UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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Universal Periodic Review: *Fourth Cycle, 47th Session*

NORWAY

I. BACKGROUND INFORMATION

Norway acceded to the *1951 Convention relating to the Status of Refugees* in 1953 and its *1967 Protocol* in 1967 (hereinafter jointly referred to as the *1951 Convention*). Norway also acceded to the *1954 Convention relating to the Status of Stateless Persons* in 1956 and to the *1961 Convention on the Reduction of Statelessness* in 1971. According to the *Norwegian Immigration Act*, asylum-seekers may qualify for refugee status as Convention refugees (granted protection in line with the *1951 Convention*)[1] or obtain refugee status based on evidence indicating a real risk of the death penalty, torture or other inhuman or degrading treatment or punishment. Norway also incorporated the principle of *non-refoulement* into its domestic law.[2]

Since Norway's introduction of a legislative package in 2015 aimed at more restrictive provisions in the *Norwegian Immigration Act*, UNHCR has submitted observations on a range of Norwegian asylum and integration related law proposals and expressed concerns that the proposed changes fall short of the standards set out in international law, including the *1951 Convention*. These measures include restrictions on access to territory;[3] increased use of "cessation" to end protection status;[4] temporary permits for unaccompanied children;[5] expanded use of "internal flight alternative" to deny protection;[6] increased use of accelerated and admissibility procedures;[7] restrictions on family reunification;[8] increased requirements to obtain permanent residence;[9] and enhanced use of coercive measures, including administrative detention.[10] UNHCR is concerned that these amendments risk breaching international norms.

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[1] *Act on foreigner's access to the Kingdom and their stay here (Immigration Act)* (hereafter: "*Norwegian Immigration Act*"), 15 May 2008, https://lovdata.no/dokument/NL/lov/2008-05-15-35.
[2] See Section 73 of the *Norwegian Immigration Act*.
[3] UNHCR, *Observations on the proposed amendments to the Norwegian Immigration Act and Regulation: Høring – Endringer i utlendingslovgivningen (Innstramninger II)*, 12 February 2016, https://www.refworld.org/docid/56c1c6714.html, paras. 13-23.
[4] Ibid, paras. 52-62.
[5] Ibid, paras. 63-72.
[6] Ibid, paras 73-75.
[7] UNHCR, *Observations by UNHCR on the proposed amendments to the Norwegian Immigration Act to allow for detention of asylum-seekers in the 48-hours accelerated procedure*, October 2015, https://www.refworld.org/docid/581323d27.html; *UNHCR Observations on the Law Proposal "Prop. 16L (2015-2016) Endringer i utlendingsloven (innstramninger)",* Instructions GI-12/2015, GI-13/2015 and 15/7814-EST". Circular "RS 2015-013", and amendment to the "Immigration Regulation, §§ 17-18", 23 December 2015, UNHCR-brev-23-desember-2015.pdf (noas.no), para. 11.
[8] Innstramninger II, paras. 76-94. *UNHCR Observations on the proposed amendments to the Norwegian Immigration Act and Immigration Regulations*, 5 April 2017, https://www.refworld.org/docid/59e612984.html.
[9] Innstramninger II, paras. 95-102.
[10] UNHCR, *Observations on the proposed legislative amendments to Chapter 12 of the Norwegian Immigration Act on the use of coercive measures, including administrative detention of families with children, arrest, directed residence/residence restrictions and regular reporting to the authorities- public hearing/public consultation* [Høringsbrev om endringer i utlendingslovens regler om tvangsmidler], February 2017, https://www.refworld.org/docid/58a2f8084.html.

As of 1 January 2023, Norway hosted 107,607 refugees and asylum-seekers, originating from Syria, Afghanistan, Eritrea, Somalia, Iraq, and Iran.[11] In 2023, the number of asylum applications made were 5,879 (504 unaccompanied and separated children - UASC) compared to 5,613 (694 UASC) in 2022. The average waiting/processing period was 123 days. At the end of 2023, 71,625 applications for temporary collective protection were made by refugees from Ukraine (1,161 UASC). In 2023, the Norwegian Directorate of Immigration (UDI) issued 4,798 decisions (granting 1,982 Convention status, 119 other refugee status, 89 on humanitarian reasons, 547 refusals).[12] Between 2020 to 2022, UDI made 7,203 decisions on revocation of residence permits - 130 under §37 (cessation) and 4,692 under §63 (revocation) of the *Norwegian Immigration Act*.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Access to territory and quality asylum procedures

Linked to 3rd cycle UPR recommendations nos. 140.226, 140.227, 140.228, 140.229:

UNHCR notes the continued use in Norway of the notion of the "internal flight alternative" (IFA) to deny protection on the grounds that the applicant can find protection in another part of his/her home country. In Norway, the so called "reasonableness" requirement, that in UNHCR's view should be part of the IFA assessment, was removed from the *Immigration Act* in 2016. This means that an assessment no longer needs to be made as to whether it is reasonable in the specific case to reject the asylum application and refer the asylum seeker to another part of the home country. The reasonableness test requires decision-makers to inquire whether the applicant will be able to lead a relatively normal life without facing undue hardship in the proposed place of IFA. The removal of the reasonableness requirement from the Norwegian legislation is an incorrect use of the IFA concept.

Recommendations:
UNHCR recommends that the Government of Norway:

(a) Ensure fully fair and efficient asylum procedures, by providing minimum procedural safeguards and protection from *refoulement*;
(b) Amend national legislation in order to reintroduce the reasonableness criterion in relation to the application of the internal flight alternative.

Issue 2: Family reunification

Linked to 3rd cycle UPR recommendations nos. 140.230 and 140.231

During the past years, many restrictive changes have been introduced in Norway with respect to the legal framework on family reunification, gradually making it more difficult for refugees to reunite with their families. As a result, the Norwegian procedures for family reunification are amongst the most expensive and restrictive in the Nordic countries. UNHCR has commented extensively on these legislative restrictions for family reunification.[13]

While welcoming Norway's reduction in 2020 of the application fee for family reunification from around 1,000 USD to 744 USD[14] for refugees with a temporary residence permit,

[11] Statistics Norway, Persons with refugee background, 5 July 2023, https://www.ssb.no/en/befolkning/innvandrere/statistikk/personer-med-flyktningbakgrunn. Note: the full figure (280,018) includes individuals who have naturalized and are no longer asylum-seekers or refugees.
[12] Norwegian Directorate of Immigration (UDI), 2022 Yearly Report, https://www.udi.no/globalassets/om-udi/arsrapport-udi-2022.pdf; UDI Statistics on immigration, https://www.udi.no/statistikk-og-analyse/statistikk/.
[13] Supra note 8.
[14] Reduction from 10,500 NOK to 7,800 NOK.

UNHCR remains concerned that the fee is still quite high. UNHCR is also concerned that the concept of family has been defined in a limited way and that discretionary possibility to grant family reunification to family members beyond the nuclear family is interpreted very restrictively. It is important that there is scope to grant family reunification to other close family members beyond the nuclear family where there is social, emotional, or economic dependency – in line with international and regional jurisprudence as well as commitments under the Global Compact on Refugees to make available and expand family reunification.

Even when the legal conditions for family reunification are met, many refugee families face practical obstacles. UNHCR is concerned, for instance, about the difficulties for family members in certain countries to access Norwegian Embassies in person.

Recommendations:
UNHCR recommends that the Government of Norway:

(a) Apply flexible and humane criteria for family reunification and allow other dependents beyond the nuclear family to reunite with refugee family members;
(b) Further reduce administrative processing fees, lower supporting requirements, and extend application deadlines;
(c) Revise and conclude new agreements with consular authorities and/or other organisations on the ground to facilitate the issuance of visas and travel documents.

Issue 3: Prevention of statelessness

Linked to 3rd cycle UPR recommendation no. 140.241: "Consider incorporating into domestic law the definition of a stateless person and establishing a statelessness determination procedure, in accordance with the 1954 Convention relating to the Status of Stateless Persons."

Since the last UPR cycle, Norway has not yet introduced a definition of a "stateless person" into its domestic law. UNHCR regrets Norway's response to the recommendations of the last UPR cycle that it is not considering establishing a statelessness determination procedure.[15] The absence of a clear legal and institutional framework addressing statelessness results in failures to identify stateless persons or inconsistencies in their registration. UNHCR has shared its recommendations in this regard on several occasions.[16]

Recommendations:
UNHCR recommends that the Government of Norway:

(a) Incorporate into domestic law the definition of a "stateless person" as prescribed under the *1954 Convention*; and
(b) Establish a dedicated statelessness determination procedure with clear institutional responsibilities and which respects the rights of stateless persons in line with the *1954 Convention*.

Additional protection challenges

Issue 4: Accelerated admissibility procedures

[15] UN General Assembly, A/HRC/42/3/Add.1, Human Rights Council, Forty-second session, 9-27 September 2019, Agenda item 6, Universal periodic review, Report of the Working Group on the Universal Periodic Review – Norway – Addendum, https://documents.un.org/doc/undoc/gen/g19/262/02/pdf/g1926202.pdf?token=W70CaU0uvsTqOg4uSy&fe=true, 241, p. 7
[16] UNHCR, *Mapping Statelessness in Norway*, October 2015, https://www.refworld.org/reference/countryrep/unhcr/2015/en/108045; UNHCR, *Recommendations to Norway on strengthening refugee protection in Norway, Europe and globally*, November 2021, https://www.unhcr.org/neu/70623-recommendations-to-norway-on-strengthening-refugee-protection.html; UNHCR, *Statelessness in Norway – 9 Facts with recommendations from UNHCR*, February 2024, https://www.unhcr.org/neu/70623-recommendations-to-norway-on-strengthening-refugee-protection.html.

The legislative and policy changes in recent years in the field of border control have made access to the Norwegian territory and asylum procedures more difficult for asylum-seekers. UNHCR is concerned that the combined effect of increased use of accelerated admissibility procedures, weakened procedural safeguards and provisions for automatic rejection at the point of entry in emergency situations will place asylum-seekers and refugees at risk of *refoulement* and other violations of the *1951 Convention*.[17]

UNHCR recommends that Norway ensure protection-sensitive border management, which maintains a fair and efficient identification of persons in need of protection and provides the necessary procedural safeguards in border procedures. UNHCR would also like to emphasize the importance of in-merits procedures over admissibility considerations as the latter tend to create procedural inefficiencies and shift the responsibility onto countries outside Europe.

UNHCR is further concerned that asylum-seekers can be returned to third countries without the required procedural safeguards being enshrined in the law. As a precondition to return or transfer of an asylum-seeker or refugee to another country, it has to be established that s/he will be (re)admitted and has access in that country to standards of treatment commensurate with the *1951 Convention* and international human rights standards. Norway has regrettably removed this criterion for considering a third country as safe in its legislation.

Access to legal aid in the inadmissibility procedure is problematic in practice and the provision of legal aid is only made available upon application. Asylum-seekers are not informed of their right to apply for legal aid nor is any practical assistance or interpreter provided for this purpose. The decision-making process on applications for legal aid could take six to eight weeks. Consequently, applicants could be deported by the time they are eligible for free legal aid.[18]

Recommendations:
UNHCR recommends that the Government of Norway:

(a) Ensure that all asylum-seekers and refugees have effective access to territory and to fair and efficient asylum procedures, including free legal aid, by providing minimum procedural safeguards and protection from *refoulement*.

Issue 5: <u>Security of stay and residence</u>

The use of the cessation clauses to end refugees' protection has increased in Norway in recent years.[19] A review of the protection needs of refugees is now mandatory prior to possible conversion of the temporary residence permit into permanent residency.[20] Some refugees have had their protection terminated even in situations when the change only applied to part of their home country. Every year, hundreds of new revocation cases are initiated, while, in reality most are granted a new residence permit and few end up with a revocation decision.[21] Processing times for revocation cases are lengthy, lasting five or more

[17] UNHCR, *Recommendations to Norway on strengthening refugee protection in Norway, Europe and globally*, p. 3.
[18] Norwegian Organisation for Asylum Seekers (NOAS), Marek Linha, *Seeking Asylum in Norway: Access to Territory, Safe Third Country and Non-Penalization*, 2022, https://www.noas.no/wp-content/uploads/2022/05/NOAS_Seeking-Asylum-inNorway_MATERIE_25.01.pdf.
[19] See UDI's annual reports from 2019-2022, https://www.udi.no/om-udi/om-udi-og-utlendingsforvaltningen/arsrapporter/.
[20] CMI Report, Number 5, by Jessica Schultz, *The temporary turn in Norwegian asylum law and practice*, September 2022, https://www.cmi.no/publications/8445-the-temporary-turn-in-norwegian-asylum-law-and-practice, section 4.2.
[21] In 2022, for instance, UDI revoked 842 residence permits out of 1,846 revocation cases initiated. Of the 842, 488 (58%) were eventually granted residence permits on other grounds, https://www.udi.no/globalassets/om-udi/arsrapport-udi-2022.pdf, p. 35. See also, NOAS, *Tilbakekall – Ungdom fra Afghanistan som risikerer å miste oppholdstillatelse eller statsborgerskap*, 2023, https://www.noas.no/wp-content/uploads/2023/10/Tilbakekall.-Ungdom-fra-Afghanistan.pdf.

years and procedural safeguards are not adequately applied.[22]

UNHCR acknowledges the possibility of using the "ceased circumstances" cessation clauses of the *1951 Convention* in situations where due to a fundamental and durable change of circumstances in their home country refugees no longer require international protection. However, cessation provisions should be used cautiously and restrictively with the necessary legal standards and procedural safeguards in place. Refugees and other beneficiaries of international protection should not be compelled to return to a still volatile situation in their country.[23]

Recommendations:
UNHCR recommends that the Government of Norway:

(a) Refrain from mandatory periodic review of the protection needs of refugees.
(b) Align standards and practice for the loss of refugee protection with the requirements of Article 1C(5) and 1C(6) of the *1951 Convention* and the general legal principles for cancellation of refugee status.[24]

UNHCR
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[22] European Union Agency for Asylum (EUAA), Asylum Report 2023, https://euaa.europa.eu/sites/default/files/publications/2023-07/2023_Asylum_Report_EN_0.pdf, p. 254; Norwegian Directorate of Immigration, 2022 Yearly Report, https://www.udi.no/globalassets/om-udi/arsrapport-udi-2022.pdf, p. 37.
[23] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP/03/03 https://www.refworld.org/docid/3e50de6b4.html; UNHCR, *Recommendations to Norway on strengthening refugee protection in Norway, Europe and globally*, November 2021, https://www.unhcr.org/neu/70623-recommendations-to-norway-on-strengthening-refugee-protection.html.
[24] UNHCR, *Note on Cancellation of Refugee Status*, 22 November 2004, https://www.refworld.org/policy/legalguidance/unhcr/2004/en/36189; note the distinction in use of terminology by UNHCR (cancellation) compared to Norwegian law (revocation).