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Protection of unaccompanied minor refugees' rights in accordance with the Convention on the Rights of the Child

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Declaration

I, (name), declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature.....

Date.....

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Abstract

In 2015, the total number of refugees in the world reached 21.3 million. Over half of these were children. And the majority of these minors were unaccompanied, traveling alone without their family, trying to find a safer place to continue their lives. The Norwegian government is obligated to protect the rights of unaccompanied minors, (15 to 18 years old), in accordance with the United Nations Convention on the Rights of the Child. The aim of this research have been to investigate how the human rights of these unaccompanied minor refugees are being protected in Norway with regards with to the Convention on the Rights of the Child. The research involved analysis of international and national legal documents, and interviews with non-governmental organizations and governmental institutions involved with the protection and care of the rights of children. The results showed that the rights of the child have a strong position in legal documents, non-governmental organizations and governmental institutions. The results also showed that minors between the age of 15 to 18 had fewer employees available in care institutions, than those below the age of 15 years, thus differential in the care received. The legal guardians whom are appointed to protect the child throughout the asylum process shall provide assistance, but not daily care. And there is no clear definition of what adequate care is, which created different interpretations by non-governmental organizations and the government.

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INTRODUCTION

I want the whole world to experience human rights being taken seriously. I wish that the world's big powers and all the fighters in the world could really understand what human rights really are!. They should never have taken away our rights!. (Hassan cited in Eide, 2012, pg. 13)

Today there are a total of 21.3 million refugees in the world. Over half of these refugees are under the age of 18 (UNHCR, 2016). Countless refugees only make it to their neighbouring country, forced to live in refugee camps or having to move regularly in order to stay alive and keep safe. Refugees are vulnerable, they have left their country and crossed an international border as a means of fleeing a conflict, war or persecution, and they need protection (UNHCR, 2016). Recent wars and conflicts throughout the world have led to one of the largest number of people migrating since World War Two, especially in Africa and in the Middle East source. The large scale of migrants, whom becomes refugees when granted protection in a country, has made it impossible for the world's countries to ignore the current refugee crisis. Meetings and discussions have been held between state leaders on how to handle and help with this large migration, both nationally and internationally.

A complicated issue is child migration, which has increased over the last decade in our contemporary world (Bhabha, 2014). The drivers for this migration are complex, and include such things as experiencing war and conflicts, threats of torture or even on their life, loss of family members and or various forms of persecution, while some children simply want to have a chance for a better life (Bhabha 2014). In 2015, out of the 31.150 refugees that applied for asylum in Norway, 5.480 were under the age of 18 (UDI, 2015). Unaccompanied minors are an especially vulnerable group of asylum seekers. The Convention and Protocol relating to the Status of Refugees [Refugee Convention] was designed to protect and secure the rights of refugees (UNHCR, 1951). These rights are however not always being upheld in the countries that the refugees reside in. This is because one's refugee status is generally considered a temporary situation, during which time the refugee awaits the results of their asylum application, and the protection and fulfilment of their rights may be difficult (UNHCR, 1951). Article 33 in the the Refugee Convention (UNHCR, 1951), about non-refoulment, prohibits a State from expelling a refugee to a country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (UNHCR, 1951, pg. 30). This article further protects children, prohibiting them from being expelled before turning 18 years of age.

In 1990, a separate Convention for the rights of children, the Convention on the Rights of the Child [CRC] (UN General Assembly, 1990), was held by and agreed upon by the UN, and after a nation has ratified the CRC it is legally binding for that state (Smith, 2012). A Convention, like a treaty, becomes binding for a nation when it is ratified, meaning that the nation agrees to the Convention and all that that entails. For a Convention to be fully ratified, the nation must “fulfil its own national requirements” (Unicef, 2017, pg. 2). There is no standard for these requirements, however the State should make the Convention a primary consideration and inspiration for acts done by the government (Unicef, 2014, Wood, 2014). It is especially important to have a Convention that is legally binding on nations with regard to protecting the rights of children, as they are an extra vulnerable group that are in need of additional care and protection (UN General Assembly, 1990).

The challenges of protecting the rights of unaccompanied minor refugees through the CRC stem from how each nation have chosen to interpret the wording of the articles, which can differ even within the same nation (Woods, 2014). Protection of children’s rights is an issue as children are often seen as the possessions of others, and are still seen as possessions to this day (Bhabha, 2014). This is illustrated by article 31 in the African Charter, a separate article dedicated to the responsibility of the child, which states the child’s responsibility to the national community as well as their responsibility towards the family and superiors, and a duty to “service his national community by placing his physical and intellectual abilities at its service” (African Commission on Human and Peoples’ Rights, 1990, pg. 11). The CRC does not have an article like this.

When children are not seen as individuals it is of utter importance to establish how their human rights are being protected in our global world today. A lack of autonomy can be a burden on the child in the asylum process, and their political arguments may be ignored. This is highly important in our contemporary society as migration, and particularly child migration, continues to rise (Bhabha, 2014).

I became a legal guardian for minors seeking asylum with a desire to assist and help children who are in a difficult situation. Over the years, I have gained an interest in the fields of refugees, migration and human rights, believing that we are all individuals and should be treated as such. Working in the field has given me valuable knowledge and an insight into a complex and increasingly important area on the local and international level. As Freedman (2014) commented, the contemporary world believes that security is more important than securing basic human rights. The politicisation of human rights is concerned with states

avoiding human rights responsibilities believed to be “burdensome or having a heavy impact upon their countries” (Freedman, 2014, pg. 86). I believe that my research and prior experience in the field will reveal knowledge on the rights of unaccompanied minor refugees in Norway, which is changing and evolving continuously with the global situation. The refugee crisis has forced leaders to act and try to find solutions for the refugees abroad and in their own states. This issue has created an escalating debate in Norway, regarding immigration and refugees, and how the state and the people of Norway ought to approach the current situation.

PROBLEM STATEMENT

Having crossed an international border, refugees lack the protection and fulfilment of their human rights by their own state, and are then dependent on the state they now reside in for the fulfilment of these rights (UNHCR, 2016). While the Norwegian state is obligated to protect the rights of unaccompanied minor refugees according to the CRC, there have been disagreements between the government and non-governmental organizations [NGO] on how to interpret and implement the Convention (De Schutter, 2014; Eide, 2012a; Sandberg, 2012). The government has enforced the practice of granting limited temporary residence for unaccompanied minors that do not fulfil the requirement for protection under the Refugee Convention (UNHCR, 1951) while NGOs working for children’s rights such as PRESS and the Association of Guardians believe this puts the children’s lives on hold and is discreditable treatment of the children’s rights. As a researcher with a background working as a legal guardian for unaccompanied minor refugees, I will study how the rights of unaccompanied minor refugees are being protected by the Municipality of Oslo and NGOs.

Research questions

How are unaccompanied minor refugees’ human rights protected in Norway in accordance with the UN’s Convention on the Right of the Child?

Followed by these sub questions:

How does the Norwegian law and policies reflect the Child Rights Convention (CRC)?

Who are the advocates for the human rights of unaccompanied minor refugees?

How are the unaccompanied minor refugees being cared for and who provides this care?

How and in what way may the Norwegian policy toward unaccompanied minors not be in accordance with the CRC?

CONCEPTS

The core concepts that will be used in the thesis are identified and explained below in order to provide an overview of the operationalization.

UNACCOMPANIED MINOR REFUGEE

In this thesis the definition that will be used for ‘unaccompanied minors’ and ‘children’ follows what Staver and Lidén (2014) as well as Øien (2010) have done in their respective reports. The concept includes children between the ages of 15 and 18 years that are without the care of a parent or a guardian or other adult person of care. These are children that have arrived on their own in Norway. The focus is on this group of children because most unaccompanied minors that arrive in Norway are in this age range. In addition, these children are not under the care of the Child Social Services in Norway [Bufetat], but rather the Norwegian Directorate of Immigration [UDI], which is responsible for immigration and asylum applications to the country. The difference in care provided for the children between the ages of 15 and 18 years makes the group relevant to research with regards to human rights.

LEGAL GUARDIAN

The Norwegian term for legal guardian is “representant”. In this thesis, legal guardian will be used to define “representant”, which is an individual who protects and ensures the rights of the child throughout the asylum process. Guardian will refer to an individual that protects the child’s rights after asylum has been granted.

ASYLUM PROCESS

This process is mentioned throughout the thesis and refers to the time from when the child arrives in Norway until the result of the asylum application is present. It includes the registration interview with the National Police Immigration Service [NPIS], living at a reception centre, meeting with a legal guardian, age testing and the final interview with UDI.

LAW AND POLICIES

The reference to legal documents in the thesis includes all relevant forms of official documents, such as international conventions, national laws, UDI circulars and memos on practices and procedures, and other legal documents related to the protection and care of refugee children.

NGO

Non-governmental organizations that work with protecting and enforcing the rights of unaccompanied minors, such as Norwegian Organization For Asylum Seekers [NOAS], Norwegians People's Aid, Save the Children, Save the Children's Youth Organization [PRESS] and the Association of Guardians.

AGE

A key component for receiving rights and protection in accordance to the CRC. A person is above the age of 18 years old is not a minor and not entitled to the same rights as those below that age. Age is also an important part of identity. Many unaccompanied minors do not have identification papers and it may be difficult to verify their age. The consequences can be dire if age is assessed incorrectly in terms of which type of protection and residence the child then can or will be granted.

LIMITED TEMPORARY RESIDENCE

The term "Enslige mindreårige asylsøkere" [EMA] translates into unaccompanied minors, while the term "EMA-begrenset" is translated to and used for limited temporary residence, as it is a limitation on residence granted until the age of 18, unless UDI believes that there is a need for protection from persecution. The children can be given limited temporary residence due to humanitarian protection as stated in Lov om utlendingers adgang til riket og deres opphold her (Utlendingsloven), [the Act of 15th May 2008 on the Entry of Foreign Nationals into the Kingdom of Norway and their stay in the realm] hereafter referred to as Immigration Act (Utlendingsloven, 2008; UDI, 2008), which will be explained in chapter one. To be able to send a child back to their country of origin, they must be met by a person who can care for them or be placed in a care facility upon arrival. The details are explained and regulated in the "Forskrift om utlendingers adgang til riket og deres opphold her" (Utlendingsforskriften), [Regulations of 15th October 2009 on the Entry of Foreign Nationals into the Kingdom of Norway and their stay in the Realm, Utlendingsforskriften, hereafter referred to as the Immigration Regulations (Utlendingsforskriften, 2009; Regjeringen, 2009)]. The Immigration Regulations applies to immigration to Norway, and will be further explained in chapter two. After the child 18 years old, it will be obligated to leave Norway since it is then by legally considered an adult and deemed not in need of a person of care to meet them or to take care of them, when transported out of the country.

CARE

A central topic in the protection of rights of unaccompanied minors, given that one aspect of protecting these rights is ensuring that children have proper care. What constitutes ‘adequate care’ has been identified by UDI and included in the Immigration Act on what the legal guardian needs to provide for a child in order to be a guardian. It has also been written into UDI regulations on what the UDI shall provide for these children. In my findings, the theme of care includes treatment of unaccompanied minors in relation to care in the form of their stay at a reception centre, mental as well as physical health, and an overall practice of care.

VULNERABILITY

The term is important in relation to unaccompanied minors because children below the age of 18 are arguably more vulnerable than adults. Vulnerability is defined as the increased exposure to the lack of well being than average children, and how their situation without their families “deeply affected the physical and psychological well-being of refugee children” (UNHCR, 1994, pg. 1). Vulnerability lays the foundation for why children need extra care and protection of their rights, compared to adults.

THEMATIC BACKGROUND

There are three distinct causes of the current migration to Europe: the Western Balkans continuing economic malaise; the turmoil in the greater Middle East; and Africa’s civil wars and conflicts. Intensification or expansion of the war in eastern Ukraine would quickly add a fourth cause of flight. (Cited in Park, 2015, pg. 10)

The global refugee crisis during the Second World War had been unmatched in the contemporary world until 2015, until the refugees crisis which erupted from conflict and civil war in Syria, Afghanistan and Iraq (UNHCR, 2016a). Europe and Norway both witnessed a historically large number of refugees seeking protection in 2015 (Regjeringen, 2016). In April of 2015, Norway received 88 unaccompanied minor refugees. By October that same year there were 1.146 new entries, and in November there were 1.142 new entries. From 2014 to 2015 there was an 339,9% increase in the arrival of unaccompanied minors to Norway (UDI, 2014; 2015). Of these 4.195 were children between the age of 15 and 18 years, according to (The Norwegian Directorate for Children, Youth and Family Affairs) (Barne-, ungdoms- og familiedirektoratet [Bufdir]), 2016).

This large entry of unaccompanied minors between of the age 15 and 18 years, and the political climate in Norway, highlights the significance of the research, illustrating different political ideologies and how it may affect legal amendments and the protection and care that unaccompanied minors receive in Norway. In the Norwegian parliamentary election of 2013, there was a shift in the political ideology as the ruling coalition of the Labour Party [AP], the Centre Party [Sp] and the Socialist Left Party [SV], that had been in power for the last two terms, lost its ruling position to a coalition of right-wing parties (NRK, 2013; Regjeringen, 2014). The conservative side, which consisted of the Right Party [H] and the Progress Party [FrP], backed by the Left Party [V] and the Christian Democratic Party [KrF], won 96 of 168 seats, giving them the majority in Parliament over the liberal side who only won 72 seats (NRK, 2013). For the first time the populist FrP came to power in Parliament, a party that entered the election with an agenda to drastically lower immigration to Norway, claiming that it was a threat to the welfare state and the Norwegian culture (Sandvik, 2013; Sandvik & Solvang, 2013).

By October of 2016 the Prime Minister of Norway, Erna Solberg, saw the need to address the refugee question, hoping to create a broad political agreement between all political parties. As Sandvik, Vojislav Krekling and Bakke (2015) wrote in their article, FrP made it clear that their main goal was stricter politics concerning refugees and asylum seekers, not a broad political agreement. The “Asylum Settlement” [Asylforliket] was presented on the 19th of November 2015. It was an 18-point agreement upon by the Government and KrF, V, Ap and Sp, aimed at meeting the immigration crisis. One of the main intentions behind this agreement was to portray Norway as one of the strictest countries with regards to regulating entry for asylum seekers (Reisjå, Kjernli, Sandvik & Nybø, 2015). There are various viewpoints on how this agreement would affect Norway. One of the concerns for Ann-Margit Austenå, General Secretary in NOAS, was that the government may have been forgetting that refugees and asylum seekers are human beings, not just financial figures (Reisjå et al., 2015). The government argued that the agreement would provide a sound basis to meet the refugee crisis, and that it was important for the nation and the international society to see that Norway could control their borders (Kristiansen, Glomnes & Ruud, 2015).

In the wake of the refugee crisis and political situation in Norway, Sylvi Listhaug from FrP became Norway’s first minister of Immigration and Integration in December of 2015 (Reisjå et al., 2015). The minister position is situated in the Ministry of Justice and Public Security, and dedicated to “the government asylum, immigration and integration policy

(Regjeringen, 2017). The fact that a politician from a populist and anti-immigration party filled the minister post responsible for immigration and integration has arguably affected this area of politics. After the “Asylum Settlement” Listhaug specified 40 suggestions made to change the laws and regulations in the refugee and asylum politics (NTB, 2015). From a human rights perspective, these 40 suggestions make it harder for vulnerable people to seek family reunification, it threatens the right to free legal representation when an asylum application is denied, and it means that granting limited temporary residence for unaccompanied minors until they are 18 will increase (Elster, 2015). One of two points that is still continuously debated is the increased use of limited temporary residence for unaccompanied minor refugees. Karolina Lindholm Billig, regional representative for United Nations High Commissioner for Refugees [UNHCR], claimed that there was the potential of doing harm in re-evaluating children’s asylum application when they turned 18 years old (Johnsrud, 2016). Limited temporary residence conflicts with the CRC, Johnsrud (2016) stated, as it places the child in an undefined situation with an uncertain future. In June of 2016, the majority in parliament voted against placing stricter rules for granting asylum to children (Sættem, Carlsen, Bulai & Skei, 2016).

Despite this, other changes were made to the Immigration Act which has affected unaccompanied minors, was one significant change that affected many unaccompanied minor refugees was the removal of “rimelighetsvilkåret” (reasonableness requirement) regarding internal relocation, allowing children to be sent back to safe areas in their home country (UDI, 2016). Prior to this, UDI had to evaluate whether this area, designated to be safe, was reasonable or not for the child, but this is no longer a legal requirement. This change has created an increase in the use of limited temporary protection for children between ages of 15 and 18. These political and subsequent legal changes over the past year can be seen to express a transformation in the Norwegian government’s view on refugee and asylum politics.

This transformation in the government’s view on refugee and asylum policies has further motivated me further to look into the subject matter of rights of unaccompanied minors in Norway. Regarding the Norwegian government and human rights, a master student (Gaarder, 2016) recently wrote an article on refugee children in a Norwegian newspaper critiquing the Norwegian government for breaking the CRC when unaccompanied minors between 15 and 18 years old are not under the care of Bufetat, illustrating the relevance and importance of the topic I have chosen. In order to gain deeper knowledge about this topic, I will first present the theory focused on human rights and the human rights based approach, followed by the methods and data. After that I will present the chapter on the CRC and other international obligations,

followed by the chapter on the NGOs and the government and the chapter on unaccompanied minor refugees. Thereafter the chapter on care and protection is presented before I will proceed to the analysis and finally present my conclusion.

THEORY

Human rights are now, sometimes controversially, at the heart of modern Europe and might be its defining feature. (Abbasi, 2015)

In this chapter, the theoretical backdrop for the research will be introduced, through presenting the history of human rights and the significant debates surrounding human rights. Following this, the human rights based approach for children is addressed and presented in relation to the research question. These children need to have their basic human rights meet when they arrive in Norway. I will use the CRC, human rights and the human rights based approach for children to analyse how the state and the NGOs protect the rights of unaccompanied minor refugee in accordance with the CRC in Norway.

HISTORY AND IMPORTANCE OF HUMAN RIGHTS

The history of human rights is dated far before the Second World War, where “the ideas and practices of preceding generations of scholars, lawyers, political leaders and citizen activists influenced and informed the text of the Universal Declaration of Human Rights.” (Woods, 2014, pg. 21). The struggle for recognition of these human rights for minorities and indigenous peoples is a constant struggle to this day. After World War Two the world changed. Having experienced two devastating wars within a short time frame, world leaders decided to form an organization that would strive for world peace, namely the UN (Woods, 2014). The members of UN created a Declaration that would secure nations individuals rights and global peace. The Universal Declaration of Human Rights [UDHR] was “deeply shaped by an earlier set of ideas about the moral significance of individual human beings held to be worthy of respect simply because they are human beings” (Woods, 2014, pg. 37). The long tradition of the UDHR has changed it to customary law providing the same value as a legally binding document (De Schutter, 2014). Human rights create the basis for how one should treat individuals and how the state should treat individuals in their territory (De Schutter, 2014).

The political conception of human rights, as advocated by Joseph Raz, is that the political and legal framework basis in the nation is crucial for how the “practice of human rights relates to the interaction between human rights and sovereignty.” (cited in Woods, 2014, pg. 67). The ‘sovereignty paradox’ refers to how the state both ratifies the Convention while simultaneously ensuring that these rights are protected and enforced (Woods, 2014). The relevant points and arguments that Woods (2014) discusses is how dependent the practice of human rights can be on the will and practice of the state. This could illustrate a limitation on

the practice of human rights, as the state is given the role of both the enforcer and the protector of the individual's human rights. As the unaccompanied minors are not citizens of the state but refugees seeking protection, they are entitled to the same respect, dignity and obligation as long as they are within the state territory (De Schutter, 2014). The rights of refugee children are protected by the Convention relating to the Status of Refugees (Refugee Convention), Norwegian law and the CRC (UNHCR, 1951). The state is obligated under international law to protect any child that is within its territory once the CRC is ratified and the binding nature of the UDHR through its status as customary law (De Schutter, 2012).

The principle of the best interest of the child is contested and debated for unaccompanied minors, and Bhabha (2014) discusses how the best interest of the child can diverge based on the age of the child. Bhabha problematizes how the evaluation of the best interest of the child in relation to the family unit and socio-economic rights can be very different for older children. Adolescents, as Bhabha (2014) refers to older children under the age of 18 years, can value family relations less and be more focused on the financial opportunities made possible through employment where they reside. Bhabha (2014) further states that it is precisely these large differences that complicates the issue which determines that make the best interest of the child difficult to determine. The best interest of the child needs therefore, as Sandberg (2012) has suggested, to be evaluated on an individual basis. As there are no set criteria to determine the best interest of the child, this should be evaluated on a case by case basis (Sandberg, 2012; UNE, 2010). Some key elements weighed when considering the best interest of the child are their health, stability and connections (Haugli, 2012). If the child is to be moved, the child's connections and the vulnerability of the child are elements often considered as part of the best interest of the child. The relative nature of the best interest of the child, argued by Haugli (2012), allows for numerous understandings of the principle, and reflects the importance of the views of the child being considered

As Ronald Dworkin (cited in Freeman, 1992) stated, in order to understand the importance behind children's rights, the idea of human dignity and political equality must be accepted. Unlike adults, children are more vulnerable and may have less developed abilities and capacities. Children need more protection and care than adults (Freeman, 1992). A double standard as to how we treat children and adults is arguably present, where children are vulnerable and independent individuals yet can meet a higher threshold in their explanation for protection (Bhabha, 2014). The child is often seen as part of a family and seldom viewed as an individual in their own right.

Sen (2014) problematizes human rights and its importance, implementation and meaning. “It is critically important to see the relationship between the force and appeal of human rights, on the one hand, and their reasoned justification and scrutinized use, on the other” (Sen, 2014, pg. 1). Sen (2014) also problematizes whether or not human rights should even be included in legislation, and if this is the way to secure human rights at all. The rights based approach has also been criticized for being an approach with the ability to give subjective opinions depending on the group the approach is intended for (Tobin, 2016). If the approach is too flexible and open-ended, it may be hard to argue its use in practice. Tobin (2016) has tried to address this by developing his interpretation of the approach (2016).

HUMAN RIGHTS BASED APPROACH FOR CHILDREN

The rights based approach originated in context of development, as Tobin (2016) explained, and has since been included in a wide field. The approach is used not only to look at development in the national and international fields, but matters that affect individuals as well as groups of individuals (Tobin, 2016). The approach has many different definitions, where there is a broad agreement in the field that the flexibility of the approach “is seen as being its greatest virtue enabling its application to adapt to the particular circumstances of any issue or environment” (Cited in Tobin, 2016, pg. 64). Tobin (2016) has designed his interpretation of the rights based approach for children, where I have included parts from this approach relevant for the thesis.

Specific to the child rights based approach to human rights is non-discrimination, the best interest principle, the right to survival, development and participation. These are key aspects using this approach for children according to Tobin (2016). The CRC is the only international human rights treaty that recognizes “the legitimate influence, indeed right, of third parties on the exercise of another individual’s rights or the limited capacity of individuals to exercise their rights.” (Tobin, 2016, pg. 72). The child is often seen as part of the family and seldom viewed as an individual in their own right, as argued by Bhabha (2014). When children are recognized to have limited capacities the respect for their right to be heard is even more vital. It is important that the child is given individual rights that are separated from the family, especially if they are a unaccompanied minor refugee.

ACCOUNTABILITY

Central to the rights based approach as it signals the duty of the rights bearer and the duty holder. The CRC article 4 states that the State provides the necessary measures for the implementation of rights (UN General Assembly, 1990). According to Tobin (2016), article 4

in the CRC makes not only the state in which the child resides in accountable to respect the child's rights, the international community is also given this obligation. The parents and the legal guardians are also to held accountable for fulfilling the human rights for the child, creating room for cooperation between parents, states and the international community. “The notion of accountability under the CRC should be seen as a tripartite system in which parents, states, and the international community co-operate for the purpose of realising children’s right” (Tobin, 2016, pg. 69).

NON-DISCRIMINATION AND EQUALITY

In regard to children, discrimination is somewhat adjusted, as Tobin (2016) explains article 2(2) in the CRC “ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members” (Cited in Tobin, 2016). Discrimination is often separated from general principles in the rights based approach, yet Tobin (2016) believes that it is important for all rights based approaches and for the implementation of other rights in the CRC.

PARTICIPATION

Article 12 states the right for the child to express their own views freely (UN General Assembly, 1990). These expressions are to be valued and considered in respect to their age and maturity, allowing the child to participate in the events around him or her, as argued by Tobin (2016). The difference between adult participation and child participation is the age and the maturity of the child. The child’s statements and views should be evaluated based on their age and maturity (Tobin, 2016). The CRC preamble explains that a State must respect the child’s cultural background – take “due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child” (UN General Assembly, 1990, pg. 1). It is important to understand what the child says and may need, as Tobin (2016) argues below.

The international system of human rights encompasses values that can be found in all cultures and all religious, moral and ethical traditions. They provide an international guide for common standards of conduct, which can be expected from all governments and societies. (Cited in Tobin, 2016, pg. 77)

The respect for cultural background is important to include for children from different backgrounds, and not as a means to treat children unfavourably based on their cultural upbringing (Tobin, 2016).

Despite the different interpretations of human rights addressed above, as I am researching the protection and care of children's rights in relation to the CRC, the human rights based approach for children is arguably the best approach. One can analyse how the state and the NGOs enforce the CRC, how this may be similar or different, providing an understanding of the controversies connected with human rights, and especially for vulnerable groups.

METHODS AND DATA

In this chapter, the method and data collection used to investigate how the human rights of unaccompanied minor refugees are being protected in Norway in accordance with the CRC are explained. First the sampling method, followed by the method for data collection including 1) documents and reports, and 2) interviews. The major themes throughout the research are explained, followed by data analysis, and ethical considerations and limitations faced during the research process.

To answer the research question, a qualitative method of approach was used. Qualitative research “consist of many different endeavours, many of which are concerned with the objective (scientific) study of realities which in some sense are objective” (Silverman, 2013, pg. 6). In order to understand how the Norwegian government and various NGOs protect the rights of unaccompanied minors, an in-depth approach was utilized to help answer the research question. This approach can retrieve expert knowledge in the field (Bryman, 2012). The qualitative approach allows the researcher to take a step back from the knowledge in the field from before, by creating a research question aimed at studying how and why these views and claims are being made (Grbich, 2013). The research method provided an opportunity to interview and assess the data directly connected to the research. The data and results from the research can not be representative for the NGO and state institutions interviewed, as, the respondents and data collected was specifically chosen to help answer the research question. By studying a specific area concerning the protection of the rights of unaccompanied minors in accordance with the CRC, valuable information and knowledge has been collected. Figures has been included to illustrate the number of children who applied for asylum, and who have been accepted. This is important in order to understand the size of the population of unaccompanied minors in Norway, and is relevant for the context of the research question.

SAMPLE

The sample method used in the research is purposive sampling. Purposive sampling is according to Bryman (2012) a non-probability form of sampling. This form allows the researcher the ability to chose respondents or a case based on features relevant to the research question (Silverman, 2013). The respondents for the interviews were chosen based on their professional knowledge in helping with answering the research question. Prior research was conducted done before contacting several of the respondents, aimed at finding those whom could have varied and relevant knowledge. The research process made it possible to obtain answers and gain in-depth knowledge to specific areas. “How interviewers gain access to

potential participants and make contact with them can affect the beginning of that relationship and every subsequent step in the interviewing process” (Seidman, 2013, pg. 44).

The respondents were first contacted via email and informed of the subject matter. The sample consists of 11 respondents from both NGOs and the Norwegian government, see Appendix 1. Due to confidentiality, only a general title was included. The interviews with each respondent lasted from 45 minutes to one and a half hours.

The respondents from the NGOs were as follows: two from the Association of Guardians, two from NOAS, one from Save the Children, one from PRESS and one respondent from Norwegian People's Aid.

The respondents from the government were as follows: two respondents from the Guardianship Department at the Country Governor of Oslo and Akershus [Guardianship Department] and one respondent from NPIS.

In addition to the samples from the NGOs and the government, the sample also include a Professor from the Norwegian University of Life Sciences [NMBU] on Afghanistan. This is relevant for the research because the majority of the unaccompanied minors that come to Norway between the ages of 15 and 18 year are from Afghanistan. To obtain expert knowledge on the country and current situation in Afghanistan is therefore valuable for the research at hand.

The interview with Save the Children and the Guardianship Department occurred through the use of “Snowball sampling”, a sampling method explained by Bryman (2012) used to find new respondents through current respondents. I was recommended by several respondents to talk to Save the Children, as their work is grounded in the CRC, and an interview with an respondent with specific knowledge on volunteer work and unaccompanied minors in Norway at Save the Children was conducted. The interview with the Guardianship Department was initiated through contact with the Head of the Guardianship Department in Oslo through informing them about my research as a legal guardian. My background as a legal guardian may have provided easier access to the Guardianship Department. Direct email contact with NPIS gave me contact information to a relevant respondent. The narrow number of respondents of the data sampling is due to the depth of the interviews held and the need for time and resources to analyse texts and laws that help to answer the research question. Each respondent was first contacted by email, where an introduction of who I was and the research was provided.

DATA COLLECTION

The first part of the research was concluded through collecting data from legal documents, reports, and relevant documents with regard to answering the research question. The second part consisted of interviews with respondents who had expert knowledge on the field. My background as a legal guardian assisted me in the direction of my research, as I had prior knowledge from the field on which themes and categories that was problematic and important for the rights of unaccompanied minors. Through reviewing literature prior to creating the interview guide and choosing the method of data collection, a thorough understanding of the field developed.

DOCUMENTS AND REPORTS

The data was first collected through researching and studying legal documents, relevant reports and laws in relation to answering the research question. The Convention of the Rights of the Child is the main legal framework for the research and consists of 24 articles. The Immigration Act and the Immigration Regulations are part of the legal framework, as well as the European Convention on Human Rights [ECHR] (Council of Europe, 1950). The Lov om barn og foreldre (barnelova) [Child Law] (Barnelova, 1981), Lov om vergemål (vergemålsloven) [Guardianship Act] (Vergemålsloven, 2010), and UDI rules and regulations are all part of the legal framework. These legal documents are important for every child that are residing in the state of Norway. The Immigration Act and the Immigration Regulations is highly relevant for unaccompanied minor refugees and the protection of their rights in relation to the asylum application. The Guardianship Act and chapter 11 in the Immigration Act explain the role of the legal guardian who protects and ensures that the rights of these children are protected throughout the asylum process. The UDI rules and regulations are included to analysis and research how casework is to be handled and how the regulations for reception centres run by UDI for unaccompanied minors are protecting the children's human rights in accordance with the CRC.

These laws will supplement the CRC and be used in the analysis to answer the research question. In the CRC, several articles are more relevant than others. Sandberg (2012) highlights articles believed to be important in preserving the rights of unaccompanied minor refugees. The articles are mentioned briefly and discussed further in my main research project. Article 22 is central as it highlights the State obligation to provide children who seek protection all the sufficient measures needed to give the child protection and humanitarian assistance in fulfilling their rights (Sandberg, 2012; UN General Assembly, 1989). Sandberg (2012) discusses

“applicable rights” which is interpreted on Norwegian law that refugee children are not entitled to all rights in the Convention. This is in conflict with article 2 which ensures the right to be free and protected from discrimination. The rights given in the Convention are as Sandberg (2012) states not to be interpreted to cause restrictions on other rights. Article 20 ensures the right to care, which will be explained in the section of main concepts. Article 3 raises the importance of the best interest of the child and how it is a primary consideration for children (UN General Assembly, 1990). This is analysed and discussed throughout the thesis, as it is a primary consideration in the CRC and a foundation in assessing the rights of children. Lastly, article 12 refer to the “right to express those views freely in all matters affecting the child” (UN General Assembly, 1990, p. 4). There are numerous articles in the CRC that could have been brought forward in helping to answer the research question, however, I have chosen to focus on the above-mentioned articles as these reflect the rights of unaccompanied minors, as seen by Sandberg (2012). All of these articles will be addressed further in the next chapter and are essential to discuss in relation to the research question.

INTERVIEWS

The method used when conducting the interviews was a semi structure interview guide, which can be found in Appendix 2. The interview guide was based on major themes relevant for the respondent’s knowledge on the field, which is presented below in further detail. The interview guide includes the most relevant and important themes in the research, while some of the respondents were asked specific questions regarding their area of expertise. The general interview guide is included to show the most important and alike themes covered. A semi structure interview guide creates more flexibility in the process of questioning the respondent as the interview guide is not absolute (Bryman, 2012). The advantage of using this method to answer the research question is that there are certain topics that ought to be covered. Some of the topics have been covered in all of the interviews, while other topics have been covered in one due to their knowledge on the field. The order of the questions varied, and follow up questions were asked if there was a need to clarify certain issues or matters. The flexibility of the semi structure interview allows for the interview to ask questions that may arise during the interview (Bryman, 2012).

The interviews were conducted in person and if possible at the respondent's office or a meeting room at place of work. This arena was chosen in order to increase the convenience for the respondent, keep the setting professional and formal, as well as to minimize the effect of

the surrounding environment upon the respondent. When this was not possible I arranged for a meeting room at the Oslo and Akershus University College of Applied Science [HiOA].

The interview with NOAS, Save the Children, the Guardianship Department, Norwegian People's Aid, PRESS and NPIS was held at their subsequent offices. The two interviews with the Association of Guardians was held at HiOA. Each respondent was given a form of consent prior to the interview via email, which was signed in person before the interview, see Appendix 3. The interviews were all recorded to ease transcriptions of the interviews as “the primary method of creating text from interviews is to record the interviews and to transcribe them” (Seidman, 2013, pg. 117). This also lets the researcher preserve the original data, allowing for the researcher to check the source and situations of uncertainty (Seidman, 2013). Respondents were asked and informed if recording was okay, and that I could turn off the recorder at any point. Some of the respondents informed during the interview which parts they did not want to be quoted on. The interviews were recorded with all the respondents.

One interview was conducted with two people at the same time, which deviated from my other interviews with only one respondent present. Meeting each respondent separately would allow for clarifying questions when meeting respondent two from the same organization. Despite this, the interview was successful with minor difficulties arising during the transcription process as the respondents would sometimes speak at the same time. To ensure the possibility for clarifying questions, I asked to be able to contact them if there was anything I was uncertain off. This was also done with all the other respondents.

MAJOR THEMES COVERED IN THE INTERVIEWS

These major themes were covered when conducting the interviews, and laid the foundation for the data analysis and coding of the transcribed interviews. Some of the themes were omitted after the interviews, while new categories and labels evolved after the transcription of the interviews were finished. I will include the major themes prior to the interviews here, and the remaining categories and labels in the data analysis. I will use the CRC, human rights and an analytical framework of themes as a basis for analysing how the state and the NGOs protect the rights of unaccompanied minor refugees in accordance with the CRC in Norway.

PROTECTION

Central to the research question as it seeks to understand and research how unaccompanied minors' rights are protected in accordance with the CRC. For this reason, protection was chosen as a central theme in the interviews with all of the respondents. After the interviews had been conducted, specific categories within the theme of protection were developed for the analysis. These categories were: limited temporary residence, general protection in Norway, and control vs. protection.

Limited temporary residence is a potential result of the asylum application for unaccompanied minors when the child is evaluated and deemed not to be in need of protection in accordance with the Refugee Convention (UNHCR, 1951). It has been addressed in all of the interviews and in the analysis of the Immigration Act and the Immigration Regulations. As there has been an increase in this type of residence, it will be analysed as a separate category in the analysis.

General protection in Norway refers to how the rights of the child are protected in different ways, through procedures or action done by the different NGOs and government institutions. The different actions and UDI rules and regulations have also been analysed to assist in providing more knowledge on the field.

The control vs. protection category refers to potential dilemmas connected to immigration control and the protection of the rights of the child when evaluating the asylum application. This was not directly focused on in the interviews, but mentioned by a few respondents which lead to further analysis on relevant legal documents.

RIGHTS – GENERAL HUMAN RIGHTS AND RIGHTS

The theme of rights refers to rights in general, such as universal human rights and rights according to the Refugee Convention. The focus in this thesis is on the rights of the child during the asylum process and on how the child should be treated accordingly. The role of the legal guardian is to ensure that the rights of the child are protected during the asylum process, according to the Immigration Act (UDI, 2009).

POLITICS

The political theme includes relevant information on the political climate in Norway from 2013 until April of 2017, such as the government, the respondents' opinions on the government and the importance that politics may have for unaccompanied minors. How the Norwegian policies reflect the CRC, and how this may, or may not, have changed over the past

few years. This was a key theme in analysing the thematic background of the research paper, and was a minor theme in the interviews, as no questions were asked directly related to politics.

CARE

Care is a central theme for ensuring proper treatment and enforcement of the rights of children. The interviews included this theme to gain an understanding of how different respondents view care and whether there may be opposing views as to the importance of care of unaccompanied minors. After the interviews were conducted, three subcategories were included for the analysis which were; adequate care, accommodation, and vulnerability.

Adequate care is translated from the Norwegian term “forsvarlig omsorg”. There is no clear definition of what this term ‘adequate’ entails in the Norwegian legal and immigration system or by the NGOs, therefore the concept is analysed further in relation to legal documents and the respondents' views. Including this in the analysis may provide answers to the role care has for the children, the meaning of care for the different actors, and the potential difficulty in providing adequate care for children in a temporary situation. It can help to analyse and discuss how the unaccompanied minors are being cared for, and what the different actors may argue are important for fulfilling this function.

Accommodation refers to where the child lives during the asylum process. Unaccompanied minors live in reception centres, while unaccompanied minors below the age of 15 years live under the care of Bufetat. This will help to analyse the affect different forms of accommodation may have on ensuring the rights of the child, and how the unaccompanied minors are being cared for while awaiting the result of their asylum application.

Vulnerability is linked to care, yet as a concept it is important to discuss it separate from care since it can help to analyse and understand the situation for the children, both physically and mentally throughout the whole process that they are in. It is a narrow concept and will be included under the theme of care in the analysis as it is a feature concerning the child's situation that is often put forward regarding asylum children and their state.

COOPERATION

A major theme included in all of the interviews, in order to show whether, as well as how, NGOs and governmental institutions cooperate on certain levels. How do they cooperate, and how has the rate of cooperation developed lately in these matters. Can cooperation between

the different NGOs and state organs help to advocate for the human rights of children, and help in the protection and promotion of care? After the interviews were conducted, cooperation was omitted as a central theme as other themes were seen as giving more depth and research to the research question.

Age

Prior experience from working as a legal guardian has given me insight into the central role age has for unaccompanied minors. For this reason, age was a key theme in all of the interviews. Age can be seen as the limitation of the application of the CRC, as it no longer applies if a child is assessed to be over 18 years of age. The age boundary gives the children certain rights, as well as increased protection and care in the asylum process, which adults are not entitled to. Also, age is important in terms of the accommodation for the child. If children are below the age of 15, they live in a care centre, while children between the age of 15 and 18 years old are in the care of UDI, living at reception centres for unaccompanied minor refugees (NIM, 2016).

Age assessment Unaccompanied minors that arrive may not have identification papers confirming their identity and age. Due to the significant role of age assessments for the children, this was made into a subcategory. To clarify the age of the child, the child can be asked to take an age test which will result in an age assessment of the child, the amount of time and resources put into proving the correct age is however controversial, which will be further explained in chapter three and discussed in the analysis. The age assessment is significant to the child, since being tested to be above 18 can have consequences for their accommodation, right to a legal guardian and general treatment.

ROLE

The role of the different respondents was included at the start of every interview to obtain an understanding of how the respondents viewed their organization's advocacy for human rights, and the different methods the organizations might employ to assist in advocating the rights of these children and ensuring the protection of their human rights in accordance with the CRC. One central role which became separate subcategories after the interviews was the legal guardian and the legal amendments.

Legal guardian Analysing the role of the legal guardian can present possible dilemmas and the importance that the legal guardians have for unaccompanied minors. The Association

of Guardians and the Guardianship Department were interviewed in order to receive detailed information about their views on their role and other key themes and areas related to the protection of the children's rights.

Legal amendments Addressing the subcategory of legal amendments and the interviews with the respondents, can help to answer and analyse how advocating for human rights may have changed, what is important for advocating human rights as of 2017 in Norway

DATA ANALYSIS

The method used for analysis was first to transcribe all of the interviews, ensuring that important and relevant information was not lost. The transcripts from the interviews were then printed out, and colour coded by category and theme. Some of the themes and categories were created before the analysis through the main topics that were covered in the interviews and interview guide, such as age, the CRC, cooperation between organizations, legal amendments, role and care. Other categories were developed going through the interviews, where similarities became apparent, such as politics, legal documents, vulnerability and rights. The respondent's answers were grouped into the different categories, and after that further analysed for similarities and deviations. The limitation of this method is how one has a lot of data, and has to choose specifically what to include in the analysis. Irving Seidman (2013) discusses the difficulty of choosing which data to include and which to dispose of, and that it is important to trust one's instincts and be thorough in the process. The information extracted was sought to help answer and discuss the research question as best possible.

During the analysis, some of the categories became subcategories of other categories, such as legal amendments and the legal guardian seen in the major themes above. Other themes were removed completely, such as politics, rights and legal documents because the significance of these categories alone was not beneficial to answer the research question. The relevant answers from respondents within each of these categories were included in other categories and subcategories were significant and useful to answer the research question. The respondent's answers were categorized, and similarities, significant findings and deviations were observed and analysed further. Answers from respondents were both directly quoted when the quote was significant or explained indirectly with reference to the respondent. Many of the responses were re-written indirectly, and care was taken not to alter the meaning of the re-written parts.

As mentioned in the beginning of this chapter, there were a limited number of respondents, so generalizations cannot be made of a representative nature, yet significant

findings and results mentioned between the respondents have been brought forward and discussed, as these NGOs and state institutions have thorough knowledge and experience in the field of children's rights, asylum process and protection of their rights.

The CRC was the main legal framework for the research and analysis consists of its 24 articles. In addition, the human rights based approach for children and the analytical categories were used in the analysis. Relevant legal documents for the rights of the children were also included. These consisted of The European Commission of Human Rights, Refugee Convention, Norwegian Constitution and Human Rights Law, Immigration Act, Immigration Regulations, Child Law and the Guardianship Act are part of the legal framework. These legal documents are important for all children that are residing in Norway. The Immigration Act and the Guardianship Act were especially relevant for unaccompanied minor refugees and the protection of their rights, as it assures their right to a legal guardian who is with them throughout the whole asylum process. These laws supplemented the CRC and were used in the analysis to supplement answer the research question.

ETHICAL CONSIDERATIONS

With a background as a legal guardian and the confidentiality in this work in respect to the rights of the children one works with, the Norwegian Centre for Research Data [NSD] restricted the use of my prior knowledge. The original plan was to use the experience and knowledge that I had obtained from working in the field to give the thesis a personal and in-depth approach. I would have been general and avoided mentioning personal details. Despite this NSD did not approve my initial research plan, due to my confidentiality when working as a legal guardian. Therefore, I altered my approach. Instead of a personal approach I chose to adopt a broader and more systematic approach, to ensure the confidentiality of previous unaccompanied minors I have worked with. This has been a challenge, as I have many personal experiences from interactions with unaccompanied minors through asylum interviews and meetings at reception centres. Despite this, general observations made regarding reception centres and other observations that have no connection to a child or my role as a legal guardian have been included.

LIMITATIONS

A limitation in this research was not being able to interview UDI. The request was declined, as they said they did not have time due to a backlog in asylum cases. That implies that

UDI currently focus on their own work before assisting others. UDI's webpage provides useful and insightful information on the asylum process and the different regulations and practices the employees have to follow, which I will look into further to help answer the research question. Another possible limitation with regards to information from UDI, has been the vast amount of data available on their website, resulting in documents being omitted because of the scope of the research. For example, the process of deportation, detention centres and human trafficking have only been mentioned briefly.

I was not able to obtain contact with and interview more than one former unaccompanied minor, and this respondent came to Norway some time ago. The asylum process was different then, and the interview illustrated how the process has changed, but it did not help to understand the current system and how this is protecting and caring for unaccompanied minors. As a result, this interview was not included in the results.

Another possible limitation has been conducting the interviews in Norwegian. The approach was chosen as all of the respondents were Norwegian, making it easier for them to communicate in their native language on a topic that they have specific knowledge about. The possible limitation arose when translating the interviews. The relevant parts for the thesis have been translated, as such some parts of the original meaning may have been lost. Four of the respondents wanted to read their quotes after they had been translated. Alterations and clarifications were made, and some of the data was removed. The respondent's' memory may therefore affect how they have edited their own answers.

Lastly, the English translation of the Immigration Act and the Immigration Regulations has not been updated as of 2014, but the Norwegian law and regulations is up to date. The English translation has been used for proper citation and terminology of the legal document, and is cited from the English translation, not the Norwegian law and regulations.

Validity

The validity of the research refers to the correspondence between the researcher's observation and the theories ability to generalise the results (Bryman, 2012). The external validity, described as the ability to generalize the data by Bryman (2012), could be seen to be limited due to the lack of ability to generalize based on the small number of respondents and documents analyzed. However, studying such a narrow field as unaccompanied minors' rights in Norway in accordance with the CRC, with specific themes and subcategories addressed in

the interview guide with specifically chosen respondents in the field and throughout the document analysis

By conducting interviews and studying laws and reports on the topic, the information collected can be more credible (Bryman, 2012). Credibility is linked to internal validity, and four of the respondents requested to check the quotes and information I would include. These respondents made clarifications and alterations that only slightly affected the findings and discussion. To further increase the internal validity of the findings, respondent validation was conducted for the remaining respondents, to make sure I understood them correctly. In contrast, the Professor from NMBU was not validated as the information was primarily used as background with relevant literature, with no direct quotations included, however, this may be a limitation. Respondent validation is conducted to seek that there is correspondence between the findings and what the respondent said during the interview (Bryman, 2012). Studying such a narrow field, with specific themes and subcategories addressed in the interview guide, findings and in the analysis, the questions been asked to most of the other respondents, and focusing on the most important themes, where the respondents were specifically chosen based on their knowledge in the field, could be seen to increase the validity of the research.

Reliability

On the other hand, reliability is difficult to reciprocate. Reliability refers to the “degree to which a measure of a concept is stable” (Bryman, 2012, pg. 715). At the same time, the questions posed during the interview were largely focused on the NGOs' overall opinions and views, and the respondents shared only a few personal examples. The Association of Guardians shared more personal experience due to the double role of a legal guardian and being part of the Association. Several of the respondents made it clear which parts they did not want included in the results, as these were very personal opinions. It is also important in order to protect the dignity of the respondent and to remember the ethics involved in interviewing a person (Seidman, 2013). The reliability of the research study could be seen to be limited as the format of the study is focused on a political and practical field that is in a state of constant change.

CHAPTER ONE: THE CONVENTION ON THE RIGHTS OF THE CHILD AND INTERNATIONAL OBLIGATIONS

The chapter will first present the content of the CRC, its significance in Norway and the main articles used to answer the research question. Subsequently, the UNHCR and the ECHR will be addressed to illustrate the importance of international obligations for Norway in relation to the protection of children's rights. The chapter does not aim to go into detail regarding the different articles in the CRC, but rather its importance in relation to unaccompanied minors' rights in Norway.

THE CONVENTION ON THE RIGHTS OF THE CHILD

The CRC was formed in 1989 and ratified by Norway in 1991. It was incorporated into Norwegian law through the Norwegian Human Rights Law of 2003 (Sandberg, 2012; UNE, 2010; UN General Assembly, 1990). The CRC is the main legal framework for the research and consists of 24 articles implied for all children under the age of 18 years (UN General Assembly, 1990). Before the CRC children were not recognized to have legal rights, only needs that had to be met (UNHCR, 1994). In 2003, two Optional Protocols were included in the lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven) [Human Rights Law] (Menneskerettsloven, 1999) and was implemented into Norwegian law, portraying Norway's commitment to the CRC and children's rights (UNE, 2010). The Convention sets a high standard for care and protection of all children, as it covers a wide span of rights, stretching from the right to education, health and family to social and political rights (UNHCR, 1994). 193 countries have ratified the Convention, with the exception of Somalia and the United States, and this gives the Convention credibility as "the CRC can be used as a powerful tool for advocacy: a country cannot claim its uniqueness as an excuse for not living up to universal standards" (UNHCR, 1994, pg. 5).

The core part of the preamble in the CRC is the protection of children rights, to have an environment for growth and well-being, and that the child should be provided with "the necessary protection and assistance so that it can fully assume its responsibilities within the community" (UN General Assembly, 1990, pg. 1). The preamble is not legally binding, as Haugli (2012) states, the ideal is for children to grow up in a family environment, however these children are deprived of that opportunity when arriving in Norway. Despite this the CRC reinforces the concept of the development of the child's personality in the best possible way, with an environment filled with an "atmosphere of happiness, love and understanding" (UN General Assembly, 1990, pg. 1).

The best interest of the child

A core article in the CRC considered to be of a primary concern, visible through art 3(1), one of the most significant articles in the CRC. The article states that the best interest of the child should always be a primary consideration when undertaking any action regarding children. According to article 3(1) “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (UN General Assembly, 1990, pg. 1). Paragraph 2 in article 3 ensures that the child is given the “protection and care as it is necessary for his or her well-being” (UN General Assembly, 1990, pg. 2). The duties of the legal guardian or the person with the legal responsibility for the child needs to be taking into consideration. While paragraph 3 in article 3 states which standard that the facilities and institutions the child resides in for either care or protection must “conform with standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervisor” (UN General Assembly, 1990, pg. 2).

The best interest of the child is a complex concept which needs to be evaluated individually (Sandberg, 2012). The criteria for what the ‘best interest’ of the child is have not been identified. It needs to be evaluated individually case by case (Sandberg, 2012; UNE, 2010). The provisions from article 3 are mentioned in several articles throughout the Convention, such as article 9, 18, 20, 21, 37 and 40 (Pobjoy, 2013). UNE highlights how the effect of discourse used in the first provision of article 3, where the best interest of the child can be “a” primary consideration, instead of being “the” primary consideration, allowing other legal documents to be given more weight. This wording opens up the legal possibility for other laws and legal documents to be considered as more important. However, if a conflict occurs, the CRC shall come before other laws (UNE, 2010).

Evaluating the best interest of the child can be combined with immigration considerations in the asylum application (UNE, 2010). If the case shows that the child does not need protection and the parents’ location is known, returning the child to the family and common environment can be in the best interest of the child (UNE, 2010). According to Pobjoy (2013), despite article 3 being generally relevant for children seeking protection it can also be used as an argument to evaluate whether a child should receive protection. This is because the best interest “applies to ‘all actions concerning children” (Pobjoy, 2013, pg. 132). It can therefore be in the best interest of the child to not give the child protection because one can

return the child to his or her family. This should be evaluated on a case by case basis, as the best interest of the child may also be to not be with family.

Non-discrimination

The right of the child to not be discriminated is against another key article in the CRC, protecting the child from unfair treatment based on attributes and situations beyond their control. The Norwegian government shall ensure that unaccompanied minors within the country's borders are respected and "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (UN General Assembly, 1990, pg. 2). These forms of possible discrimination are only a minimum standard, as elaborated by Stang (2012), "other status" is included in the provision to include forms of discrimination that may arise for the child. All forms of discrimination, whether intended or unintended, in the legal framework or done in practice, does not fulfil the right to non-discrimination, according to Stang (2012). The state is obligated to protect the child from any discrimination directly related to the child's legal guardians' opinions or beliefs. The opinions of the adults that are in the life of the child should not affect how the child is viewed or treated, as the child is a separate individual with individual rights.

Protection and equal enjoyment of rights

Unaccompanied minors rarely have any acquaintances or place to stay with when they arrive in Norway. The Norwegian government therefore provides accommodation for them. As stated in article 20, if the child is without a family then the child "shall be entitled to special protection and assistance provided by the State" (UN General Assembly, 1990, pg. 6). The government shall provide care that is in accordance with the national laws of Norway. The placement of the child should take into account their previous upbringing and try to accommodate for their "ethnic, religious, cultural and linguistic background" (UN General Assembly, 1990, pg. 6).

One article in the CRC is dedicated to children seeking refugee status, namely article 22. The article highlights the State obligation to provide the children with the sufficient measures needed to give the child protection and humanitarian assistance in fulfilling their rights (Sandberg, 2012; UN General Assembly, 1990). The protection should be in line with Norway's domestic law and procedures, giving the child the right to the "enjoyment of applicable rights set forth in the present Convention and in other international human rights or

humanitarian instruments to which the said States are Parties” (UN General Assembly, 1990, pg. 6).

Sandberg (2012) discusses the use of the term, “applicable rights” in article 3 of the CRC. This is interpreted by Norwegian law commentators to be that unaccompanied minors are not entitled to all rights in the Convention, only the rights which are applicable to them. An interpretation like this is in direct conflict with article 2 which ensures the right to be free and protected from discrimination. As stated by Sandberg (2012) rights in the Convention are not intended to cause restrictions on other rights, yet it shows how one word can be interpreted differently with possibly large repercussions. The second provision in the article makes it clear that all measures should be used to try to locate child's family, as this is the best environment for the child to grow up in most cases, and if it is not possible to locate them, the “child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, set forth in the present Convention” (UN General Assembly, 1990, pg. 6).

A child has just like an adult the same right to speak freely through the article 12 “right to express those views freely in all matters affecting the child” (UN General Assembly, 1990, p. 4). There should be room for an open dialogue with and for the child, evaluated against maturity and age. The foundation to express their views should be laid out in the best way possible, The Norwegian government should lay this foundation either indirectly or with the help from a legal guardian, or on their own. As argued by Stang (2012), to be able to freely participate in their own life is key to the fulfilment of other rights in the CRC. Participation is a key to give the child a feeling of the right to express oneself and participate. If the child is unable to participate with regards their own life, how are the other rights to be protected in a proper manner?

EUROPEAN CONVENTION ON HUMAN RIGHTS

Norway signed and ratified the ECHR in 1952, which was incorporated into Norwegian law through the Norwegian Human Rights Law in 1999 (Menneskerettsloven, 1999). Norway is therefore also bound by the Convention through international law (ECHR, 2017). The ECHR does not have any articles specifically for children, yet children are respected on equal terms as adults (Stang, 2012). The right to liberty and security, article 5, is especially relevant for unaccompanied minors. For people in a European country, losing this right is difficult, one must for instance commit a criminal act. The ECHR through article 14 also secures the right to be free from discrimination on the same grounds as the CRC. None of the rights in the Convention

are not be discriminated against on any grounds, such as “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Council of Europe, 1950, pg. 12). A key article often associated with the rights of children is the right not to be tortured and receive inhuman treatment (Stang, 2012). Children are vulnerable and can therefore be at a greater risk of exposure to inhuman treatment.

CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES

“International treaties are important to refugee children because they set standards” (UNHCR, 1994, pg. 4). The Refugee Convention from 1951 and the 1967 Protocol provide both adults and children with the same rights. The Convention defines “refugee” with the given criteria mentioned below from article 1(2):

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (UNHCR, 1951, pg. 14)

If a child or young person is accompanied by an adult who according to law or custom has responsibility for them, not defined as unaccompanied by UNHCR (1994). Norway however takes this into consideration, and consider all children arriving without their parents or others that could have parental responsibility to be defined as an unaccompanied minor (Eide, 2012a). The treaty further emphasis that children and adults have the same legal rights and social welfare rights, it is not restricted through age (UNHCR, 1994). The Refugee Convention of 1951 and the CRC are connected on the international arena and reinforcing one another. The UNHCR uses the CRC where it is applicable and as a guiding principle “In all actions taken concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given primary consideration” (Cited in UNHCR, 1994, pg. 5).

CHAPTER TWO: THE GOVERNMENT AND NON-GOVERNMENTAL ORGANIZATIONS

In this chapter, the legal documents and laws that are central to the protection of the rights of unaccompanied minors will be explained. The NGOs introduced in the chapter on methods and data are explained in detail, as these NGOs all have a role in the field with respect to protecting and ensuring the rights of unaccompanied minors. The end of the chapter includes a detailed explanation of the asylum process, where the role of the different government organs involved are portrayed. Going back to the research question on how the human rights of unaccompanied minors are protected in Norway in accordance with the CRC, unaccompanied minors are both protected by legal documents and NGOs, where this chapter will shed light on the possible differences and similarities

The laws and provisions that protect the rights of unaccompanied minors in Norway are found in the Constitution, Norwegian Human Rights Law, the Immigration Act, Immigration Regulations and the Child law. The right to a legal guardian is included in the Immigration Act and the Guardianship Act.

The Constitution and the Norwegian Human Rights Law

In 2014, a legal amendment in the Kongeriket Norges Grunnlov (Grunnloven), [Constitution] included the provision 104 on the best interest of the child (Grunnloven, 1814). The provision confirms that decision and action involving children must consider the best interest of the child. The child is also secured the right to development, as the state is obligated to secure “necessary economic, social and health security, ideally within one’s own family” (Grunnloven, 1814, parag. 104). The Human rights Law officially secures the legal position of the CRC in Norwegian law. According to provision 3 in the Human Rights Law, the CRC is given more emphasis in situations of uncertainty.

Immigration Act

The current Immigration Act was implemented in 2010 (Utlendingsloven, 2008). Chapter 3 in the Norwegian Human Rights Law builds on chapter 4, reinforcing that the use of the Immigration Act must be in relation to Norway’s obligations through international law (UNE, 2010, pg. 1).

Residence based on protection

Unlike the Refugee Convention, the Immigration Act includes another option for receiving protection in Norway, for those that have a high risk of “inhuman or degrading treatment or punishment upon return to his or her country of origin” (UDI, 2008, pg. 13). Paragraph a and b cited below gives a detailed account of how persecution is evaluated,

(a) individually or on account of repetition constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or

(b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a manner that is comparable to the situation described in (a). (UDI, 2008, pg. 14).

The form of persecution that are mentioned in accordance with the Immigration Act are physical/mental violence, gender based or child based violence, discriminatory prosecution or punishment, unable to have judicial redress, or punishment for not joining military service (UDI, 2008). Persecution can be committed by state actors, NGOs or organizations/ groups in control of specific areas in the country (UDI, 2008). When UDI evaluates the basis for a child’s need for protection, the Immigration Act implies that the best interest of the child shall be given due weight in the assessment (Ministry of Children and Equality, 2016).

Residence based on humanitarian concern

The best interest of the child is a primary consideration when evaluating whether the child is eligible to receive residence on humanitarian grounds, as the child may not fulfill the formal requirements for being persecuted, or based on the strength of the child’s connection to Norway. A positive implication for children is that they can be given residence in situation where an adult may not (Ministry of Children and Equality, 2016; Utlendingsloven, 2008). The state has the ability to weigh immigration control when deciding the case of a child. If the child receives residence based on humanitarian considerations, the child can be allowed to stay due to lack of proper care upon return to the country of origin, health situation, as well as situations of social or humanitarian concern that can allow the child to stay, or that the child is a victim of human trafficking, as stated in the Immigration Act.

The right to be recognised 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. (UDI, 2008, pg. 13-14)

If the child lacks proper identification papers, he or she can be granted temporary protection in accordance with Section 38, paragraph five in the Immigration Act. These cases are valid for less than one year and open to renewal, while in some cases renewal of the permit is not possible.

The Act also includes sections and provisions for the duties and appointment of legal guardians for unaccompanied minors (UDI, 2008). The duties of the legal guardian are to follow and represent the child's best interest in the asylum process and perform the relevant tasks and legal obligations necessary. Chapter 11 in the Immigration Act and the Guardianship Act overlap on several points. Some points are brought forward here, the remaining will be in the section on the Guardianship Act.

During the case, the legal guardian shall (UDI, 2008, pg. 51):

- (a) be present during conversations between the authorities and the minor,
- (b) assist the minor in connection with investigations of identity, age, etc.,
- (c) assist the minor in connection with tracing his or her parents or other carers, and
- (d) maintain contact with the minor's lawyer and stay informed of progress in the case.

The responsibility also includes ensuring that adequate care is provided properly. The legal rights of the child are to be protected, yet the matter of daily care is outside of their jurisdiction. Children above the age of 7 years have the right to be heard based on age and level of maturity, when evaluating the opinions and statements of the child (Utlendingsloven, 2008, section 98e.). It is the Guardianship Department of the County Governor of Oslo and Akershus (Guardianship Department) duty to inform UDI of whom has been appointed the legal guardian for the child. This section is also responsible for providing training and assistance, and oversee that the duties of the guardians are performed in a correct and adequate manner.

Immigration Regulations

The Immigration Regulations was enforced in 2009 explains how legal articles and provisions in the Immigration Act are to be interpreted and used. Chapter 8 is applicable to

unaccompanied minors, explaining how to interpret chapter 5 of the Immigration Act. The chapter called “Residence permit on the grounds of strong humanitarian considerations or a particular connection with the realm” (Regjeringen, 2009, pg. 47) deals with cases where the child does not fulfil the normal protection requirement under the definition of the Refugee Convention of a refugee, and instead is given residence based on humanitarian reasons. One significant part of the paragraph in the Immigration Regulations is that it opens up for “limited residence permit for unaccompanied asylum-seeking minors aged 16 or older due to a lack of proper care upon return” (Regjeringen, 2009, pg. 51). The provision is included below.

Unaccompanied asylum-seeking minors who have reached the age of 16 at the time the decision is made and who do not have any grounds for stay other than that the Norwegian authorities deem that the applicant would be without proper care if he/she were returned may be granted a residence permit under section 38, first paragraph, of the Act until they reach the age of 18. The permit may not be renewed and does not form the basis for a residence permit for family members under chapter 6 of the Act. (Regjeringen, 2009, pg. 51)

This opens up for unaccompanied minors to stay temporarily in Norway for two years. After they turn 18 years old, they have to leave Norway as the Norwegian state is not obligated to make sure that there is a person of care that will meet them when they are returned to their country of origin. This regulation was introduced by the previous government in 2009/2008 (Bufdir, 2017). If the child lacks the proper identification documents, the child may be given temporary residence until their identity has been verified.

THE GUARDIANSHIP ACT

In 2013, the appointment of legal guardians for unaccompanied minors was started in Norway (Ministry of Children and Equality, 2016). Without parental guidance or another figure of legal guardianship, a child do not have the right take to legal action, make legal decisions, or have legal custody over their own economic funds. The legal guardian is contracted by the Municipal in the relevant county where the child resides. The majority of unaccompanied minors are first registered in Oslo and receive a legal guardian before the registration interview with NPIS (Vergemålsloven, 2010). The person appointed to be the legal guardian must be suitable to perform the duties implied and must agree to work on a case by case basis. Legal guardians must present a clean criminal record, but in urgent cases this can be postponed. The legal guardian should, as far as possible, respect and listen to the opinion of the child before

taking any legal action. If the child has legal capacity, the legal guardian is unable to prohibit the child from taking legal action on its own. The legal guardian can only take legal action if the child does not understand what legal action entails. An assessment by a doctor must confirm the child's lack of a legal understanding (Vergemålsloven, 2010).

Point 46 binds the interaction between the legal guardian and the child with confidentiality, which is also applicable after the case is finished. The Guardianship Department is responsible for controlling and checking that the guardians follow their protocols. The Section also provides advice in situations of uncertainty as the section is available for consultation and guidance. This puts responsibility on the Guardianship Department to ensure that the legal guardians do an adequate job (Vergemålsloven, 2010). The Guardianship Act is general for all children in Norway, whereas the Immigration Act includes a specific paragraph for refugee children.

Child Law

Created in 1981 the Child Law applies for all children in Norway under the age of 18. It also protects and strengthens the rights of unaccompanied minors and their treatment during the asylum process in Norway. The first part of the Child Law states that all children in Norway are protected under this law. This is the steadiest legal provision used from this law for legal arguments stating that unaccompanied minors shall be treated and given the same rights as Norwegian children. The part of the law which is appropriate for the children is paragraph 30 which states the duties of parental responsibility (Barneloven, 1981). All children are entitled to care from whoever has the parental responsibility, and this responsibility must be enforced with the interest of the child as the foremost concern.

UDI

UDI is the Norwegian governmental institution responsible for immigration policies. All applications for asylum and protection in Norway are treated by UDI. Their role is to ensure that individuals who fulfil the requirements set by law are given protection or residence in Norway. Another central role of UDI is to ensure that the system is not misused (UDI, undated). UDI is under the control of the Ministry of Security and Justice which provides funding for and the legal practices that UDI must follow. When evaluating reasons for asylum, a key aspect is the situation in the applicant's country of origin. UDI is provided information by The Norwegian Country of Origin Information Centre (Landinfo) on the status in different countries throughout

the world (UDI, undated). Landinfo is under UDI while the research generated is not issued by UDI or the Immigration Appeals Board (UNE) (Lange, n.d.).

UDI circulars are binding for the caseworks at UDI, the police and other Norwegian institutions that deal with immigration cases. The circulars include the routines for how task are to be done, how rules and regulations are to be interpreted and routines for casework (UDI, undated a). Internal practice are also binding for the caseworkers, and refers to primarily internal routines for the caseworkers, and in special cases include guidelines for how the caseworker should interpret the regulations (UDI, undated b). Lastly, UDI memos on practices and procedures refer to “mainly normative descriptions of work practice. They may contain internal processing routines.”(UDI, undated c)

NGOS

NGOs have an important role as they enable individuals to act in public arenas (Karen, Mingst & Miles, 2015). Their independent nature and ability to create networks is a useful link between communities and institutions (Karen, Mingst & Miles, 2015). NGOs, unlike the government, is on the ground, mostly with a neutral political perspective and can be willing to act where other actors are not willing. Their method of protecting and caring for unaccompanied minors' rights is based on their independent nature, giving them the freedom to apply pressure on topics that they view as important and relevant for these children (Karen, Mingst & Miles, 2015). NGOs have different roles, described below.

NOAS

NOAS is an NGO that was created in 1984 by Annette A. Thommessen to protect and give free legal aid in support of the rights of asylum seekers (NOAS, 2016a). Since 1984 the number of asylum seekers and refugees has slowly increased in Norway, and by 1994 about 12.000 individuals applied for asylum in Norway (NOAS, 2017). The organization is present at numerous reception centres, giving information to asylum seekers about the asylum process in Norway and providing legal help for individuals who qualify to receive help.

NOAS is part of different projects concerning unaccompanied minors. One of the largest currently ongoing projects is the Information programme running from 2013 to 2017 through UDI. To be given information from an NGO on the asylum process is a right stated in the Immigration Regulations (Utlendingsforskriften, 2009). The funding is given through membership payment, governmental support, gifts, private funding, as well as Pro Bono work (NOAS, 2017). The information programme is provided to newly arrived asylum seekers, both

adults and children. NOAS provides information on the asylum process, how the Dublin–practice work, their rights and duties as asylum seekers, how the asylum interview is conducted, information about the age tests for unaccompanied minors, how one can get the application accepted, what happens if the application is denied and so on (NOAS, 2017a). NOAS looks at all applicants who seek free legal assistance for their case and assist those individuals where there is a chance of changing the verdict of the application. These cases are prioritized by NOAS. Whether or not there is a belief that NOAS will be able to assist in changing the verdict of the case is an important factor for evaluating whether or not NOAS will give free legal assistance or not (NOAS, 2017b).

Save the Children

Created in 1946, building on the CRC and human rights as its foundation (Redd Barna, 2017). It is a leading organization for protecting children’s rights, founded on every children’s right to “survival, protection, development and participation” (Redd Barna, 2017, para. 3). In Norway, there is strong human rights based focus directed towards marginalized children (Redd Barna, 2017). A core focus for Save the Children that is relevant for my thesis is “Barn på Flukt” (Children fleeing persecution). The organization has strived and is still striving for a long time to give unaccompanied minors the same rights as Norwegian children. In 2012 and 2013 the NGO initiated a campaign “First and foremost children” to increase visibility and shed light on that these children have the same and equal needs as any other Norwegian children (Redd Barna, 2017a). Another related project that Save the Children have participated together with NOAS is on the report “Over eller under 18 år?” (Above or under 18 years?), analysing the age assessment that the children receive and how this process could be improved. The report looked at international guidelines, Norwegian practice and psychosocial age assessment (Redd Barna, 2017a).

PRESS

Originally started as part of youth organization under save the Children in 1995. In 2000, the organization became an independent youth organization, but the organization is still part of Save the Children’s youth organization. In 2014, their name was changed from Save the Children Youth to Press (Press, 2017).

Through political action Press draws attention to the rights of the child, and the reasons why these are violated. We wish to raise awareness of the role of youth in society and at the same

time put pressure on governmental bodies and other decision makers to reduce their violations of the rights of the child (Press, 2017a, homepage)

The organization is especially devoted to supporting and fighting for unaccompanied minors disappearing from reception centres. They believe that there should be a larger focus on striving to work against children disappearing and also to find the children when they disappear (PRESS, 2017). The organization has also emphasized the effects of limited temporary residence which is not renewable through a current campaign called “Hurra for deg”, which is a statement on the fact that when the child turns 18, he or she has to leave the country. The campaign is playing on the word “hurray for your 18th birthday, yes you we want to return” It is a prioritized campaign, and as of 2016 a total of 316 unaccompanied minors between the age of 16 and 18 received this temporary protection. These children are legally not allowed to be sent out of Norway, without the presence of a person who can care for them, according to the Immigration Regulations (Utlendingsforskriften, 2009). If the Norwegian government is not able to locate a person of care, the child is allowed to stay in Norway until the age of 18. After turning 18 years old and then having become legal adults, these children are deemed not in need of a person of care to be located or able to return to their home country. The organization and the campaign is strongly against temporary protection as they believe this puts the children’s lives on hold, and contributes to making the children’s situation worse, as they know they will be sent out once they turn 18 years old.

Norwegians People's Aid

It is the “labour movement's humanitarian solidarity organization”, and a large part of the organization work in Norway is associated with first aid and rescue services, and activities for refugees, asylum seekers and integration work (Norwegian People's Aid, 2017, pg. 1). Norwegian People's Aid is one of two NGOs in Norway that runs its own reception centres. As of May of 2017, the NGO operates 5 centres (Norwegian People's Aid, 2017a). Previously also they had reception centres for unaccompanied minors. To be able to run a reception centre the NGOs proposal for how the centre would be run must be accepted by UDI. Anyone can run a reception centre as long as one fulfils the requirements set by UDI and UDI choses and approves the proposal, as stated in the UDI circular and instruction for how the acquisition for contracts to running reception centres (UDI, 2013). The proposals from different actors are presented to UDI whom will chose the alternatives they consider adequate to meet the requirements (UDI, 2013).

There has been a drastic reduction in the number of NGOs that operate reception centres. As of 2017, only 8% of centres are run by NGOs (Norwegian People's Aid, 2017b). Henriette Killi Westhrin, The General Secretary of Norwegian People's Aid, explains how the NGOs role as a spokesman for how reception centres are operated is significant, giving them the ability to inform the media and the public on the conditions in the reception centres (Norwegian People's Aid, 2017b). The NGO does not operate the reception centres based on profit, but fear they lose out on running reception centres in the future as the government is argued to be weighing price over quality. To try to avoid this Parliament initiated that UDI must allow municipals, ideal and commercial actors to operate reception centres, “UDI shall actively encourage municipalities and NGOs to establish and operate reception centres, and shall within the framework of the regulations facilitate for these actors to run the reception centres” (Cited in Norwegian People's Aid, 2017b).

The Association of Guardians

A voluntary NGO created for legal guardians and guardians for unaccompanied minor asylum seekers and refugees (Vergeforeningen, 2017). The organization gives both guidance to legal guardians and guardians to improve their rights and care, while also working to improve the rights and standard of the children in Norway (Vergeforeningen, 2017). The role is done through being a spokesman for legal guardians and guardians and creating arenas to exchange support and assistance, as well as that the NGO strive to give the unaccompanied minors situation attention in the media and for the public. The NGO has a unique position assisting legal guardians, giving them an understanding and knowledge on the field and where there may be breaches in terms of the rights of the child. The legal guardians, however, are bound by confidentiality and this is only allowed to be opened when speaking to the Guardianship Department. The legal guardians need to protect the confidentiality of the child while at the same time sharing experience, which can be difficult. If the Association of Guardians and Guardianship Department had the same rules of confidentiality, the child's rights could potentially be strengthened. The restriction is stated in legal documents.

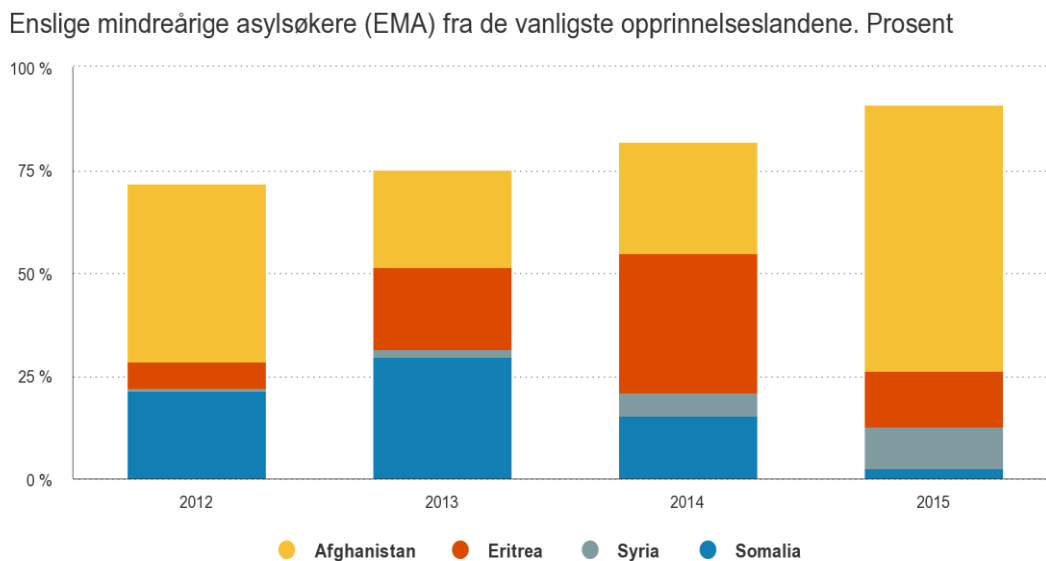
CHAPTER THREE: UNACCOMPANIED MINOR REFUGEES AND THE ASYLUM PROCESS

As mentioned in the introduction, out of the 31,150 asylum seekers that sought protection in Norway in 2015, 4,195 were unaccompanied minor refugees. With unaccompanied minor refugees being the main subject of the research, it is important to explain their background and the possible results of the asylum protection process they must go through.

WHO ARE THE UNACCOMPANIED MINORS AND WHY DO THEY COME TO NORWAY?

The children that arrive in Norway are a diverse group but sharing a need for care, guidance and protection. In Norway children are considered unaccompanied if they are without their parents or other adults that have parental responsibility (cited in Eide, 2012a). Norway considers all children who travel alone without their family as an especially vulnerable group (Eide, 2012a).

Children leave their own countries for various reasons. A majority of them leave following death in the family, imprisonment or persecution of a family member, fear of persecution, family conflicts, poverty or a lack for proper education. Migrating can take years, where experience before and during the trip can give the child trauma (Cited in Oppedal, 2013). Also, as highlighted by Bhabha (2014), many unaccompanied minors are looking for better life opportunities than they could have had at home, illustrating the large variation of the children migrating. Every child can have individual reason for choosing to leave their country, emphasising the importance of treating and evaluating each individual child separately. Within the mixed group of nationalities and identities, the majority of the children come from Afghanistan. UDI statistics state that in 2015, 64.6% of the unaccompanied minors that arrived in Norway came from Afghanistan, compared to the 13,5% that came from Eritrea and was the second largest national group. This can be seen in Table 1 (Bufdir, 2016).



In order to understand more and gain a professional perspective on the situation in Afghanistan, I interviewed a Professor at NMBU. The respondent has a professional background living in Afghanistan, who does research on land and climate change and how this might affect Afghan lives. The Professor explained that the security situation in Afghanistan has deteriorated since early 2000, and it became especially poor after the international forces pulled out in 2014. The deteriorated security situation is linked to how the Afghan army and the police lack basic resources such as payment and equipment. Due to the long periods of conflict in Afghanistan foreign investment has not thrived. The high number of children fleeing Afghanistan, especially young males fleeing to seek asylum in Norway, may have numerous reasons. Some reasons might be poverty, a lack of work, and for some, conflict situations. In a report issued by the United Nations Population Fund [UNFPA] in 2014, the population of young people under the age of 25 years in Afghanistan was 63% (Jochim, 2014). As Afghanistan is a developing country, poverty is prevalent and highly affecting children. The report states that a large youth bulge can increase the “risk for violence and conflict” in the country (Jochim, 2014, pg. 16).

Despite research evidence on Afghan youth joining extreme groups being unclear, prevalent conflict and poverty can make them feel disconnected from society, as the educational system is inadequate and there are few employment opportunities (Jochim, 2014). As suggested by the Professor, many of the children between the age of 15 and 18 years lack opportunities due to poverty and conflict, and migrate to seek refuge in other countries. The Professor has heard of and suggested that many of the children that come from Afghanistan are economic migrants, not firstly being driven away by conflict, but rather due to poverty and a lack of

opportunities. One could argue that this is an indirect outcome of prolonged conflict in the country, as The World Bank Group report on the economic situation in Afghanistan stated that displacement due to conflict and poverty is a problem (2016). According to the Professor, if they do not migrate or find a job, there can be monetary opportunities in the Taliban.

The Professor states that the current security situation in Afghanistan is intense and varied, but that it has become worse over the past twenty to ten years. There are however regions that are calmer than other. Therefore, the Professor believes that it is important to look at where the individual comes from. Despite there being conflict in large parts of Afghanistan, the respondent still says there are “safe spots” where one can live, such as Herat. As of 2016 there were 3.5 million refugees in Pakistan and Iran (World Bank Group, 2016, pg. 4). Refugees and migrants are also returning from Pakistan. Afghanistan, however, lack a proper system that is ready and capable to assist and help them upon return, due to the government and communities lack of resources to assist the returning refugees (Word Bank Group, 2016). Professor mentioned the large number of men that disappear from reception centres in Norway because they do not want to return to Afghanistan. According to a report by Echavez, Bagaporo, Pilongo and Azamanesh (2014) the majority of unaccompanied minors that leave Afghanistan seeking protection are male, because of the cultural restrictions placed on young women, expecting them to stay in the home. The Professor showed concern regarding the disappearance of the young boys, and whether the Norwegian government is interested in taking action in preventing these boys from disappearing. The report by Echavez et al., (2014) states numerous reasons for unaccompanied minors to flee Afghanistan, from poverty, labour insecurity, fear of conflict and recruitment to the Taliban, or to better their opportunities. The reasons are many and varied, and one does not know what particular reason caused one child to seek protection in Norway compared to another, therefore the government should strive to evaluate each case closely, avoiding generalization.

LEGAL GUARDIAN

When applying for asylum in Norway, all children under the age of 18 years are entitled to a legal guardian. This is enforced in the Immigration Act, chapter 11 A point 98a – 98g (Utlendingsloven, 2008). The legal definitions and guidelines for the legal guardian are laid out. The legal guardian is appointed by a separate Guardianship Department that is responsible for the legal guardians in the County Governor of Oslo and Akershus, point 98b (Utlendingsloven, 2008). The Municipal in the region where the child resides is responsible for

the training and guidance of the legal guardian. UDI must be informed by the County Governor as to whom is appointed as a legal guardian.

To be qualified as a legal guardian one needs to have a clear criminal record issued by the police, be suitable for the job, and agree to the criterias and job specifications. The legal guardian is also responsible for ensuring that the child is adequately taken care of. Daily care is not within the legal guardian's responsibility as the people working in the reception centres fulfil this role. Lastly, one must respect the child's religion, language and other cultural aspects to ensure that there is clear communication between all involved parties. This work often involves a language translator. The importance of the right of the child to be heard is mentioned in the law, where the age and the maturity of the child needs to be kept in mind (UDI, 2008).

The right to a legal guardian ends when the child's asylum application is approved, if the child turns 18 or UDI believe the child is above the age of 18 years. The right to a legal guardian also ends if the child leaves the county, the parents or other care people come to Norway, or the general rules for having a legal guardian are no longer present. With an acceptable reason the legal guardian can be taken off the case. If there are health issues that need to be treated, social and possible humanitarian reasons, it is impossible for the child to be returned to the country of origin (UDI, 2008). The legal guardian follows the child through the whole asylum process.

THE ASYLUM PROCESS

NOAS as an NGO strives to protect the rights and dignity of the individuals in the asylum process (NOAS, 2016a). The organization provides information regarding the asylum process and give legal help to asylum seekers. In regard to information, they have described the process for unaccompanied minor refugees arriving in Norway seeking protection. I will use this information, my own prior knowledge, information from UDI and the Norwegian People's Aid handbook for guardians and legal guardians to explain the asylum process for unaccompanied minor refugees in Norway.

Firstly, the child is registered with NPIS. A short interview is conducted to try to clarify the identity of the child and the travel route to Norway. A legal guardian is present as well as a translator. Children applying for asylum in Norway without their parents or a person with parental role have the right to a legal guardian throughout the whole asylum process. This is to ensure the protection and safeguarding of the child's rights. The legal guardian is appointed by Guardianship Department at the County Governor's office of Oslo and Akershus (UDI, 2015a).

Before the interview with NPIS, the legal guardian should explain their role emphasizing that they are neither part of the government or the police, and the asylum process to the child. A dialog between the child and the legal guardian before the interview is important to try to develop trust before meeting with NPIS, as some children have a strained relationship to police officers (Vevstad & Nordby, 2012). Any form of identification paper must be given to the police. The legal guardian has to sign documents on behalf of the child, giving NPIS the right to gather personal information, register the child in the Data System for Immigration and Refugee affairs [DUF], check the belongings of the child and take fingerprints. If the police believe the child is clearly over 18 years, the child's age can be altered (UDI, 2016a).

The interviewer from NPIS must consider whether they believe the age of the child is likely or not to be below 18 years. If NPIS is uncertain regarding the child's age, it should be noted and made available for the next person looking at the case (UDI, 2016b). There is an additional attachment that NPIS and the Children's affairs unit [BFE] at UDI have to fill out to best determine the child's age (UDI, 2010b). BFE is a sector within UDI that was created in 2009. Its employees have extra knowledge and experience with interaction and interviewing children (Stortinget, 2012, parag. 5.1.3). However, at any stage of the asylum process, UDI can alter the child's age if new information is discovered or given (UDI, 2016a). If the child has applied for asylum in another European country before arriving in Norway, the case will be transferred to the Dublin-sector in UDI. Due to the limitation of the study, these cases will only be touched upon briefly, as stated by Vevstad and Nordby (2012) the children's asylum applications are not treated in Norway.

After the registration at NPIS the child is moved to a transit reception centre for children between the age of 15 and 18 years old. The child is often moved again after a time to a new reception centre. If the child was registered as 18 years or above by NPIS, the child can be moved to a reception centre for adults. UDI is responsible for the care of the children in the refugee centres (UDI, 2014). The role of caregiver at the reception centre as well as the responsibility for the asylum applications could suggest a conflict of interest for UDI, and this will be debated with regards to the protection of the children's rights in the analysis. The child is then tested for tuberculosis. If the child has this illness, he or she will be given medical treatment (NOAS, 2016). At the reception centre the child receives information from NOAS about the asylum process. A movie in a language the child can understand will be shown. The child is asked to write about who he or she is, the family members, and how he or she arrived in Norway. The reason(s) for fleeing their country should also be included.

Age is an important key in the asylum process, as it correlates with the child's identity. UDI argue it is important from the child's perspective, as well as law- and social aspects, to distinguish the differences between an adult and a child (UDI, 2016b). If the child lacks identity papers the child can be asked to take an age test. The age test can occur prior to or after the asylum interview with the UDI. As of 2016 the test is an x-ray of the hand and the carpus as well as an dental investigation. The Institute for Clinical Odontology performs the dental control, using a mirror and a probe, followed by an x-ray of the child's teeth. Additional photos of smaller areas of the mouth and teeth may be taken if needed. Two independent dentists will then determine the age which is sent to Barnesak AS (UDI, 2010a). Unilab AS performs the x-ray of the hand and the carpus. A child radiologist will evaluate the "ossification, bone maturation and closure of growth zones in the wrist, carpus and pre/fingers of the applicant" (UDI, 2010a, parag. 4.2). The age test is voluntary. However, if the child does not agree to take the test, it may have implications for the evaluation of the asylum application, which UDI and the legal guardian must inform the child about. Barnesak AS evaluates the results from the two tests, and the conclusion is sent to UDI (UDI, 2016b). The Norwegian Institute of Public Health [FHI] was given responsibility for the professional part of the age test in January 2016, the possible changes and consequences of this will be discussed in the findings and analysis.

The result on the age test is then sent to UDI and the legal guardian. The age test is controversial and has been criticised by NOAS and other actors (NOAS, 2014). A report from NOAS states that one should focus more on information from the child's close relations, such as employees at the refugee centre and the legal guardian, rather than the medical age test. The Norwegian Medical Association [NMA] believe that the method is not accurate enough to determine age. This is based on research on other factors that may affect the maturity of the skeleton and systematic control system on how the doctors decide an age (NOAS, 2014).

The child will then be appointed a lawyer, as unaccompanied minor refugees are vulnerable and may need help to present their case. The lawyer is appointed by the Lawyer Union and issued by the Regional Office or the arrival unit at UDI. Children that are assessed below the age of 18 years will automatically receive a lawyer, as they have the right to free legal advice (UDI, 2010b). The child is given three hours of free legal advice without having a needs assessment (UDI,2010b). If the child is believed to be above 18 years and their asylum application is denied, they have the right to free legal advice. The lawyer, as the legal guardian, is bound by confidentiality. If the child is below 18 years and disagrees with the results of the age test, the lawyer can help write a comment on this. The legal guardian is also asked to give

a comment on the question of age, may assist the lawyer with relevant information, and even write their own age comment to highlight their view.

After some time at the reception centre the child attends the asylum interview with UDI. The interview with UDI is the most important part of the asylum process. During the interview the child has to explain about their identity, family, country of origin and the reason that they need protection and cannot return to their home country (NOAS, 2016). The legal guardian is required to visit the child and prepare the child for the interview. The legal guardian is present during the interview, and if the rights of the child are violated, the legal guardian should intervene in the break to avoid a situation that may make the child uncomfortable (Vevstad & Nordby, 2012). There is one interviewer present, whom writes down the interview while it is simultaneously recorded (UDI, 2013a). The interview is then sent to an officer at UDI. From a source at UDI I was told that there are two people who will look at the case for the asylum seeker and decide whether the child's case should be approved or not. The result is then sent to the legal guardian and the child. According to Bufdir (2016), most of the asylum application for children were approved in 2015, 98% to be exact. In 2015, 92.8% of the children between 15 and 17 received refugee status, 4.5% received humanitarian protection while 2.5% of the children were denied protection (Bufdir, 2016). If the application is denied the child can receive legal help from a lawyer to appeal the denial. UNE will then review the asylum application (UDI, 2010b).

The legal guardian and the lawyer should explain the appeals process to and discuss what is in the best interest with child. As of 2016, only 7,9% out of 5.876 of everyone who applied for asylum had their application approved (UNE, 2017). As this is a long and often traumatic experience for the child, it is the legal guardian's duty to consider the actual chances of getting the case approved are. They need to inform the child on the option of returning to the country of origin and how this is conducted. The applicant can choose to return freely or be forced to leave un-voluntary. The legal guardian must weigh what is in the best interest of the child. However, the child must make the decision in the end, no matter what the legal guardian believes is the best course of action (Vevstad & Nordby, 2012). If the applicant does not appeal the case and continues to live in Norway, they may be detained on the basis of living in Norway on illegal grounds and forced to leave the country (Vevstad & Nordby,2012)

CHAPTER FOUR: CARE AND PROTECTION

In this chapter I will elaborate on the significance of care and protection to answer the research question. To analyse and understand how the rights of unaccompanied minors are protected by NGOs and the government in accordance with the CRC, the concept of care is paramount to protect their human rights. However, there is not a unified definition of what the concept should contain for this group. Several central understandings and perspectives of care will be presented, followed by the dilemma legal guardians may experience in their role when ensuring that there is adequate care for the children. The legal guardians and UDI are both supposed to provide this care. There are different forms of protection the children can receive, depending on whether the child is perceived to be persecuted or not.

CARE

Care is a diverse term which can include many different aspects, such as physical and mental care, as well as respect for the child's rights. Research done on the concept has concluded that there are different ways of providing what is deemed to be adequate care for unaccompanied minors (Lidén et al., 2013). Article 3(2) in the CRC states that "institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health" (UN General Assembly, 1990, pg. 2). This also needs to be in relation to the competence of the staff and supervision. Care is relevant for the children on an overall and detailed level. The child is entitled to alternative care which is provided through article 22 in the CRC (NIM, 2016). The child's physical and mental care is very much dependent on their day to day life. To ensure the best possible care, one could argue that the child should be able to live in proper accommodation, be cared for by competent people and have their rights respected. There is no clear definition of care, yet the Norwegian government operates with the term adequate care. The most important aspects are the physical and mental, as well as respect for their rights in all during the asylum process. It is a broad term, but it is vital for unaccompanied minors to be cared for by competent people and live in proper accommodation to fulfil their daily needs in relation to the CRC. Care is both provided by the reception centres, and also protected by the legal guardians.

In a study by Michelsen and Berg (2015) 17 children under the age of 15, and 7 children between the age of 15 and 18 years, who were in the asylum process were interviewed. The study discovered that the experiences of trauma and loss of close relations in the past was a common trait between all the children. As the research was done on one group below 15 years, and

another above, general tendencies based on the limited population were highlighted. The need for an understanding adult seemed to be important for the unaccompanied minors, even though many of the children in the study had friends they could talk to. Acute needs and the need to contact adults was important to give the children above 15 years as a normal life as possible during the asylum process. A close relationship with an adult during the asylum process may help the child make the best of the situation (Michelsen & Berg, 2015). Lidén et al., (2013) found that unaccompanied minors need for care is more complex and varied than for younger children, connected to their experience of growing up in another society.

“The care provided at reception centres shows a tension between facility care and family care, between personal enthusiasm and professional distance to the asylum process and design of the minor's life project [...] and the balance between giving weight to the teenagers independence and their dependence for adult person and public care- and welfare services” (Liden et al., 2013, pg. 51).

Engebrigtsen (2012) discusses how this group of children are alone, having left the care of their families, siblings and friends. The lack of close relations can put the children in an even more vulnerable situation, as the children are at an age where “social and psychological support is important for healthy development and growth” (Engebrigtsen, 2012, pg. 159). Engebrigtsen also challenges the notion of a child having to be with the family to receive the best care, and that this is often idealized with basis in the best interest of the child. This perspective can make the children into victims, making it difficult to accept cases outside the norm. The children are instead seen as “innocent and vulnerable with need for assistance (Engebrigtsen, 2012, pg. 167). In Norway, the child is vulnerable and dependent, but the parent's duty is also to help the child become independent from their parents, something which is ideal for the child and the family (Engebrigtsen, 2012, pg. 167). The state where the child resides is obliged to provide the child with the protection and care necessary for their protection (UN General Assembly, 1990). Most importantly, every individual has their own experience and needs (Michelsen & Berg, 2015).

The legal guardian follows the child throughout the asylum process, and must protect the rights of the child and ensure that the child receives adequate care. Being a legal guardian can be difficult, as one is not supposed to provide care for the child. Instead, the legal guardian is to ensure the protection of all the legal rights. If anything occurs that is not in the best interest of the child, discriminates the child or breaches the rights of the child in any way, the legal guardian is to take swift action and ensure that this is stopped (Vevstad & Nordby, 2012).

Whether or not the legal guardian is able to improve the situation for the unaccompanied minors is different from case to case, due to the complexities of the asylum process and the will of the legal guardian. The legal guardian must respect the child's right to be heard according to article 12 in the CRC, and respect the child's decision even if the legal guardian does not agree. Despite clear guidelines, care can often become a topic for legal guardians. In the Handbook for legal guardians, a chapter is solely dedicated to the complexities of being a legal guardian. The legal guardian is not supposed to ensure care, yet when one assists a child in a process over several months, it may be difficult to avoid. The legal guardian must try to build a level of trust with the child, so that he or she is able to explain the reason for seeking asylum in the best possible way to UDI. A dilemma is presented in the chapter on that if one knows that the child you are responsible for is having a rough time, how does one react? (Vevstad & Nordby, 2012). The distinction is difficult in practice, as one may feel responsible for the child during the process. It is important that the legal guardians do not interfere with the care given by other providers, but if the care is inadequate and does not improve, this may become an area where the legal guardian might feel compelled to assist the child. The distinction between legal protection and care for the child becomes difficult as the child is in a vulnerable position without their family, and the legal guardian becomes the only close adult the child may consistently know for a period of time in Norway (Vevstad & Nordby, 2012).

The government must evaluate the best interest of the child when assessing the asylum application. The evaluation can include reference to immigration control as a reason for either declining or permitting residence to the minor (UDI, 2008). The CRC obligates the nation to provide alternative care for children that are unaccompanied and lack their families, where article 20(3) states that "when considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing" (UN General Assembly, 1990, pg. 6).

The current situation for unaccompanied minors in Norway places children between the ages of 15 and 18 years under the care of UDI, while those under the age of 15 years are in the care of Bufetat. "Bufetat is responsible for the care of the child, but the care centre is responsible for providing the care on behalf of Bufetat" (Human Rights Bodies, 2016, pg. 40-41). The number of employees at the reception centre is lower than for care centres for younger children (Michelsen & Berg, 2015). The separation based on age could create discrimination towards children between 15 and 18 years, while children below the age of 15 may receive more care than older children. The different in living arrangements between these two groups will be discussed further in the discussion.

Basic needs must be covered and children who arrive in Norway should not have different living arrangements compared to Norwegian children, as all children in Norway are to be treated equally according to the Child Law (Barnelova, 1981). As Engebrigtsen (2012) discusses, the concept of care loses its meaning if it does not connect to the specific situation of the child, further stating that the CRC is neutral in regard to care precisely because it has to be interpreted through the specific context.

PROTECTION AND PERSECUTION

In order to give the child a fair asylum process, different forms of protection will be explained briefly, chiefly concentrating on limited temporary protection which most unaccompanied minors receive as of March 2017 (UDI, 2017a). The term is highly debated, and it is especially relevant in cases regarding gender and age. Bhabha (2014) argues that there may be an extra barrier for children to convince the authorities that they have a well-founded fear of persecution. The boundary for fear can be lower for adults and well-founded can be expressed differently due to a child's sensitivity. The child may fear persecution, while an adult with a different perspective does not evaluate it in the same way.

The manner in which a child's rights may be violated may be different from those of adults. In particular, the claims of children have suffered from: Scepticism about the reliability of child testimony deference to local traditions implemented by non-state actors and considered oppressive by the asylum seeker [and] narrow construal of the 'membership of a particular social group' to exclude broad demographic characteristics such as age. (Edwards, 2003, pg. 78)

Like adults, unaccompanied minors must show that their human rights are being persecuted according to the definition of persecution in the Refugee Convention article 1(2) (Bhabha, 2014; UNHCR, 1951). 'Child persecution' can be seen as a contradictory term. Children are not seen as political actors, making the threshold to prove a danger for persecution higher. Bhabha (2014) argues that it is not the invisibility towards separated and unaccompanied children pursuit for protection that is the correct term. Rather that ambivalence towards these children make it hard to sustain hope for refugee protection and protection of their rights, as they are met with "suspicion, condescension and patriarchal perspective." (Bhabha, 2014, p. 207). Encountering these perspectives can neglect children's role as possible political actors and instead emphasizes a role as an irregular migrant. In addition, there are problems of inconsistency, and negative attitudes the children may face from the government (Bhabha, 2014).

Stang (2012) discusses how children can be given protection in Norway even though adults may not view the same reasons as persecution. The criteria to prove persecution should be lower for children. As children are considered to be extra vulnerable, victims of human trafficking are brought forward as a separate group that can be given protection on these grounds in the Immigration Regulations. Øien (2012) explains how the caseworkers at UDI enforce the regulations and politics of the government. When evaluating the grounds for persecution and the case of the child, UDI looks at the situation in the country the child fled from. Whether the children in Norway are met with ambivalence or not, as Bhabha (2014) discusses, the CRC and legal documents have been created to protect the children's rights in the best possible way.

Approval as a refugee is fulfilled according to Refugee Convention and the Immigration Act definition of a refugee, having a "well-founded fear of persecution of reasons of race, religion, nationality, membership of a particular social group or political opinion" (UNHCR, 1951, pg. 14). If the child is deemed to not be persecuted in accordance with the Refugee Convention, the child will not receive protection but can receive residence based on a strong humanitarian concern or a strong connection to Norway (Stang, 2012; UDI, 2008). This is legally enforced in the Immigration Act chapter 5, section 38 and gives unaccompanied minors the possibility to have their asylum case accepted based on strong humanitarian concern or due to a strong bond to Norway (UDI, 2008). There are several reasons why a child may have their asylum application approved, the most relevant for unaccompanied minors is where the child does not have adequate care if returned to their home country, and are thus given limited temporary residence in Norway (UDI, 2008).

In 2016, a provision in the Immigration Act was altered, resulting in the ability to send children to internal relocation without assessing whether this was reasonable or not. Internal relocation is the practice of send a child back to another city in their country, despite their hometown considered to be unsafe. Prior to this amendment, the 'reasonableness' of sending the child back to a different city had to be assessed before a decision was made on the form of protection or residence. Due to international conventions and regulations, Norway can not send back children, instead, many of these children have received limited temporary residence until the age of 18 years. Non-refoulement in the Refugee Convention ensures that a child is not to be returned to a country where there is a risk for the child's life, and the CRC obligates Norway to protect children, therefore individuals cannot be forced to leave Norway before turning 18 years old.

LIMITED TEMPORARY RESIDENCE

In Norway limited temporary residence is protection for children above the age of 16 who do not have adequate care in the country that they left (Regjeringen, 2009). The child is only given approval until the age of 18, because the child's identity and the need for protection is seen to be temporary by UDI, or other reasons argue in favour of limited temporary residence (UDI, 2008). If the child's identity is not verified, the child can be given limited residence one year at a time, which can become ordinary protection if the identity is then clarified (Stang, 2012). This is stated in the Immigration Act, chapter 5, section 38, under circumstances:

- (a) the permit shall not provide the basis for a permanent residence permit,
- (b) the permit shall not provide the 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) that the validity period of the permit shall be shorter than one year (UDI, 2008, pg. 20)

The practice is further enforced and explained in the Immigration Regulations Chapter 8. Unaccompanied minors that do not have any reason for residence in Norway other than their lack of care if returned to their home country, can be given limited residence until the child is 18 years (Regjeringen, 2009). The implications of this protection will be discussed in the analysis.

ANALYSIS

The analysis and discussion is presented under the themes and categories, as well as their subcategories, stipulated in the section on Methods and Data. The respondents are anonymous and have therefore been referred to as respondents from the different NGOs and governmental institutions, instead of their name when being cited (Appendix 1).

PROTECTION

“Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.” (De Schutter, 2014, pg. 285).

TEMPORARY RESIDENCE AND PROTECTION PRACTICE

Temporary residence for unaccompanied minors consist of different forms of protection, with minor alterations in the definition of the permit. An advisor from the Association of Guardians explained that “there is a lot of confusion around this term, but first of all, everyone who gets asylum in Norway is given temporary protection, no one gets permanent protection straight away.” Limited temporary residence, residence on humanitarian basis and not protection for unaccompanied minors between the ages of 16 and 18 years was initiated after a legal amendment in the Immigration Regulations in 2009, as mentioned by the respondent from PRESS (Regjeringen, 2010). This residence permit is not renewable. With the limited residence the children have, one significant finding was that all the respondents from the NGOs, except one, mentioned either on their own or after being asked “What temporary protection means”, that there could be challenges concerning limited temporary residence. The respondent from the Norwegian People's Aid saw it as “inhumane treatment” of these children. The similarity in their views towards limited temporary residence could indicate that NGOs working with children’s rights saw this as important for the treatment of the children. PRESS was one of the NGOs that identified as being against the limited temporary residence and have even initiated a campaign called “Hooray you’re 18”, playing on how the child’s birthday present is to be deported from Norway. The respondent from PRESS states:

This is a practice we strongly disagree with, it puts children’s lives on hold, it discriminates the children between 16 and 18 years, and it does not promote development or good health, and it is one of the largest factors leading to children disappearing, they become so afraid that they go into hiding.

The campaign has been initiated before, but the NGO saw the need to start it again due to an increased number of children receiving limited temporary residence. Out of the 408 unaccompanied minors who received protection in 2017 in Norway, 215 was granted limited temporary residence and will be sent out once they turn 18 years (UDI, 2017a). This amounts to over half the children receiving limited temporary residence and could suggest that the legal amendments in immigration regulations have negative consequences for these children. Also that the NGO felt the need to take action by once again initiating the campaign “Hooray you’re 18” in order to advocate for these children's’ needs for basic human rights. The campaign strives to put the human rights of these children on the agenda of the Norwegian society and highlights the possible disadvantages the limited residence can have for these children, such as living in a state of insecurity.

The respondents from the government did not comment on the practice itself when asked about what limited temporary residence is, yet as respondent one from the Guardianship Department first stated “If they receive temporary residence with limitations, that it does not lay the foundations for permanent residence, but it can be renewed if one collects what UDI needs, they will still a claim to a legal guardian as long as one is a minor” and emphasised that “One does not loss the right to a legal guardian even though one has a permit with limitations”, which also include the children that have received limited temporary residence until they turn 18 years of age. The Immigration Act chapter 11(a) does not comment on the format of the residence or protection form of the child. As long as the child is under the age of 18, they have the right to a legal guardian. The duties of the legal guardian end when the child turns 18 years of age during the asylum process, or the child is assessed to be 18 years, or older, by UDI. If the child receives permanent residence, the child receives a guardian whom will take care of the child’s rights (Utlendingsloven, 2008).

The respondent from NPIS remarked that a change had occurred, and that there had been an increase in the use of limited residence. The increase in this form of residence may suggest that unaccompanied minors between the age of 16 and 18 are being treated unfairly, in relation to article 2 in the CRC (UN General Assembly, 1990). Children shall not be discriminated against in any way, intentionally or unintentionally. The article includes “other status” of discrimination, which is intended for new forms of discrimination that may arise for children (Stang, 2012). The respondent from PRESS proposed that limited temporary residence can lead to a discrimination of the children based on their age. How the practice is ensuring and evaluating according to article 3 and the best interest of the child, is uncertain, as the practice

seems to assume that children aged 16 to 18 years are less vulnerable than children below 16, and that it is in the best interest of the child to stay in Norway until the age of 18 years. As Bhabha (2014) argues, by creating a distinction between children and adolescents, adolescents may have different needs than the younger children, such as financial interests. Whether or not they are young or older children, their needs are individual, and a temporary residence may make any child extra vulnerable, as the situation is only temporary, making it hard to fully fulfil the state's obligation to respect the basic human rights of the child.

An article from UNE (2006) states that if the Norwegian government does not find a person of care in their home country, the government will let the child stay until becoming an adult. If a person of care is located, it is often regarded as being in the child's best interest to be reunited with the family, which UDI should evaluate in each case (UNE, 2006). UDI should treat the children with respect, dignity and the obligation of their human rights, given fair treatment by the government and the caseworker. UNE (2006) proposes in the same article that a majority of unaccompanied minors in Norway are motivated primarily by getting a better future, where the majority are sent by their parents, as so called "ankerbarn". The definition of these children, as respondent one from the Association of Guardians explained, is that "ankerbarn is a child that is sent here in a way, who travels first, to acquire residence, and then apply for family reunification and get the family here". The origin of the concept was explained by respondent two from the Association of Guardians, on how Listhaug used the term in relations to many of the Afghans minors arriving in 2015. But according to the respondent this has been thoroughly refuted, since especially Afghan children do not use family reunification, because they might not know where their families are and their closest family may not be alive anymore.

The same respondent further explained that "especially in relation to Afghans, they are the ones that ask for help, they do not know where their families are, so they ask for help [...] if they had been sent here as "Ankerbarn" they would have had a plan on how to contact their family". As is seen in the UNFPA report (Jochim, 2012), the number of young people under the age of 25 years in Afghanistan is 63%. UNE, as the appeals organ for asylum applications have a distinctly different view than the Association of Guardians on the relevance and importance of children and argues that Afghans have been sent by their parents. The motive behind unaccompanied minor seeking protection or asylum in Norway is technically not supposed to be relevant, as everyone has the right to be treated fairly and the right to apply for asylum according to the Refugee Convention. Despite this, in the Immigration Act provision

38 stipulates that caseworkers can consider immigration control if there are many people arriving with similar grounds for protection.

Despite their rights to non-discrimination under the CRC, Bhabha (2014) states how “no international body or senior official, no UN department, institute, or treaty body is charged with responsibility for migrant children per se” (pg. 222). If one has a sceptical view of the unaccompanied minor, this could affect how one view the persecution that the child might fear (Bhabha, 2014). To have an impartial perspective when engaging with the children could help to increase the protection of their rights in terms of preventing discrimination and ensuring that the caseworker evaluates the case for that specific child, thus decreasing the risk of generalization. The UDI circulars for caseworkers’ state that the interview must be a reflection of the child’s age and maturity (UDI, 2016c). The child also has an obligation under Immigration Act provision 83 to assist UDI in clarifying their identity. In these interviews, the place of birth and where the child has lived are two aspects that are seen as especially important for unaccompanied minors, as stated in the UDI circular on how to evaluate asylum cases by unaccompanied minors (2016).

A significant finding in relations to UDI is that the respondent from PRESS explained that UDI seems to be aware of the possible discrimination in limited temporary residence and internal relocation, as “UDI have tried to soften the practice, they want children that are 16 and 16 and a half, to be able to be more lenient towards them”. After further analysis, it was discovered that UDI wrote a suggestion to the Justice and Security department to make the system more lenient on children below the age 17 years from Afghanistan, to make it easier to give them ordinary temporary protection and residence without the current limitations (UDI, 2017). The human rights based approach for children (Tobin, 2016) where the rights of non-discrimination and equality, are central to protect the rights of the child. The willingness of UDI to try to alter the regulations regarding temporary residence would arguably ensure that larger numbers of children have their basic human rights fulfilled and respected. These children also have to stay in the reception centre until they are sent out, which can be for a period of two years if the child is 16 years or older when the permit is issued (Bufdir, 2016). The Norwegian government’s different treatment of children from 16 to 18 years can be seen as not enforcing this right. UDI argues that there should be a greater concern for the children under the age of 17, than those between 17 and 18 years, based on their predictability. When reviewing their asylum applications, UDI suggested that the child’s ability to create a life in the area the child may be internally relocated to should give grounds for a normal protection according to

Immigration Act section 38, instead of primarily evaluating adequate care. The background for the suggestions by UDI is repercussions of a legal change in 2016.

The right to be recognised 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. (UDI, 2008, pg. 13-14)

One could argue that the ability to receive protection in an area of their home country does not provide a treatment of the child, showing the value of having a worthy life as important, which reflects an important human right. The loss of livelihoods due to prolonged conflict, especially for children from Afghanistan as mentioned in the report by Jochim (2012), can affect the child's abilities to have a worthy life. The area in which one can be sent to, as a result of internal relocation, must be a safe place. Previously UDI had to evaluate whether it would be reasonable to return the child to a specific safe area, allowing for more consideration in a case by case basis for the caseworker (Regjeringen, 2009). NOAS (2016a) sent a hearing statement disapproving of the removal of the reasonableness requirement before the Immigration Act was changed in 2016, stating that the use of the reasonableness requirement "opens up for discretionary assessment that is not in accordance with the international principles" (cited in NOAS, 2016a, pg. 27).

The Ministry of Justice and Security did not approve of the suggestion and claimed that there was no reason to further differentiate between children aged 16 to 18 years, and stated that the Ministry must include all unaccompanied minors between the age of 16 and 18 years. No differentiation based on age or country of origin is necessary. Discrimination can be seen to be allowed if there is a legitimate reason, as Heyerdahl, 2012 explains. The prolonged conflict in Afghanistan and deterioration of the security situation, explained by the Professor at NMBU, may be a reason for UDI to give these children different treatment compared to the rest of unaccompanied minors. Positive discrimination such as this could enforce the best interest of this particular group of unaccompanied minors (Heyerdahl, 2012). The findings suggest that the Ministry of Justice and Public Security may not see the need for the alterations that UDI suggested for protecting the right of this group of children, stated in the Immigration Act and Immigration Regulations. As was commented by several respondents, the group that is mostly affected by limited temporary residence are from Afghanistan. This could explain why UDI specifically wanted the amendment to incorporate Afghani unaccompanied minors. The Ministry seem to be aware of the importance to not further differentiate and discriminate based

on age and country of origin, yet at the same time the Ministry is aware of the current practice being unfair to this specific group of children (UDI, 2017a).

GENERAL PROTECTION IN NORWAY

One of the major roles for NPIS is to ensure the protection of the children's rights during registration by asking the child if he or she has been exposed to any form of threats, violence or needs help. The caseworker at NPIS questions the child if there is anyone they are afraid of in Europe. The role of NPIS in this situation, as explained by the respondent from NPIS, is to try and clarify if the child needs any form of help. If there is anything that indicates sexual abuse, prostitution or forced marriage, NPIS have developed guidelines with specific questions regarding the area of concern for the child. It is done on a case by case basis. NPIS will inform the local police office about the circumstances surrounding the child. As the mandate of NPIS only entails immigration, local police are given responsibility to follow the case. If the child has been a victim of human trafficking, the child can be given humanitarian residence, in accordance with provision 38 in the Immigration Act, which stipulates that the Norwegian government take care to consider children whom are extra vulnerable.

Through the development of specific routines and questions for children, NPIS creates an arena to discuss sensitive topics. The NPIS do not have the jurisdiction to directly assist the child, but provide information and assistance for the child to seek help. Senior advisor from NPIS indicates that the protection of the rights of unaccompanied minors, as with all children in Norway, are vast and include numerous areas, from sexual abuse and exploitation to forced marriage. Varied forms of guidelines with questions based on situations that the child may be in, might allow the child to speak about and explain these situations, reflecting a will of the NPIS to take the matter seriously by treating the child with respect and dignity, giving them room to express their opinion. However, as the respondent from NPIS explained, a limitation of time with the child can hinder the development of trust and feeling of safety to enable the child to open up, as some of the problems are often considered to be shameful. The NPIS strives to give the child a friendly as possible interview method when the child is registered. The senior advisor explained that NPIS does not contact the governments of country of origin for details regarding their identity until their asylum application may be denied. This is because "we know that he or she does not have the right to protection from that government" and shows that NPIS do not put the child at risk from persecution by the government.

Adults do not receive humanitarian protection on the same basis as children, as respondent from NPIS explained, which could be because children between the age 15 and 18

years are regarded as vulnerable compared to adults, and therefore may experience the same threat as an adult in a more intense way, as Bhabha (2014) also has stated. An adult may not view the same incident as persecution or as a threat, yet the child may due to their capacities of not being fully developed, which can be confirmed and connected to Dworkin (cited in Freeman, 1992.) The government protects the need for extra protection for unaccompanied minors in comparison to adults in the legal system, which have the ability to receive humanitarian protection through provision 38 of the Immigration Act. How this is done in practice is difficult to assess, as the caseworker have the opportunity to evaluate the requirement for immigration control. The child has to show that he or she has been persecuted in the same way as adults. Norway also includes the evaluation if the individual is in danger of torture or other inhumane treatment upon return to their country, provision 28 in the Immigration Act. The “scepticism about reliability of child testimony” (cited in Edwards, 2003, pg. 78) can complicated the situation of the child, where their testimony may not always be considered trustworthy based on them being a child (Bhabha, 2014).

The respondent from PRESS brought up during the interview how there has been an increased number of disappearances of unaccompanied minors. A report regarding disappearances was issued recently by NIBR, which had two suggestions for the government:

One was to dispose of temporary protection and the other was to give the care for 15 and 18 year olds from UDI to the Child Social Services. And the government refused to agree to this.

The lack of will to take this seriously also makes us concerned. (Respondent from PRESS)

The main conclusions of the report by Aasen, Dyb and Lid (2016) was that between 2008 and 2015 a total of 601 unaccompanied minors had disappeared from reception centres. The report studied 68 missing reports that were sent to UDI regional office from January 2013 until the end of June 2015. The major finding children distinguished the children who disappeared into three different groups. One group of children disappeared soon after arriving at the reception centre and were mainly from North Africa. The second group were those that may be forced to return from Norway, divided into two different groups, those had their application denied, the those had received limited temporary residence. The last group consisted of unaccompanied minors that were agitated and concerned, they often came and went from the reception centre, causing concern among the staff. The children could start building a network outside the reception centre, and possible putting them in harm's way.

The main conclusion from the report was the lack of a separate institution with responsibility for the disappearances of unaccompanied minors. The report suggests that one institution should be in charge of these disappearances, and that this should be UDI. In addition to the suggestions mentioned by PRESS, the report also stated that the supervising role of the reception centres should be given to the County Governor. Disappearances of unaccompanied minors is an important topic and there can be many reasons why these children leave the reception centres.

Without a single institution being responsible for disappearances, as the report pointed out, it may become difficult to collaborate and share information regarding the child, as there are a number of institutions that are involved when a child disappears. Both the reception centre, Bufetat, UDI and the local police. Without an overall systematic institution responsible for coordinating the work, information may be lost and the process stop.

In 2008, PRESS had already made a report on disappearances of unaccompanied minors, the first on this field as the respondent from PRESS stated. The latest report from PRESS in 2013 looked into a circular issued by UDI regarding the practice of information and follow-up when unaccompanied minors disappear from reception centres. Two findings from the report were that UDI claimed the police needed to look into the cases more, while the police claimed that UD was responsible for the care of the children and it was ultimately their role (Espeland, 2013). Both of these reports suggest that there is a need for an institution that has the main responsible for ensuring that these children's rights are protected and respected even after disappearing from reception centres. By not ensuring a proper system for the children one can question whether the disappearance are taken as seriously as they should be, and the question of who is accountable can become problematic. If a Norwegian child were to disappear, the reactions from the police and other institutions might be quite different, which is not enforcing the best interest of the unaccompanied minor. The disappearances may not be taken as seriously as PRESS and the report by NBIR desire, as it is voluntary to reside in the reception centres. It can be argued that only an adult with prolonged contact or an extra drive for the child may check that action was taken. However, the report also mentions that there are children that actively want to hide from the police. By treating unaccompanied minors in the same way as when Norwegian children disappear, one would signal a respect and value for equal treatment of individuals within the jurisdiction of Norway.

Control vs. protection

The respondent from Norwegian People's Aid explained how there is a possibility to control immigration, through a legal provision 38 in the Immigration Act (UDI, 2008). The criteria the caseworker can weigh whether or not to grant the child protection or not, is social consequences, need for control, and whether there may be a numerous number of other children applying for protection on the same grounds (UDI, 2008). As respondent two from NOAS explained “There is a “can”, one does not “have” to, but one “can” put weight on [immigration control]”. The same respondent further explained how the caseworkers have a choice as to how much weight they give the aspect of control. From the State perspective, it could be seen as understandable to have the opportunity by law to evaluate whether or not the factor is relevant (Freedman, 2014). The possible difficulty is on how to interpret and prioritize the factors in different ways.

According to UNE (2010) the sovereignty of the state opens up for regulating those who enter and leave the country. One should not be allowed to stay in another country only based on the prospect of obtaining a better future and a better life (UNE, 2010). Some of the children that come are deprived of many of their human rights in their home country as a result of prolonged conflict and war. The human rights of the child encompass more than merely protection, the human rights of the child are to be enforced in the state they reside, through obligations to the CRC (De Schutter, 2012). The diverse immigration regulations that the caseworker can follow are written here. The caseworker is judicially allowed to consider the concerns of immigration control up against the best interest of the child. Stang (2012) believes that in the refugee area, “the field is dominated by other and stronger interests than the concern for the single child, first and foremost societies interest concerning controlling immigration.” (Stang, 2012, pg. 81). As argued by Haugli (2012) the best interest of the child is a diffuse concept, which creates ethical framework for taking action. The proposal to refer to the best interest of the child can in some situations give decisions a legitimacy that there may not always be grounds for and can be used “to legitimize political viewpoints” (Haugli, 2012, pg. 56), something which can be seen to weaken the best interest of the child.

CARE

ADEQUATE CARE

The most significant finding is how the Association of Guardians and the Guardianship Department refer to ‘care’ and the implications this may have for the child in different ways. Referring to care in various ways can be a reflection of how the CRC lacks a specific article

referring to the care unaccompanied minors are entitled to, as came forth in the report by Norge nasjonale institusjon for menneskerettigheter [NIM] (2016). Both respondents in the Guardianship Department mentioned and discussed that they were aware of the dilemma concerning the role the legal guardian must master, being the judicial parent yet not being responsible for providing daily care. The legal guardian should fulfil the duties within the legal framework, stated in the Immigration Act and the Guardianship Act. The Association of Guardians expressed concern and brought forward the importance of care once questioned by me during the interview “what care means for unaccompanied minors”, explaining that their role is complex, being everything from a lawyer, to a mum and even a detective. Respondent one from the Association of Guardians explained their view on care:

The care needs for unaccompanied minors I can say first and foremost that I believe is not being well enough taken care of in Norway as it should be [...]. The expression that UDI uses is “forsvarlig omsorg” adequate care. What is in that term? I mean that children between 15-18 do not have an appropriate living standard as of how they live now. And then one can include health and such things under care, that some actually make sure that they get that. That is not always done.

Respondent two from the Guardianship Department had a similar approach to the dilemma regarding how one is to ensure adequate care for the children, posing the question “What is good enough care?” during the interview. Respondent two from the Guardianship Department further explains that it is divided in the law, as the legal guardian does not have the responsibility for daily care but has to ensure that the child receives sufficient care, stated in provision 98(d) “The representative shall ensure that the minor’s care needs are met satisfactorily, but the representative does not have responsibility for the minor’s maintenance and daily care.” (UDI, 2008, pg. 51). The same respondent from the Guardianship Department continued to comment on how difficult this must be for the legal guardians, as “it is not black and white what is in the judicial parental responsibility and what is in the responsibility for care”. The said that it was important for the Guardianship Department that the child had a contact person at the reception centre to ensure daily care, which is also a recruitment stated in UDI circular for the care to be provided in reception centres, where each unaccompanied minor shall have a contact person among the staff, ideally the same person throughout the duration of their stay (UDI, 2011). The different concerns regarding care can illustrate diverse interests at play, where the Association of Guardians are focusing on what is missing, while the

Guardianship Department is concerned with how to meet the legal requirements in the best possible way.

Care is addressed in the preamble and concerning article 3(2) (UN General Assembly, 1990). As argued by NIM (2016), age should not be used as a reason for dissimilar accommodation for one group of children in Norwegian society. Research has shown that unaccompanied minors need emotional support and have as much of a predictable daily life as possible (NIM, 2016). This is confirmed in the study done by Michelsen and Berg (2015), on how being able to contact an adult and acute needs were important for providing a normal a day as possible the children above 15 years of age.

Article 20(1) in the CRC entitles children to special protection and assistance (UN General Assembly, 1990). As cited in NIM (2016), in the specific context of the article, “it implies targeted measures of protection and assistance over and above those required for children in general” (NIM, 2016, pg. 16). The respondent from Norwegian People's Aid builds on this, where connection of care to not only basic needs, but also the need for safety, “I believe that is very important. How one can give an experience of safety and affiliation to those whom come, that is a big challenge”. Respondent two from the Association of Guardians stated that providing adequate care without having to provide daily care was difficult due to the situation at the reception centres, as the children lacked clothes and finances to buy proper food. Despite the responsibility stated in the Immigration Act for the legal guardian, the duty is difficult as they work within such close proximity of the child. This is addressed as a general problem, as seen by Vevstad & Nordby (2012) who dedicated a whole chapter to the dilemma of being a legal guardian.

As the CRC does not have an article dedicated to care, interpretation and implication can differ between actors. Article 22 in the CRC entitles the children to the right to receive “appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention” (UN General Assembly, 1990, pg. 6). The enjoyment of all the rights in the CRC can be argued to fulfil care for unaccompanied minors. As Sandberg (2012) illustrated, applicable rights have by some been argued to narrow the rights that unaccompanied minors are entitled to. The wording in the article can be interpreted in various ways, yet as Sandberg (2012) expresses, articles in the CRC were not created to enforce limitations on other rights in the Convention. This could allow the government to choose which rights to be given more consideration. If one sees article 22 in relation with article 3, the claim can become stronger (Haugli, 2012).

ACCOMMODATION

All of the respondents from NGOs mentioned their opinion on the separated living conditions for children above and below 15 years of age. If the child is below 15 years the child can live in a care centre where care is provided by Bufetat. The protection of the rights of the child are secured in the Child Social Service Law, with a separate chapter explaining through legislation the care the children are entitled to judicial (Barnevernsløven, 1992). When the care centres were first created, NIM (2016) reported that the government had initially planned on expanding the care centres to include unaccompanied minors above 15 years. In 2009 the previous government acknowledged that it was a long-term project and concluded that a lack of resource in the Child Social Service made it impossible to meet the requirement during the previous governmental period (NIM, 2016). Respondent one from the Association of Guardians brought forward how UDI is both responsible for the providing care in the reception centre and treating the asylum application for the children. This opens up for a conflict of interest for UDI, and could deem it appropriate to include the care for unaccompanied under the care centres, which would separate UDIs role as caregivers to care being provided by an institution that was created for child care. The assistant director of UDI, Birgitte Lange expressed the need for UDI to judicially implement the form of care that unaccompanied minors are entitled to (Skjetne, 2017). “We suggest to judicially implement UDIs care responsibility for unaccompanied minors between 15 and 18 years to clarify for both UDI and the reception centres what kind of care these teenagers are entitled to” (Cited in Skjetne, 2017). The government did however not agree with this.

Respondent two from the Association of Guardians further stated that there have been cases where children have been moved several times, “while the Child Social Services claim moving a child is the absolute last thing you do”. The respondent from PRESS stated that the children above 15 years should have the same treatment as children under 15 years. The care provided in the reception centre is regulated through two circulars from UDI (Liden, et al., 2013).

The first circular states the specifications that should be met in terms of the care provided in the reception centre (UDI, 2011). The best interest of the child is a primary consideration, which is stated to cater to the individual's needs, such as their personality or age. This is emphasized further as the reception centre shall strive to meet the individual's needs in the best possible way. Proper care, assistance and a good environment for development shall be ensured, where additional attention is to be given to children between 15 and 18 years. UDI

visits each reception centre twice a year to conduct supervision of the centre, where one of the visits includes supervision specified to assess the care situation and how it is provided.

The second circular concerns requirements concerning activities and participation of the residents. The goal is to give the children as normal a daily routine as possible, as well as ensuring that the child's need for challenges and experience are met while also developing their skills (UDI, 2012). The unaccompanied minors "have a right to participate in all decisions that concern them. They shall participate in planning work and have responsibility for implementation of measures when it is relevant." (UDI, 2012, para. 2.2). This reflects that UDI is trying to ensure the child's participation valued as central in the human rights based approach (Tobin, 2016). By valuing the child's participation, their basic human rights are enforced, which can give the child a feeling of purpose and help against what Oppedal (2013), Bræien & Christie (2012) mentioned about psychological problems after possible trauma.

Staff requirement is stated in a separate circular, where a minimum of two people must be present 24 hours per day (UDI, 2010). The circular for care and the activities promote respect and ensure the best interest of the child, valuing the individual, and that the children should participate in deciding activities and their voice is heard. Their care is central in the circulars. It can be difficult to achieve this level of care and assistance if there are not enough employees throughout the day, as stated in the requirements by UDI (2010a). In the Child Social Service Law there are legal requirements on how many employees are supposed to be at work, while reception centres for unaccompanied minors only have required to have two employees (UDI, 2010).

VULNERABILITY

This concept was touched upon by a handful of the respondents, which may be because there was no direct question regarding vulnerability. After the interviews and further research, the significance of vulnerability became apparent to the research question. A question regarding vulnerability could have been included in the interview guide for a broader analysis of the perspective and impression on vulnerability.

It is something we focus on in many different settings, for example in hearing statements or in speeches that we give. Information about vulnerability is important for the handling of asylum cases, not just for the minors to get the treatment and follow up that they need. (Respondent One, NOAS)

The respondent from the Norwegian People's Aid describes how some of the children may have been fleeing for a long time period and trusting adults could be difficult, as “they might have met many people that have exploited them”. The majority of the unaccompanied minors that arrive in Norway are alone and may have difficult experiences from migrating. Without the proximity of close relations the child could be at risk of developing psychological problems (Bræien & Christie (2012). As Oppedal (2013) explained in a report on Social Networks, Accomplishments and psychological health for children, unaccompanied minors have varied experiences, where some may have been on the run for years. These experiences can affect the child, making them extra vulnerable for trauma and different forms of violence (Oppedal, 2013). Research on the psychological field, explained by Dybdahl, Christie & Eid (2006), has discovered that resilience towards trauma is often linked to external factors, such as the family and social environment. Older children often rely more on the social environment for support than the younger children (Dybdahl, Christie & Eid, 2006). Respondent two from the Association of Guardians commented that the children are often viewed as:

First and foremost asylum seekers and not children, that is how we treat them in Norway, move them from reception centre to reception centre, away from friends they have made, this is not considered, broken relations, everything is like, there are totally different rules for them compared to Norwegian children. So their traumas just expand as they are retraumatized here in Norway.

This could again be seen in regards to the accommodation of unaccompanied minors, and how to best protect the rights, care and vulnerabilities of the child in accordance with the CRC and the human rights based approach for children, and how moving the child should be a last option, as both Dybdahl et., al, (2006), Oppedal (2013) and Bræien & Christie (2012) argue for the importance of close relations and proper social network to take care of the children’s mental health.

Unaccompanied minors are, as Bhabha (2014) argues, more vulnerable and sensitive, which can affect their interpretation and experience of persecution. It could also be seen as an argument to ensure that children receive care and protection tailored to them. The majority of the informants were from Afghanistan, which reflects the current situation as they are the largest group of unaccompanied minors arriving in Norway currently. Oppedal (2013) states that this group have a strong will to make it and to thrive in the new country they arrive in. Respondent

two from the Association of Guardians explained how many children cry a lot, and that this can be hard on the legal guardians. The distress is connected with the result of the asylum application, whether or not the child will be granted protection. Respondent two from the Legal Guardian further stated that “we would never expose Norwegian children to anything close to this”. Engebriksen (2012) stated how family situation is often idealized, where children can be made into victims, and seen as innocent and vulnerable, forgetting the journey that many of the children have endured. Their situations are highly individual, which the UDI circular for care has included important of, responsibility and ability to participate and be heard, lay the foundations for all the other human rights to be met. The children are met with respect and their needs are met (UDI, 2011).

AGE

“It means everything. If you are over or under 15 years. If you are under 15 years you will receive a much better offer, both in relation to care but also in relation to education and accommodation.” (Save The Children respondent).

The evaluation by UN Committee on the Rights of the Child (2010) criticised Norway in 2010 for age discrimination in reception centres, and urged the Norwegian state to “carefully examine the possibility of expanding legislation to provide protection of children against discrimination on the grounds of their age.” (CRC, 2010, para. 20). A significant finding was that the majority of the respondents, specifically respondents from the different NGOs, believed that separation based on age is treatment of the towards the unaccompanied minors. One of the key themes in the interview guide was age. All respondents were asked to explain the meaning of age for unaccompanied minors. This may also have led the respondents to express the opinion on discrimination more openly, as I saw this as important and wanted to research age further. The majority of unaccompanied minors lack identity documents, and UDI (2016b) believes it is important to distinguish between the difference of an adult and a child in relation to for example housing and how their case is evaluated.

Before the interviews, lack of adequate care was a key argument behind my view on the separation of accommodation for these children. After the interviews the respondents brought to light how this could be discrimination on the basis of age, as the children are placed in a reception centre or care centre based purely on age, without a needs assessment. If the children's needs are assessed before placement, it could cater to the individual needs of the children, as a 17-year-old may suffer from trauma and need extra care, while a 16 year old does not need the

same offer. As Save the Children stated, “we have a very unnatural distinction for adults and children”, as explained further, children are complex, and their needs are different from child to child. The CRC states that there should be no discrimination of any kind “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin” (UN General Assembly, 1990, pg. 2). The Norwegian government answer to the Committee on the Rights of the Child from 2010 was that “Discrimination on the basis of age is only prohibited in relation to work.”(Ministry of Children and Equality, 2016). That is the only comment regarding the Committee's critique of the separation of care of unaccompanied minors based on age. This response suggests that the government believes that separating these two groups based on age is not discrimination. The reasons for this may be numerous, though as NIM (2016) stated, one reason could be the financial cost of having all children under the age of 18 in care centres as these centres have higher requirements on employees and care given legally stated in the Lov om barneverntjenester (barnevernloven [Child Social Service Law] (Barnevernsloven, 1992). The CRC further states in article 22 that a child who is deprived of his or her family shall be entitled to “the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.” (UN General Assembly, 1990, pg. 6).

The government must identify the people entering Norway and residing within the country. NPIS mentioned how the identity of the unaccompanied minor was relevant for security reasons and for information on who is in the country. Respondent two from the Guardianship Department explained how the majority of unaccompanied minors that arrive in Norway lack identification papers. The Guardianship Department respects the right of the child to be heard and participate in their own age evaluation, so a legal guardian will in most cases be appointed based on the child’s own age testimony. There are rare cases where a legal guardian is not appointed, as both respondents stated explicitly in the interview. The Immigration Act states that all asylum seekers who are uncertain of their age, which is a central part of their identity, are required to assist the authorities as best they can to collect the necessary documents to confirm their identity (UDI, 2008). This also helps to avoid adults being placed with children.

The CRC is only applicable to people under the age of 18 years, according to article 1, which makes the resolution on the age assessment crucial for the child whether or not the child has the right to be protected in accordance with the CRC. The respondent from the The Norwegian People's Aid and respondent one from the Association of Guardians had divergent

remarks on the effect age has on whether the child will receive protection in Norway or not. Respondent one from Legal Guardian believed that, even though the child is informed that the age will not matter for whether or not they receive residence or protection, this is not true because there are “totally different criteria that need to be met.”

If you are assessed to be over 18 years, you do not have the right to a legal guardian and that can affect their chances immensely. ..[.]. But again it is dependent on the right to protection, and this in itself not dependent on their age, but the treatment you get, that is dependent on age. So there is discrimination there. (Respondent from the Norwegian People's Aid)

Age can be difficult to assess without identification papers, yet there are methods that may be used.

AGE ASSESSMENT

The age assessment, which was explained in detail in chapter three is considered a controversial test, and is only supposed to be conducted in situations of doubt (NOAS & Redd Barna, 2016). The findings confirmed that respondents from the NGOs viewed the age assessment as problematic. The respondent from PRESS confirms this, stating that the age test is not made to suit the children.

The respondent from Save the Children stated, “that we do not have good methods does not justify using bad methods”. This was also confirmed by respondent two from the Association of Guardians who explained how the medical age assessment is given too much weight in the age assessment, and that there should be an increased focus on statements and viewpoints of others. The findings reflect the results and discussions that were presented in detail in NOAS and Save the Children’s report evaluating the age test and assessments from 2016, which I received in the interview with one of the respondents from NOAS.

The report showed concern for how UDI was in breach of the Immigration Act by sending a group of children within an age range to take an age test (NOAS & Redd Barna, 2016). Up until November of 2015, UDI routinely age testing all children between the age of 14 and 18 years. As the report states, as well as respondent one from the Legal Guardian mentioned, children have been age tested despite the caseworker having no doubt in the suggested age. Several of the respondents from the NGOs commented on the controversy of the age test. Respondent one from NOAS explained having written a report looking at the age test and assessments made by UDI and Barnesak AS. A former child paediatrician who evaluated

the results from x-ray of the hand and the carpus and a dental check-up gave an overall assessment which was sent to UDI whom decided the age of the child (UDI, 2010b). Respondent one from the Association of Guardians and the respondent from PRESS both explained how the Child Doctor Union has been critical of the age test practice for several years, yet that politicians have been silent about the matter. The age assessment has been critiqued heavily for several years, resulting in FHI, a research institute, that the Norwegian government is showing a will to improve the age tests, being assigned to take over the role from Barnesak AS on the 1st of January 2016 (NOAS & Redd Barna, 2016).

Bhabha (2014) suggests that age determination of children is difficult, lacking in a specific method that reflects the age of the child in the best possible way. To use a method to assess the most precise age possible for the child is in their best interest, because receiving the wrong age may deprive the child of certain rights, such as the right to legal assistance in the case, their accommodation and having their case evaluated on humanitarian basis. As Bhabha (2014) and the respondent from the Norwegian People's Aid both suggested, the result of the age test may have an impact on education, housing opportunities, and how the child is treated throughout the process.

FHI has conducted two reviews on two different age tests. One review included promising results, referred to as “the Greulich and Pyle atlas for age estimation.” (FHI, 2017). FHI state that more studies need to be conducted to fully evaluate the method and how correct it is in relation to age tests. As stated in the report by NOAS and Save the Children, a precise medical age test will always include an element of uncertainty – therefore the psychosocial aspect should be evaluated to minimize the elements of uncertainty (2016). Respondent one from the Association of Guardians and the respondent from Save the Children also suggested the need for additional evaluation from other people involved with the child. A psychosocial age test has two main goals, “1) Make the age assessment more precise. 2) Specify / locate possible needs for increased follow-up.” (NOAS & Redd Barna, 2016, pg. 103).

Acting as a legal guardian for a child believed to have received the wrong age, the legal guardian must write an age statement arguing why the age is incorrect, including information that is relevant to the assessment. The report by NOAS and Save the Children (2016) presented results showing that some legal guardians produce weak age statements. Suggestions from the report specified that legal guardians should follow certain criteria when writing an age statement to make the arguments as valid as possible, which can help to ensure a proper age assessment and that the child's own testimony is given due weight, as in respect to article 2, the

right to be heard, and the child's need to participate in matters of such importance concerning them. Respondent two from the Guardianship Department stated that they include information regarding age in the introductory course, but the follow-up course included more focus on the dilemmas on age. Respondent one from the Guardianship Department clarified how what is mentioned briefly in the introductory course, and in more detail during the follow-up training. The Guardianship Departments answers compared with the other respondents can suggest opposing perspectives on how important age may be for the legal guardians, as they work directly with the children. Through the interview with two respondents from the Association of Guardians, age was a central area of focus. Respondent one from NOAS emphasized how the child's age and temporary protection are the most crucial elements for unaccompanied minors. The respondent from the Norwegian People's Aid described how important age was for receiving rights as a child or not, and that there were large variations in the age assessments. As the respondent in Norwegian People's Aid explained further, "if you are assessed to be over 18 years, you do not have the right to a legal guardian and that can affect their chances". Respondent two from the Guardianship Department further explained that age is a central theme for the Guardianship Department, and how the different governmental organs evaluate age is addressed.

The importance of age is mentioned and highlighted by all respondents, in different degrees and with different focus areas. However, it can be suggested that there is an agreement there that to ensure protection and fulfilment of the human rights of these children, a correct and proper age assessment is in the best interest of the child and all other children already living in the different care centres and reception centres. As the respondent from Save the Children stated, "it must be in the interest of everyone that no adults get sent to reception centres for unaccompanied minors, but also in everyone's interests that children are not sent to adult reception centres". The Norwegian government shows a will to improve the age assessment for unaccompanied children by giving the responsibility to research new methods to FHI. As age is such a central factor for unaccompanied minors, a fair and proper age test gives these children the proper treatment and care of their rights. It is an important step in the right direction of safeguarding these children's rights and will help to protect their basic human rights in Norway.

KEY ROLES FOR THE NGOS

One NGO explained that their main role consisted of providing information for unaccompanied minors regarding the asylum process, and assisting those they could if their application was denied. Respondent two from NOAS explained that they rarely assisted

unaccompanied minors due to the fact that a majority of them either turned 18 years before the case was denied or they would before their appeal was handled, as it could take up to a year for UNE to review the case again. It is a long process, and the same respondent from NOAS explained that they can only help people they believe they have a chance at changing the application, if not they cannot take on that specific case.

Respondent two from the Association of Guardians explained how the main goal for them is to “strengthen the rights of unaccompanied minor refugees and asylum seekers in Norway, and work to strengthen the guardians”. Another NGO described how the organization has a large focus on volunteer work in reception centres, such as Torshov and Refstad. The NGO tries to create a positive experience for the children living in the reception centre. Due to the decrease in number of children arriving in Norway lately, Save the Children said that the reception centres have been closed and the NGO has focused more on “integration work and political advocacy.” (Save the children respondent). The respondent from Save the Children also explained the hearing statement campaign the NGO had initiated to try and stop the new care law.

All of the respondents were asked if they cooperated with other NGOs or governmental institutions (Appendix 2) and the majority of NGOs mentioned a newly created network of NGOs formed to protect the rights of unaccompanied minor children. The network is referred to as EMA- network, and is led by Save the Children and NOAS, and includes the Red Cross, Norwegian People's Aid, the Association of Guardians, Fellesorganisasjonen, Norwegian Nurse Union, Norwegian Child Doctor Union, the Lawyer Union, Press and others (Akademiker forbundet, 2017). One advisor from NOAS mentioned that they have meetings where they discuss themes that are related to unaccompanied minors, and will at times invite external guests. The creation of the EMA- network can suggest that the organizations want to have closer cooperation on these children’s rights. Through cooperation like this, the organizations may have a stronger voice when advocating children’s rights and areas the organization deem important for the children.

All of the NGOs mentioned how they work towards ensuring the rights of children, either through contacting the media regarding specific incidents regarding the rights of children, or by writing hearing statements to Parliament when disagreeing with new suggestions for new laws. The Guardianship Department also write hearing statements to Parliament in cases that are relevant for them, as in regard to the suggestion for the new care law for children under the

age of 15. The role of the legal guardian will be discussed further, following legal amendments, with a concentration on the suggestion for a new care law for unaccompanied minors.

LEGAL GUARDIAN

Respondent one from the Legal Guardian explained the difference between working in the Union and being a legal guardian, providing an idea of the role of the legal guardian as well:

As a legal guardian or guardian in a single case, I have to look at the circumstances in that specific case, specifically that child, and try to take it from there. While in the Union we do it on a higher level, we receive comments and inquiries from our members and are able to see where there is systematic lack/neglect of care and not just see the one.

Acting as a legal guardian can provide insight on the detailed level of the legal guardian's role in practice, while the position in the Association of Guardians provides an overall view of the situation for the unaccompanied minors. The role as a legal guardian provides the respondent with useful information and experience regarding the treatment that unaccompanied minors may receive. As this is an NGO, the effect of the involvement with the children and their asylum process could serve to strengthen the advisor's advocacy for children's rights in the Union in relation to the CRC. The personal and moral aspect of human rights are key in treating children in a vulnerable position with respect and dignity. The legal guardian has a unique position to ensure that the child's rights are protected, as they have a close relationship.

The respondent from the Norwegian People's Aid explained how it may be difficult for the unaccompanied minor to understand what protection of their rights really means, and a way of ensuring this is to have a legal guardian that has been through proper training. The respondent from the Norwegian People's Aid also mentioned situations where "legal guardians are qualified legal guardians, with good knowledge about their role, they (the children) feel more safeguarded and receive better protection of their rights than those that do not have the training". The Guardianship Department has a responsibility to control the work of the legal guardians. However, the legal guardians are not employed with a working contract, working on a case by case basis, and this may make assessing the work of the legal guardians difficult. There are no clear guidelines stating that the legal guardian should have experience working with children or legal experience, and the appointment is based on an evaluation by the Guardianship

Department (Utlendingsloven, 2008). Clearer guidelines on the qualifications needed by the legal guardian could secure increased protection for the rights of unaccompanied minors.

In regards to the different forms of protection and permits that the children can receive, the Guardianship Department is primarily concerned with protecting the rights of the children in the best way possible, as respondent two from the Guardianship Department stated, “we do not decide which permits they get”. The respondents from the Guardianship Department explained how the form of protection and permit the child receives does not affect the right to a legal guardian. Respondent two explained that “one does not lose the right to a legal guardian even though one has a permit with limitations”. All unaccompanied minors have a right to a legal guardian as long as they reside in Norway. The same advisor commented further “then one has full rights like Norwegian children”. The child should have full rights as Norwegian children, as stated in the Child Law, despite difference in relation to accommodation for unaccompanied minors. The legal guardian will continue to protect the child’s human rights in accordance with the CRC.

The limitation forces children to live in reception centres for a prolonged time period (NIM, 2016). The legal guardians ability to move the child is dependent on UDI and a specific section Regional Office for the East, (Regionskontor Øst) [RKØ] that has the responsibility for the transit refugee centres and the logistics between these refugee centres (UDI, 2013b) Region Midt-Norge [RKM] is responsible for the transfer from a transit refugee centre to an ordinary refugee centre, which can in some situations be difficult. There are certain criteria that must be fulfilled if a child wishes to move from one reception centre to another. The criteria consists of whether there are family members in the other reception centre, the child needs medical care, educational or work related reasons or lastly the child feels isolated due to nationally or based on language and wishes to transfer (UDI, 2017b). Several respondents brought up how children are moved from one reception to another without the consideration of the child. Respondent two from the Legal guardians have to fill in this application on behalf of the child, and it is uncertain whether or not this will be approved. The Association of Guardians explained how for example ties to friends were not considered. The comment suggests that when the child is moved, the opinion of the child is not as important as one should wish according to the CRC. Instead of securing the child's right to participate in their own life and the choices made concerning their living situation, the child’s opinion seems to be given less value. The older and more mature the child is, the more weight the opinion of the child is to be given (Stang, 2012). The best interest of the child can be argued, as Stang (2012) states, to include stability

and continuity, especially contact with other people than the people of care. Moving a child can affect the child's development and be in conflict with the best interest of the child. One of the possible reasons why UDI is unable to meet all the needs of the children, can be that many of the children want to live in or near Oslo. There are reception centres throughout Norway, and each of these should have people living there to be able to operate. As a result of the reduced number of asylum seekers and unaccompanied minors arriving in Norway, UDI had by mid-2016 removed over 7,000 places at reception centres (UDI, 2016d). The Norwegian People's Aid stated in an article (Norwegian People's Aid, 2017b) as one of two organizations that run reception centres is afraid they will no longer be able to compete with other actors on the grounds of price. NGOs, like the Norwegian People Aid, running reception centres provides knowledge in an area central to unaccompanied minors and the enforcement of their human rights on a daily basis (Norwegian People's Aid, 2017b).

LEGAL AMENDMENTS

Many the respondents from the NGOs mentioned their opinion on the current suggestion for the new Omsorgssenterloven (Care centre law), hereafter referred to as new Care Law (Regjeringen, 2016a) for unaccompanied minors under the age of 15. Despite this not directly being focus group of this study, the suggestion for a legal amendment concerning children under the age of 15 years can portray the general view and direction towards unaccompanied minors in Norway. Unaccompanied minors between the age 15 and 18 are suggested to be included in this law with time, according to the Ministry of Children and Equality 2016 suggestion (Regjeringen, 2016a). As respondent one from the Association of Guardians and respondent two from NOAS commented, the suggestion for a new law would remove the care of children from the current Child Social Service law, is a step in the wrong direction. Respondent two from the Association of Guardians stated regarding the suggestion for the new law:

A big change is supposed to happen, it will also mean a much worse care situation for those children under 15 years as well. And that is really going in the wrong direction, as we have over many years worked to get the Child Social Services to provide care for the children between 15 and 18 years, as with Norwegian children.

Creating a separate law for all unaccompanied minors can be seen as problematic, as several of the respondents from the NGOs showed concern for what they believed as the lowering of quality of care for children under the age of 15 years, instead of including unaccompanied minors. The respondent from Save the Children and the respondents from the

Association of Guardians believed that the suggestion was a worsening for the children. As Save the Children, the Association of Guardians, PRESS, Norwegian People's Aid and NOAS believe that unaccompanied minors between 15 and 18 years should be under Bufetat and not the care of UDI, a legal amendment that creates a distinction between the children below and above 15 years of age can be seen to be further creating a discrimination of the children.

In the report by NIM (2016) on unaccompanied minors and care – the suggestion for a new law is argued to affect and reduce the quality of care that children under the age of 15 years would receive. The law suggests that the care should be tailored to the unaccompanied minors as a group, while at the same time not being given the same standard of care as provided through Barneoven (Regjeringen, 2016a). One could argue that including the Child Social Service Law would secure the care for unaccompanied properly in the suggested law. However, creating a separate system for unaccompanied minors whom already might feel very different from the rest of the Norway, may only deprive them further of participating on equal grounds as Norwegian children, and treat them unfairly based on their status as “unaccompanied minor”. The suggested law has not been voted in, announced on the tenth of March 2017 (Regjeringen, 2017a). In the last interview the respondent from PRESS mentioned that the new law had not been agreed upon because of the reduced number of children under the age of 15 years arriving in Norway. The government therefore believed it was unnecessary to create this new law, based on the few children applying for asylum in Norway. The implementation of the law was not altered by considering the best interest of the child or how the law may discriminate these children further from Norwegian children (Regjeringen, 2017a).

By creating a new law for unaccompanied minor children under the age of 15, and later to include those above 15 to 18 years, the respondent from Save the Children argued that this “goes everything that is in the best interest of the child. The right not to be discriminated, this is obvious discrimination [...] we have actually made it okay to discriminate children that are not like “ourselves”. The government believe that it is fruitful to separate the care for refugee children as their situation is temporary, as stated in the new care law (Regjeringen, 2016a). The children also have different needs than Norwegian children, and a separate law protecting these rights would be the best for these children. The children do have extra needs compared to Norwegian children, the respondent from PRESS explained how many of these children have been through traumatic experience in their home country or on their way to Norway. Traumatic experiences creates a need for extra attention and assessment during their stay in a care centre. The Child Law article 1 ensures that all children within Norway are to be treated the same and

that they have equal rights. The CRC, which has a central position judicially through being included in the Norwegian Human Rights Law. These suggestions may be breaching article 2 in the CRC in relation to discrimination. The human rights based approach to children further states how non-discrimination and equality are important human rights values which are important to fulfil for the protection of children's rights.

CONCLUSION

When there is a war or conflict, this can often lead to people having to flee their homes in order to find safety. In these situations, people are vulnerable. Over the last years, the number of child refugees and migration has increased, putting the rights of these children on the agenda worldwide. Children who travel alone can be faced with a variety of predicaments. The aim of the Refugee Convention is to protect the child's right to seek asylum as a refugee, while the CRC is to ensure that the state protects the rights of the child.

Through my research, the CRC was seen to have a strong legal position in Norway. The Convention was incorporated into the Norwegian Human Rights Law in 1999. The best interest of the child has been implemented into the Immigration Act and is to be a primary consideration when caseworkers evaluate children's right to protection. At the same time, the Norwegian Immigration Act stipulates the relevance of weighing the best interest of the child against immigration control. The caseworkers must evaluate this issue on a case by case basis in accordance with the legal requirements stated in the Immigration Act.

The major findings from the research suggest that the rights of unaccompanied minors are strongly advocated by all of the NGOs and governmental institutions that were interviewed. Save the Children and PRESS have the CRC as the foundation for their work and strongly advocate especially the rights of unaccompanied minors in Norway. Save the Children initiated a hearing statement campaign against the suggestion for the new Care Law, urging people to get involved so the new Law would not go through Parliament. PRESS initiated the campaign "Hooray it's your birthday" again, seeing that the problems of increased disappearances and prolonged time waiting that limited temporary residence may have created for unaccompanied minors. The Norwegian People's Aid is striving to end the discrimination between the children under and above 15 years of age, and has a spokesman role for running reception centres, as they are one of only two NGOs running reception centres in Norway. The Association of Guardians is concerned with strengthening the rights of the children in the best possible way by also ensuring that the legal guardians receive the guidance and help they may need in the field. The Guardianship Department is strongly concerned with how to ensure that the legal guardians perform their duties to the best of their abilities within the legal framework, emphasizing that the right to a legal guardian is not dependent on the form of protection that the child receives. While NPIS whom meet the children for the first time, have information cards to try to see if the children needs physical or psychological assistance in any way.

The findings can also suggest that there are different interests behind the actions, illustrated through how the Association of Guardians emphasise the importance of care and how this is especially lacking in reception centres for the unaccompanied minors. The close relations legal guardians have with these children can explain this fact, making it difficult for the Guardianship Department to fully understand the complexities of the care situation. The Guardianship Department clearly expressed their understanding of the dilemma and difficulty, but arguably portrayed a more legal perspective when addressing this topic. This can also be a reflection on the Association of Guardians being created to primarily strengthen and protect the rights of unaccompanied minors, while the Guardianship Department is part of a government institution and thus accountable to the government with regards to the actions that they take.

The practice of age assessments is still controversial, yet the government has shown an interest in finding better methods for identifying the age of children whom are uncertain of their age and lack identity documents. The respondents and the literature focused on how age is such a vital topic for these children, as the consequences of being assessed as over 15 years or 18 years can be dire for the children.

The last significant finding is how the Norwegian government is still considered by a majority of respondents and literature on the field to discriminate against unaccompanied minors care, accommodation and protection based on the issue of age. Neither the CRC nor the Norwegian legal system had a clear definition of care. The CRC does not have a specific article regarding care, while the Norwegian legal system does not have a clear definition of what adequate care means. The suggestion for a new care law proposes that the government does not want to go in the same direction as the NGOs and the recommendations from the Committee on the Rights of the Child report from 2010. The law could suggest further discrimination of an already vulnerable group of children. UDI has shown a will to make the practice of granting limited temporary residence more lenient for unaccompanied minors, which was declined by the government. Concerns regarding immigration control can be given weight through the Immigration Act and may explain the government's reluctance to allow the group of children who receive limited temporary protection to receive normal protection.

For future research, I would recommend studies on how to improve the care for unaccompanied minors, both locally and internationally. It could be interesting to compare and contrast how care is given and provided in one country with another. I also think it is important to study the impact limited temporary residence can have on the children through interviews with the children who are here on this residence permit.

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APPENDIX 1

Respondents:

Norwegian Peoples Aid – Advisor

PRESS - Advisor

Save the Children – Regional Consultant, East section

NPIS – Advisor

NOAS – Respondent one – Advisor. Respondent two – Advisor

Guardianship Department – Respondent one – Advisor.

Respondent two – Advisor

Association of Guardians – Respondent one- Member of the Board.

Respondent two – Member of the board

Professor at NMBU

APPENDIX 2

Brief introduction before the interview:

I am going to conduct a qualitative semi structured interview with you for my master thesis at NMBU. You have received detailed information about the research project through the confidentiality form that was sent to you earlier. What is said during the interview is completely anonymous and confidential. The information will only be used in accordance with this research project. I will record the interview, as I have informed you of before the interview. Please just inform me if you want me to turn the recorder off. Now we will begin.

Role and the Convention of the Child

1. Please explain the role of the organization
2. Could you explain your role at work?
3. Could you explain generally about the CRC in your work?
4. Could you explain the need for care for unaccompanied minors?

Cooperation

5. Could you say something about how you cooperate with other institutions?
6. Additional question if appropriate: Such as the Guardianship Department, NPIS, UDI, other organizations?
7. How is the cooperation with other state institutions/ NGOs?

Work with unaccompanied minors

8. Could you explain how you work for unaccompanied minor refugees' rights?
9. What is your strength?
10. What do you consider the most important work in relation to unaccompanied minor refugees rights?

Rights for children

11. Please say something about your general impression of the protection of unaccompanied minors' rights?
12. The term "Ankerbarn", could you define that?
13. What does "temporary residence permit" for unaccompanied minors mean?

Age

14. Could you explain the meaning of age for unaccompanied minor refugees?
15. How do you work with age regarding unaccompanied minors?

APPENDIX 3

Request for participation in a research project

”Unaccompanied minor refugees rights in accordance with the Convention on the Right’s of the Child”

Master student: Christina M. Berg, 28 years old.
Supervisor: William Derman

Background and intention

The project is a master thesis conducted at the Norwegian University of Life Science. The purpose of this project is to research unaccompanied minor refugee’s rights in Oslo and how they are kept according to the Convention on the Rights of the Child. This will be done by analysing legal documents, documents by the Norwegian Immigration System and several non-governmental organizations. I will also hold interviews with people I believe have relevant information in regards to the topic of my research.

The people I have included in the research are chosen based on their work and knowledge in the field. I believe you have relevant information for my research. You have been chosen by me and the help of my network in the field, as I work as a legal guardian for unaccompanied minor refugees and volunteer at a refugee centre in Oslo through the Norwegians Peoples Aid.

By accepting to join this research project, you will be interviewed for about one hour. This will be recorded and you are free to turn this off at any time. The questions will be based on unaccompanied refugee children’s rights, the Convention on the Right’s of the Child and other relevant legal aspects regarding their rights. The asylum process and your role will also be a part of the interview. I am interested in your specific knowledge in the field. Personal identifiable information will not be published. The data will be kept in a research diary, recorded audio file and transcripts. The data will then be analysed before it is presented in my thesis.

The interview will be conducted in Norwegian, and I will transcribe the whole interview and translate the parts that will be used in the research project. You are welcome to receive the results and conclusion at your request.

How will your personal information be treated?

All personal information will be kept confidentially. I will be the only one that has access to the data. The personal details that have been collected will be kept in a separate area than the rest of the data collected, and any files that may be stored on my laptop will be password- protected. Personal details will be coded so that I can recognize the different people that have been a part of my project. Participants will not be able to be recognized in the final project.

The plan is to finish the project by May 2017. Personal data will we made anonymous at the end of the research project, and audio recordings and transcripts will be kept until I have orally defended my thesis. After this the files and transcripts will be deleted.

Voluntary participation

Joining and accepting to be a part of this research project is of your own free consent. At any point in time you will be able to withdraw from the study. If you decide not to participate anymore, all your information that has been gathered will be made anonymous, removed from the thesis and deleted.

If you want to take part in the research project, or have any questions, please feel free to contact Christina Myrvang Berg at 92490394. My supervisor is William Derman whom can be reached at bill.derman@nmbu.no

The study has been reported and approved by Personvernombudet for forskning, NSD - Norsk senter for forskningsdata AS.

Consent for participation in the study

I have received information about the project, and agree to participate

(Signed by participant, date)



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