period of time due to the expulsion of the parent from Norway. Although the best interest of the child is an important principle implemented in the Norwegian legislation and practice, we see too often in these cases that immigration regulatory considerations trump the best interest of the child, resulting in the child being separated from one parent for a certain amount of time. These were the findings in NOAS' report "Barnets beste i utvisningssaker" from 2020⁶, available only in Norwegian. Another finding was that the children affected by the expulsion order of one parent, were not sufficiently heard by the authority prior to the decision making.

Norway's legislation and practice is in general quite advanced when it comes to taking into consideration the principle of the best interest of the child, as well as the right for a child to be heard. In Norway, the Convention on the Rights of the Child is incorporated into the Human Rights Act, which forms part of Norwegian law. The principle of the best interest of the child is codified in the Norwegian Constitution⁷. The Supreme Court has expressed that the child's best interest is not just one of several factors in an overall assessment, the child's interest must form the starting point, be highlighted in particular and be at the foreground.⁸

Despite the emphasis on the best interest of the child, immigration regulatory considerations often trump considerations for the best interest of the child. The experience from NOAS' legal aid work is that the threshold is high for the child's best interest to take precedence over immigration regulatory considerations. Even in cases where paediatric statements from,

⁶ Translated into English: The best interest of the child in expulsion cases, https://www.noas.no/wp-content/uploads/2020/03/NOAS_Barnets-beste_rapport_WEB.pdf

⁷ §104 Norwegian Constitution

⁸ <https://lovdata.no/pro/auth/login#document/HRSIV/avgjorelse/hr-2015-206-a?searchResultContext=2649&rowNumber=96&totalHits=207>.

among others, educators and psychologists clearly show that it will have major negative consequences for the child if the parent is expelled, it is seldom of decisive importance for the outcome of the case. The courts' practice in expulsion cases is also not uniform. In many of the expulsion cases NOAS see affecting children, the breach of the law might be linked to the Immigration act, not criminal acts. The breach leading up to an expulsion might have been that a person did not follow the leave date after having received a negative decision on their asylum claim.

It is essential for the assessment of the child's best interest in an expulsion case to take into consideration the realistic length of the separation from a mother or a father, and it is a serious shortcoming when this is not assessed and emphasized. In Norway, the expulsion cases with children involved are often with an entry ban of two years. Two years is a very long time in a child's life. And, even if an entry ban is set to two years, the family split will in reality last much longer. An expelled person must first wait at least two years in the home country before an application for family reunification can be submitted. Then comes the administration's case processing time, which can be up to two years. There is also no guarantee that the application for family reunification will be granted at any time. The high income requirement and other strict criteria can lead to an application for family reunification never being granted, and the family split becoming permanent.

According to NOAS' experience working with cases, the immigration authorities do not always require information about the child's situation, his/her connection to the parent to be expelled as well as the remaining parent's ability for care when assessing an expulsion. In several cases, only the address, legal status and who has the formal parental responsibility are the only information that emerges about the child. Little is mentioned about how the child actually feels, or how the specific care situation is in his/her daily life. There is a lack of information about the child's specific care situation, health situation, presence / absence of vulnerability, social network and any kindergarten place or schooling. Based on the lack of information about the care situation, it cannot be concluded that the care situation will be satisfactory if one parent is expelled.

NOAS experience that the immigration authorities do not systematically hear the children orally and directly in cases where one of their parents is considered expelled. It is important that others than the parents hear the children directly and orally, to avoid situations where the child withholds information to shield the parents.

Recommendations:

- Authorities must ensure that the child's best interest is emphasised and at the foreground in the immigration authorities' expulsion assessment.
- Immigration authorities dealing with expulsion cases should in each individual case obtain sufficient information about the child's situation and what consequences an expulsion of a parent will have for the child. This could include an external, expert assessment. Proper, thorough, comprehensive and individual assessment of the child's best interest should be assessed in each individual case.

- Children should be given the possibility to be heard in cases where they are affected by the expulsion of one parent.
- Authorities should consider introducing other forms of reactions than expulsion with an entry ban in order to prevent that children are deprived of a parent.
- In expulsion cases that affect children, the authorities should in the decision-making process always investigate and assess whether there is a real possibility for the child being reunited with the mother or father after an entry ban ends, and emphasize this in the assessment of the best interest of the child.

We thank you again for the opportunity to provide our submission.

Sincerely,
for **the Norwegian Organisation for Asylum Seekers**



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