



EUROPEAN POLICY BRIEF

VULNER

VULNER POLICY BRIEF: NORWAY

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KEY MESSAGES

- In Norway, attention to vulnerabilities remains fragmented among various guidelines and actors. Vulnerable groups as concretely identified in human rights agreements to which Norway is party, such as the UN Convention on the rights of the child, tend to be prioritized, although vulnerabilities related to torture and disability still need more attention.
- Norway should consider a more holistic approach to addressing vulnerability. This would entail strengthened mechanisms for identifying vulnerabilities beyond those of some vulnerable groups as identified in international agreements, and better coordination in terms of following up those in need of special support.
- The access to free legal aid early in an asylum proceeding should be improved, to guarantee that vulnerabilities are identified timely and duly taken into consideration in the decision-making process.
- Existing guidelines on how to address the extra needs of vulnerable asylum seekers should be formalised into a Reception Law. A minimum standard for the reception conditions for unaccompanied minors would also help ensure that their rights are secured without discrimination.
- In the Norwegian legislation, 'strong humanitarian grounds' remains the placeholder for compound vulnerability concerns. While this provision permits decision-makers a certain discretion to grant residence outside of refugee status, it is not without its shortcomings. Outcomes are heavily determined by immigration control interests, so that vulnerability becomes a relative consideration depending on the numbers of similarly-situated people.
- Norwegian authorities should reintroduce the 'reasonableness' requirement for application of the 'internal protection alternative' (IPA) in line with its international obligations, to guarantee that the vulnerabilities faced by some applicants are being adequately taken into consideration when assessing the risk of persecutions in the home country. In addition, the

principle of the child's best interest should be emphasized as a 'fundamental consideration' in all cases involving children.

- Recent shifts in asylum and immigration policies produce vulnerabilities by making residence more temporary, refugee status and residence permits more temporary and precarious, and return to conflict-affected countries more permissible. Such consequences should be analyzed and mitigated as part of a more systematic approach to assessing and addressing vulnerability within the protection system.

INTRODUCTION

The UN Global Compacts for Migration and on Refugees require states to develop their migration and asylum policies in ways that consider the vulnerabilities that migrants and refugees may be facing. However, the Norwegian Immigration Act neither refers to vulnerability as a category of concern nor establishes a specific duty to address vulnerabilities. Vulnerability is simply not used as a *legal concept* in the Norwegian Immigration Act. How, then, is vulnerability understood and operationalized in Norway?

The study conducted by the Norwegian team of the Vulner project is based on document analysis of legislation, case law, policy documents and administrative guidelines, as well as 36 interviews with civil servants, judges and social workers in Norway.

This Policy Brief identifies some possible shortcomings in the Norwegian protection regime, and points to corresponding policy recommendations.

EVIDENCE AND ANALYSIS

We organize policy-relevant findings around three themes.

(I) *A fragmented approach towards the identification of vulnerability*

Legal obligations vis-à-vis specific and particularly vulnerable groups, such as minors, persons exposed to gender based violence and victims of trafficking, are incorporated with reference to international conventions and protocols. Thematic human rights instruments raise the profile of certain refugee groups to promote a more fine-grained risk analysis. However, a 'human rights approach' downplays certain vulnerabilities, such as trauma as a consequence of past persecution, as well as their intersecting nature.

State obligations towards certain vulnerable groups and persons are implemented in several detailed guidelines on specific issues. This enables individualised assessment and equal treatment, and limits the room for discretion. Despite the plethora of guidance on certain categories and vulnerabilities, there are situations and instruments that are *not* adequately addressed.

The *responsibility for identifying* persons with extra needs is diffused across different actors, accountable for different aspects and phases of the asylum procedures. There are advantages to this approach, but also certain built-in challenges. Vulnerability thus becomes one of many topics to cover, and often a peripheral one given time pressures and limited expertise. By implication, there are no dedicated experts to identify vulnerabilities and no systematic assessment procedures and tools, such as questionnaires and health examinations. Complex and intersecting vulnerabilities may thus be overlooked. Another challenge is the fragmentation of data, attributable to different and not

always interoperable data systems and data privacy regulations. All of these factors complicate coordination and information flows.

(II) *Insufficient procedural guarantees and reception conditions*

In relation to *procedural aspects*, numerous guidelines and circulars address how to identify claimants from certain vulnerable groups during the asylum interview and throughout the decision-making process. Even so, there are some shortcomings in the way in which asylum hearings are conducted, including restrictions on the right to a personal appearance upon appeal and limits on legal aid. Inadequate legal aid early in the asylum proceeding may have important implications for those with less ability to express their concerns and needs, who may indeed qualify as especially vulnerable.

When it comes to *reception conditions*, modified accommodation and support is available for certain groups, such as separate sections for unaccompanied minors and for those with demanding health problems, and safe accommodation for victims of trafficking. Reception practices are steered by guidelines, there are no minimum standards. The situation for detained persons with health problems waiting for forced return has drawn critique from outside observers.

The obligation to follow up health problems and other special needs falls to the ordinary health and welfare service. Access to healthcare, however, depends on asylum seekers' formal status as well as the available resources, awareness and skills of the local health service. Blind spots also exist with regard to Norway's obligation under the Istanbul Protocol to identify and document torture. Although guidelines are available, they are neither sufficiently disseminated nor actively used in the health service. This has long-term consequences for the rehabilitation of torture victims.

(iii) *Qualified and uneven attention to vulnerability in the protection assessment*

In Norwegian law, refugee status extends to persons protected from return under human rights law (complementary to the Refugee Convention). The asylum assessment is sensitive to certain vulnerable groups and individuals, such as minors, those exposed to gender-related persecution and harm (abuse, forced marriage, female genital mutilation, sexual identity) and human trafficking. The removal in 2016 of the '*reasonableness test*' in application of the '*internal protection alternative*' (IPA) means that many vulnerabilities related to internal displacement are excluded from the return analysis.

People with *compound vulnerabilities* who do not qualify for refugee protection are considered for a residual category of residence on *strong humanitarian grounds*, with fewer rights, less legal security and a greater scope for revocation. The factors in favor of residence on strong humanitarian grounds are balanced against the state's interest in immigration control, so outcomes depend not on levels of vulnerability but rather on the numbers of people from the same country with similar experiences. Further, 'the child's best interests' are evaluated while considering a residence permit on humanitarian grounds – not in the protection assessment. By implication, such concerns are frequently sacrificed to immigration control interests, raising doubts about whether they have been adequately weighed as a '*fundamental consideration*' in the decision (CRC).

Our research gives rise to the following recommendations.

- **Clarify the position of vulnerability in the legislation and improve identification measures**

To ensure a holistic approach to vulnerability we see the need for a clarification of the position given to vulnerability as a concern in the immigration legislation. One example is how to assess the intersection of vulnerabilities. Another is how to understand the obligation to follow up vulnerabilities, related to rehabilitation and the duty to advance durable solutions for refugees. There is also a need to improve measures to identify vulnerabilities:

- We recommend to extend the health examination in the arrival centre and to identify a responsible agency for the identification and follow up of vulnerable individuals.
- We recommend that the immigration *and* health authorities develop guidelines to follow up the obligations of the Istanbul Protocol/UNCAT to build sufficient expertise and competence to address *victims of torture* in the health service and to facilitate their rehabilitation. Following that, victims of torture could also, to a greater extent than today, be given priority for resettlement.
- We recommend evaluating whether the Norwegian asylum practice is in line with the obligation to take all appropriate measures to modify or abolish existing practices that constitute discrimination against *persons with disabilities*. The international obligation to ensure equal treatment, set down in the Convention on the Rights of Persons with Disabilities (CRPD), has received too little attention in Norway.
- We suggest it is time for a new regulation on the criteria for reassessment/amnesty for *elderly* protection seekers. Many of those living in reception centres without a legal stay, or on ID limits, are elderly, yet regulations for this demographic are underspecified.

- **Improve the reception conditions and procedural rights**

The time spent in reception centres waiting for an application to be processed often increases vulnerabilities and exacerbates health problems. Inadequate reception conditions add to the negative trend.

- We suggest formalizing a Reception Law in place of existing guidelines. A minimum standard for the reception conditions for unaccompanied minors would also help ensure that their rights are secured without discrimination.
- We recommend taking action to assess the vulnerabilities among *detained persons*, to improve their conditions and their access to health and legal services.
- We see a need to improve the access to free legal aid early in an asylum proceeding. This is necessary to make a good decision based on adequate information of problematic issues in the first instance.
- We see a need to extend access to oral hearings in the Appeal Board, to improve administrative procedural rights.
- There is also a need to improve the competence of interpreters related to vulnerability issues.
- We see a need to improve advisory support for **asylum seekers** with unverifiable or missing ID documents.

- **Avoid producing vulnerability through narrow interpretations of refugee law and security control measures**

The use of limited permits, transfers to third states, and intensified efforts to withdraw protection when conditions change in the country of origin increase the precarity of residence within Norway. Asylum and administrative policies then *produce vulnerability*. For example, *time-limited permits for people whose identity cannot be verified* undermine children's rights to stability and development, and impede inclusion in Norway for humanitarian status holders of all ages.

- We strongly recommend reintroducing the 'reasonableness' requirement for application of the 'internal protection alternative' (IPA) in line with international obligations and in response to concerns expressed by the United Nations High Commissioner for Refugees (UNHCR) for decisions regarding admissibility and cessation of refugee status.
- We suggest evaluating the practice of considering the 'best interests of the child' in the assessment of residence on humanitarian grounds, to assess whether the principle of the child's best interest is adequately weighed as a 'fundamental consideration' in those cases.
- Temporary residence permits have well-documented detrimental effects on the inclusion of persons with a right to remain in Norway. We recommend looking into solutions for balancing the need for control of residents' identities with the benefits of speedy settlement in a local community.
- We recommend evaluating the cessation practice of recent years to assess whether it is fit for purpose and well-aligned with the principle of a durable solution, as elaborated in The Global Compact on Refugees to which Norway is a signatory and a 'strong supporter'.
- We find it necessary to improve, through legislation and administrative guidance, routines for identifying and following up vulnerable asylum seekers as part of Dublin procedures. Narrow application of the sovereignty clause in these cases, which would allow the claim to be decided in Norway, results in the removal of highly vulnerable individuals, including victims of torture.

THE VULNER RESEARCH PROJECT

This policy brief has been issued by Hilde Lidén and Erlend Paasche at the Norwegian Institute for Social research (ISF), and Jessica Schultz at the University of Bergen. It reflects the result of their own scientific data (legal documents, asylum cases and interviews with the immigration authorities/administration/judges/experts) and analyses, which they developed within the framework of the VULNER research project.

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

This policy brief reflects only the authors' views. The European Union and the project coordinator are not liable for any use that may be made of the information contained therein.

PROJECT IDENTITY

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CONSORTIUM	Max Planck Institute for Social Anthropology - MPG Halle, Germany Ca'Foscari University of Venice - UNIVE Venice, Italy Catholic University of Louvain - UCL Louvain, Belgium Center for Lebanese Studies - CLS Beirut, Lebanon Institute for Social Research - ISF Oslo, Norway Martin Luther University Halle-Wittenberg - MLU Halle, Germany Population Europe – PE Berlin, Germany University of Ottawa - UOTTAWA Ottawa, Canada
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