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Returning The Unaccompanied Asylum Seeking Minors:

Policy and Strategies Put in Place in the Best Interest of the Child

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ABSTRACT

The study has been conducted with the objective of examining Norway's policy on the returning (deportation) of unaccompanied asylum seeking minors as well as the strategies put in place in the best interest of the child. Specifically, it sought to find out among other things the reason unaccompanied minors choose Norway as their destination country; existing policy regarding the return or deportation of same.

In terms of its design and analysis, the study employs the qualitative approach. It basically took the form of desk research analyzing texts from books, policy documents, human rights rapporteurs, individual research papers (both qualitative and quantitative studies) and other relevant organisations like Non-Governmental Organisations.

The study found that the factors that pull UAMs to Norway UAMs Norway's reputation as a good country, its strong asylum policy especially unaccompanied minors, social connections, opportunities for a better future and also their respect for human dignity On Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years, the study found that Norway applies the European Return Directive. The Dublin II Regulations also guide the country and also the EU Action Plan (2010 – 2014). In view of this, Norway has done quite well in terms of the reintegration package put in place for both forced and voluntary returnees.

On the issue of how Norway's policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives, it was found that Norway's return policy in principle does not differ from those of the United Nations and the European Directives. However how it carries out its forced returns or deportations is what seems to have some inadequacies.

When it comes to whether Norway's existing policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions, it was found again that there are issues with concerning its forced deportation. Therefore the conclusion drawn is that whereas voluntary return policy in Norway is consistent with the best interest of the child principle as advocated by various international conventions, its forced return does not.

On the basis of the above, overall it can be concluded that Norway has a policy on the return or deportation of unaccompanied asylum seeking minors between the ages of 16 and 18 years and that generally the strategies put in place are in the best interest of the child but there is also the need for improvements in some aspects especially in connection with forced returns.

TABLE OF CONTENTS Page

ACKNOWLEDGEMENT III

Abstract IV

Table of Content V

ABBREVIATIONS VII

List of Tables VII

1.0 Introduction 12

CHAPTER ONE: BACKGROUND AND OBJECTIVES OF THESIS

1.1 Background 13

1.2 Theme and Research Questions 13

1.3 Research Questions 15

1.4 Objective of the Study 15

1.5 Significance of the study 16

1.6 Prevalence of Unaccompanied Children Seeking Asylum 16

1.6.1 Unaccompanied Children Seeking Asylum in Norway 17

1.6.2Unaccompanied Children Seeking Asylum in Europe 17

1.6.3 The Global Situation: Receiving Countries 19

1.6.3.1 The Global Situation: Source Countries 19

CHAPTER TWO: THEORIES, CONCEPTS AND RESEARCH METHODOLOGY

2.0 Introduction 23

2.1 Key Concepts 23

2.1.1 Asylum Seeking 23

2.1.2 Unaccompanied Children 24

2.1.3 The Best Interest of the Child 25

2.2 Theoretical Framework 29

2.2.1 Push-and-Pull Theory 29

2.2.2 World Culture Theory 31

2.3 Human Rights, based on Social Justice 33

2.4Justification of Theoretical framework 34

2.5 Methodology 34

2.5.1Background and Choice of data 34

2.5.2. Study Design 35

25.3 Methodological Assumptions and Beliefs 36

2.5.4 Methodological Issues and Considerations 37

CHAPTER THREE: NORWEGIAN POLICY - BEST INTERESTS OF THE CHILD

3.0 Introduction 38

3.1 Child Welfare in Norway 38

3.1.1 History of Child Welfare in Norway 38

3.1.2 Welfare with Equal and Universal Benefits 40

3.1.3 The Child Welfare Act of 1992 42

3.2 Objective of the Child Welfare Act, Support and assistance 44

3.3 Housing measures and other needs for unaccompanied refugee and asylum-seeking minors and Consideration of the child's best interests 44

3.4 Taking children into care by the Welfare Services 46

3.5 Adoption of Children 47

3.6 The rights of parents in the event of care orders 47

3.7 Asylum seeking procedure 48

3.8 Asylum procedure for unaccompanied minors 49

3.9 Challenges in the "welfare" of the Unaccompanied Asylum-seeking Minors 49

3.10 Final Rejection of Application and Return 52

3.11 The Return Policy and Practice 52

3.12 The European Return Directives 52

3.13 The Norwegian Welfare Act and the Best Interest of the Child 57

CHAPTER FOUR: NEW IMMIGRATION ACT OF 2008

4.0 Introduction 60

4.1 Brief General Highlights of the New Immigration Act 61

4.2 Return of UAMs and the Immigration Act 62

4.3 Expulsion or Forced Return 65

4.4 Tripartite Memorandum of Understanding 66

4.4.1 Breaking Own Laws and violating UN Laws 68

CHAPTER FIVE: ANALYSIS OF POLICIES, PRACTICES AND DEBATES

5.0 Introduction 69

5.1 Why UAMs generally choose their destination countries 69

5.2 Why UAMs choose Norway as their destination country 72

5.3 Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years 74

5.4 How Norway's policy concerning the return of unaccompanied children differ from the United Nations Guidelines and the European Directives 75

5.5 Norway's existing policy regarding the return of unaccompanied children adhere to the best interest of the child as advocated by various international conventions 77

5.6 Conclusion 80

5.7 Recommendations 82

Reference 84

ABBREVIATIONS

CRC	Convention on the Rights of the Child
EMN	European Migration Network
ERPUM	European Return Platform for Unaccompanied Minors
EU	European Union
IOM	International Organisation for Migration
UAMs	Unaccompanied Minors
UDI	Directorate of Immigration
UASC	Unaccompanied Asylum-seeking Children
UDHR	Universal Declaration of Human Rights
UNHCR	United Nation High Commission for Refugees
UNCRC	United Nations Convention on the Rights of the Child
UK	United Kingdom
US	United States
VARPs	Voluntary Assisted Return Programs

LIST OF TABLES

		Page
Table 1.1	Asylum Trends in Norway (2007 – 2014)	6
Table 1.2	Europe and the EU Unaccompanied Asylum Situation (2011 – 2014)	8
Table 1.3	Global Unaccompanied Asylum Situation - Receiving (2011 – 2014)	10
Table 1.4	Global Unaccompanied Asylum Situation - Sources (2011 – 2014) 12	
Table 3.1	Accommodations types for UAM	33
Table 3.2	UAM who returned (2009-2013)	43

1.0 Introduction

The increasing number of unaccompanied children seeking asylum in Norway has been of concern to the Norwegian authorities and the public as well. The Norwegian authorities have therefore advocated and designed various measures and methods to address the problems of unaccompanied children seeking asylum in the country. One of the measures was to return these children; to be precise, those between the ages of 16 and 18 years, to their countries of origin or to the country where the children sought for asylum for the first time (Redd Barna 2012-2013, 17)

Single children or a child without parents travelling to seek asylum is not an unknown fact in Norway. History of Norway concerning asylum seeking children reads that Norway has been receiving unaccompanied asylum seeking children since 1938. (Eide 2007, 42). Since then, the Norwegian society has been experiencing the arrival of single children seeking asylum alone (ibid).

The Norwegian authorities consider unaccompanied minor refugees as a vulnerable group of immigrants. Vulnerable in the sense that these children are separated from their families for many reasons: some might have fled from wars with their parents and got separated in the process, others might have been sent by their own parents through human traffickers or smugglers to help them look for better lives. These children go through dangerous and traumatized journeys before they reach their destination countries; mostly industrialized countries, of which Norway is one.

International conventions as well as Norwegian legislation have provisions that apply specifically to these minors once they come to Norway. (Liden et al 2013, 9) Within the Norwegian legislation is the return policy which will be discussed.

The focus of this study therefore, is to review Norwegian policy involving the return of unaccompanied asylum-seeking minors.

Chapter one begins with background information about this study of Norwegian policies involving the return of unaccompanied asylum-seeking minors. The chapter also presents the objectives of the study as well as the research questions it aims to answer. Chapter two presents theories and concepts employed in the thesis for studying unaccompanied asylum-seeking

minors in Europe, Norway and elsewhere. Chapter three focuses on policies about return of unaccompanied asylum seeking minors in relation to policies and practices related to the doctrine of "the best interest of the child" as well as to United Nations guidelines, declarations and conventions. These include a review of international policies such as the United Nations Human Rights Declarations, the Convention on the Rights of the Child and the United Nation High Commission for Refugees (UNHCR) Guidelines. Chapter Four presents Norway's Immigration Act of 2008 which came into force on 1st January 2010. The chapter deals with practices and debates about these processes about the registration, reception, asylum interview situation and the issue of returning unaccompanied asylum seeking minors to their homelands. Chapter five presents an analysis of the policies, practices and current debates focused on unaccompanied asylum seeking minors. The conclusion reviews the findings of the study and makes policy recommendations about the return of unaccompanied children taking into account the best interest of the child.

Chapter One: Background and Objectives of Thesis

1.1 Background

The increasing number of unaccompanied children seeking asylum in Norway has been of concern to the Norwegian authorities and the public as well. The Norwegian authorities have therefore advocated and designed various measures and methods to address the problems of unaccompanied children seeking asylum in the country. One of the measures was to return these children; to be precise, those between the ages of 16 and 18 years, to their countries of origin or to the country where the children sought for asylum for the first time (Redd Barna 2012-2013, 17).

Norway commenced the process of return and deportation of unaccompanied in the early part of 2000. The Norwegian Government in 2002 established Voluntary Assisted Return Programs (VARPs), which are funded by the UDI, and carried out by the International Organisation for Migration (IOM) (Meld. St. 27, 2011-2012: 48) These programs include, *inter alia*, information and counselling, assistance to obtain valid travel documents, travel arrangements and post-arrival reception (Norwegian Ministry of Education and Research et. al 2012). In 2009 the Government of Norway decided to tighten its immigration policies. It therefore proclaimed that there is a need to ensure that those unaccompanied children who do not have needs for international protection are assisted to return to their country of origin in order to create a sound future in their home countries (Ministry of Labour 2009, 4).

Norway in collaboration with Sweden, the Netherlands, Great Britain and Denmark, initiated the European Return Platform for Unaccompanied Minors (ERPUM). ERPUM is a pilot project designed by these aforementioned countries and their main aim was to return the UAMs who have no grounds for protection safely to their homelands. The target group for these centres is youths aged 16 to 20 and whose only ground to stay is that they are without parental care on return (Ibid, 5).

Working together with other European countries on this return issue became necessary because Norway is not the only European country who receives unaccompanied asylum seeking minors but other industrialised countries in Europe.

Other non-European countries like the United States of America also experience the influx of asylum seekers including unaccompanied minors but for this thesis, the focus will be on Europe and Norway.

These policies and strategies are to reduce influx of unaccompanied minors to these destination countries. However, the concern of this study is whether the interest or the rights of these vulnerable minors are catered for within the policies and strategies the countries are putting to counter the menace. Thus, in as much as I agree with the destination countries that the presence of unaccompanied minors poses a challenge on their institutional set up, it must also be emphasized that as long as the push factors (which are mostly wars and political unrests) are present in their home countries, these minors will always want to leave. In fact because of the vulnerability of these children, The Convention on the Rights of the Child bestows on these unaccompanied minors right to special care and protection in all sphere of their need till they become majors or adults (Derluyn and Broekaert 2008, 17).

1.2 Theme and Research Questions

The main concern or theme of this thesis is to examine the policy that deals with unaccompanied children in Norway and the deportation or return of unaccompanied asylum-seeking children (UASC) to their countries of origin. It looks at the policy strategies, vis a vis the legal instruments dealing specifically with unaccompanied children seeking asylum in Norway and their deportation. Apart from this, the study is interested in finding out how children between 16 and 18 years are treated differently as well as how the policies dealing with the deportation of unaccompanied children conform to the United Nations Guidelines and the European Council directives. Additionally, the study explores how the policies adhere to the best interest of the child in dealing with unaccompanied children as advocated by various international conventions such as the 1948 Universal Declaration of Human Rights (UDHR) Committee on the Rights of the Child, the 1951 United Nations Convention Relating to the Status of Refugees and the 1989 United Nations Convention on the Rights of the Child (CRC).

1.3: Research Questions

The following research questions have been formulated to guide development of the study.

- Why do UAMs choose Norway as their destination country?
- What is Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years?
- How does the existing Norwegian policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives?
- How does the existing Norwegian policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions?

1.4. Objective of the Study

The general objective or aim of the study is to examine Norwegian's policy on the returning (deportation) of unaccompanied asylum seeking minors as well as the strategies put in place in the best interest of the child. Specifically, the study seeks:

- To find out the reason the children choose Norway as their destination country;
- To examine Norway's existing policy regarding the return of unaccompanied children between 16 and 18 years;
- To examine how the existing Norwegian policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives;
- To examine how the Norwegian policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions and in the domestic laws of Norway.

1.5 Significance of the Study

Norway is regarded as following the steps of other countries that have tightened their immigration measures in order to prevent the inflow of unwanted immigrants, especially, unaccompanied children seeking refugee status.

The study is going to shed light on the situation of unaccompanied asylum seeking minors in Norway. This way, it will enable policy makers understand the current dimension of the situation and how best it can be addressed especially whether minors should be treated the same way as all other people.

Again, the study will be exploring the strategies of the Norwegian government policy on the return of unaccompanied asylum seeking minors, by looking at how the best interest of the child is taken care of. This way, it would help both the Norwegian government not to infringe on the rights of the children. For the children, it would help as it seeks to ensure that their interests are catered for.

It also seeks to throw light on whether the New Migration Policy adequately addresses the best interest of the child as enshrined in the Convention of the Rights of the Child and other international policy documents dealing with the rights of children. The study is significant also in this regard because after reviewing or comparing these international policy documents with the Norwegian policy, any gap that is identified would be highlighted and the attention of policy makers drawn to. This would go a long way to better improve the Norwegian policy and also address the gaps in the interest of the children.

1.6. Prevalence of Unaccompanied Children Seeking Asylum

1.6.1 Unaccompanied Children Seeking Asylum in Norway

In Norway, the Directorate of Immigration (UDI) is responsible for minors ages 15-18 whereas the Child Welfare Service is responsible for all those below the ages 15-18. (Directorate of Immigration). According to the UDI, Norway has been recording a number of asylum cases over the years.

The data presented in Table 1.1 indicates that Norway recorded asylum applications totaling 89,530 from the year 2007 to 2014. With respect to children who are younger than 18 years and seeking asylum, altogether 9,001 unaccompanied children sought asylum in Norway over the

same period. The table below shows that the number of children seeking asylum varied significantly from year to year.

Table 1.1: Asylum Trends in Norway (2007 – 2014)

Number of Applications	Year							
	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
All Cases	6,530	14,430	17,230	10,060	9,050	9,790	11,470	10,970
Unaccompanied Children (Minors)	403	1,374	2,500	892	858	964	1,070	940
Total	**6,933**	**15,804**	**19,730**	**10,952**	**9,908**	**10,754**	**12,540**	**11,910**

Source: UNHCR (2004 - 2015); Institutt for samfunnsforskning (2014, 50)

In Norway the number of asylum cases has been on the rise. From the Table 1.1 above, asylum applications for minors increase from 403 cases in 2007 to 2,500 in 2009, to 1070 cases in 2013 and declined to 940 cases in 2014. This trend is indeed worrying and needs to be interrogated. From the information in Table 1.1, it can be seen that the issue of unaccompanied minors and even adults seeking asylum is pronounced and has assumed on average an increasing dimension. The UNHCR (2006 - 2009) estimates that globally, between 13 and 25 million people are refugees in various parts of the world.

A sad reality however about this global refugees population is that, approximately half of this are children. While some of these refugee children are accompanied by parents or other family members during their escape and flight to neighbouring countries or industrialized countries, others are definitely not with any parents or caregiver (Wallin and Ahlström 2005, 6). Of special concern to this study is the substantial group of these children who become separated from their families and therefore arrive in countries to seek asylum on their own. The increasing number of unaccompanied children seeking asylum in various developed countries has been and will continue to be of a great concern for governments of destination countries and the international community at large.

1.6.2: Unaccompanied Children Seeking Asylum in Europe

Europe and the EU have not been spared in terms of the menace of unaccompanied asylum minors evading the territory. The summary information with regard to the number of unaccompanied asylum seeking children applying for protection has been presented in Table 1.2 below.

Table 1.2: Europe and the EU Unaccompanied Asylum Situation (2011 – 2014)

Region	Year			
	2011	**2012**	**2013**	**2014**
Europe	327,200	355,500	485,000	714,300
EU	277,800	296,700	396,700	570,800

Source: UNHCR Asylum Trends (2012 – 2015: 2-3)

From Table 1.2, in 2011, 327,200 cases of unaccompanied children seeking asylum were registered by the 38 countries in Europe which happens to be 19% higher than what was recorded in the year 2010. The following years, the number of unaccompanied asylum applications in the region increased by 9%, 36% and 47%, bringing the asylum claims to 355,500, 485,000 and 714,300 in 2012, 2013 and 2014 respectively.

Additionally in 2011, 2012, 2013 and 2014 the states making up the European Union also registered 277,800, 296,700, 396,700 and 570,800 new asylum claims respectively with the 2012 figure being 7% higher compared to what they recorded during the previous year and the 2013 and 2014 being 34% and 44% higher than their previous year's figures. This also obviously depicts in increasing trend. A country data from the Federal Office for Migration and Refugees (2010, 16) revealed that 1,075 unaccompanied children applied for asylum in Germany in 2001.

This number however decreased, but increased again to 324 applications by unaccompanied children in 2008 and further decreased to 268 applications in 2009. Out of the 268 applications made by these unaccompanied children, 104 children were granted refugee status and 3 were given asylum status, 132 applications were rejected, 20 were redirected in accord with the Dublin procedure. Furthermore, a total of 439 applications were made by 16 and 17-year-old unaccompanied children in Germany in 2008. The top five countries of origin of these unaccompanied minors recorded in Germany in 2008 were Iraq, Vietnam, Afghanistan, Guinea,

and Ethiopia. Gender wise contrary to general trends, Ethiopia showed a greater number of girls than boys applying for asylum (Kühlmann 2011, 18).

The European Migration Network (2010a) revealed that in Netherlands, a total of 739 unaccompanied children were registered in 2008 and rising to 1,031 claims in 2009. Of all asylum seekers recorded in 2008, 25% represented children and which is an indicative of a sharp rise in unaccompanied asylum claims compared to the 1990's figure (European Migration Network, 2010a; Kühlmann, 2011, 9). Another study by the European Migration Network (2010b) disclosed that the greatest number of applications submitted by unaccompanied children in Europe in 2008 came from the United Kingdom and it totaled 4,285.

The least number was recorded in Lithuania with a single application. Poland obtained 376, Italy 573, and Spain 13 applications (Kühlmann 2011). In 2014, the EU received a total of 570,800 asylum application and with 173,070 asylum applications; Germany became the single largest recipient of asylum claims in the region. Sweden came second with 75,090 claims, then Italy with 63,655 claims, France followed with 58,845 claims, and Hungary came fifth with 41,215 claims. Furthermore, as at June 2015, the region had recorded 380,240 cases already. Germany again was ranked first among the EU nations after registering 154,105 unaccompanied asylum claims. Hungary came second with 65,480 claims, Italy third with 30,140, France fourth with 29,450, and Sweden taking the fifth place with 25,745 asylum applications (Eurostat 2015, in Immigratie en Naturalisatiedienst 2015).

The above comparative analysis of the prevalence of unaccompanied Children Seeking Asylum in Europe indicates that the issue of unaccompanied minors abounds in the region. Most asylum seekers find their way in Germany, Sweden, France, Italy and Hungary and that the source countries are mostly Afghanistan, Russia and Serbia with most of these asylum seekers being males.

1.6.3 The Global Situation: Receiving Countries

Up to this point, I have managed to paint a picture about the prevalence of unaccompanied children seeking asylum by first looking at the Norwegian picture, then broadening it down to Europe and finally to the world. This section deals with countries that receive most of the children seeking asylum.

It specifically examines the trend or the prevalence of unaccompanied children seeking asylum in the receiving countries. Thus, it aims to bring to light which country or countries have been recording or registering more or less cases of unaccompanied children seeking asylum. The state of affairs of children seeking asylum globally is presented in Table 1.3 below.

Table 1.3: Global Unaccompanied Asylum Situation - Receiving (2011 – 2014)

Region	Year			
	2011	**2012**	**2013**	**2014**
Australia/New Zealand	11,800	16,100	11,700	9,000
Japan/Korea	2,900	3,700	3,300	7,900
Europe	327,200	355,500	485,000	714,300
EU	277,800	296,700	396,700	570,800
Nordic Countries	38,998	62,900	76,400	106,200
North America	101,400	103,900	98,700	134,600

Source: UNHCR Asylum Trends (2012 – 2015: 2-3)

It is estimated that nearly 200 million people are staying outside of their home country globally (The Global Commission on International Migration 2005, 14). Available statistics shows that a total of 11,800, 16,100, 11,700 and 9,000 cases of asylum applications were recorded by Australia and New Zealand in 2011, 2012, 2013 and 2014 respectively. This shows that the trend of asylum cases has been on the decline in Australia and New Zealand. Apart from these, the Asian countries of Japan and the Republic of Korea also received 2,900 requests in the year 2011, 3,700 in the year 2012, 3,300 in 2013 and 7,900 in the year 2014 (UNHCR Report 2013, 2015, 2–3).

According to a report by the UNHCR Report (2012, 2-3), the figure recorded in 2011 represented 77% growth in asylum applications over that which was recorded in the previous year. Meanwhile, the 2012 figure was only 28% higher than the 2011 figure, declined by 11% in 2013 and increased again by 139% in 2014. This also indicates that apart from 2013, unlike Australia and New Zealand, the trend of unaccompanied asylum cases has been on the rise in Japan and the Republic of Korea (UNHCR Report 2013, 2015, 9). The cases of Europe and the European Union Member States have been explained in the previous section.

Apart from Europe, the Nordic nations which include Denmark, Finland, Iceland, Norway and Sweden also saw an upsurge in the yearly asylum claims. These nations together registered 62,900 asylum claims in the year 2012 which in fact represents an increase of 38% over its 2011 figure. It must be emphasized here that out of the 62,900 asylum applications recorded by all Nordic nations, Sweden alone received 43,900. These countries got 76,400 and 106,200 asylum requests representing 21% and 22% rise in 2013 and 2014 accordingly. Sweden's asylum application alone increased from 54,300 to 75,100 between 2013 and 2014. Thus, the Nordic countries also have been experiencing increased asylum application cases over the years (ibid). In North America, the case was no different. This is because the region received 101,400 applications in the year 2011, 103,900 in 2012, 98,700 in 2013 and 134,600 in 2014. This means that between 2011 and 2012 asylum cases increased by 3%, fell by 5% in 2013 and increased further by 36% in 2014. Over the same period, Canada also did register new applications totaling 20,500, 10,400, and 13,500 in 2012, 2013 and 2014 respectively. In fact, the 2012 figure fell below the 2011 figure by 19%, fell by 49% in 2013 and increased by 30% in 2014.

With reference to the United States of America, 83,400 claims were registered in 2012, 88400 in 2013 and 121,200 in 2014. This corresponds to a 10% increase in 2012 over its 2011 figure, 25% in 2013 and 44% in 2014. With these figures, the United States (US) was ranked the country with the highest number of asylum applications in 2012 among the 44 countries covered by the report. Germany, France, Sweden, as well as Great Britain and Northern Ireland followed with 64,500; 54,900; 43,900; and 27,400 cases correspondingly (UNHCR Report, 2013, 2015: 2 – 3).

However in 2013, German registered 109,600 new asylum requests and for that matter became the single largest recipient of asylum claims among the 44 industrialized nations the UNHCR report covered. Germany was followed by the US with 88400, then France with 60,100 claims, Sweden with 54,300 claims, and Turkey came fifth with 44,800 claims. In 2014, Germany again was ranked first among the 44 industrialized nations after registering 173,100 unaccompanied asylum claims. The US came second 121,200, Turkey third with 87,800, Sweden fourth with 75,100, and Italy taking the fifth place with 63,700 asylum applications (UNHCR Report, 2013 and 2015).

The above presentation shows that asylum claims have been on the increase in Europe as well as other non-European regions.

1.6.3.1: The Global Situation: Source Countries

Apart from examining countries where asylum seekers often go to, the study sought as well to explore the source or countries of origin of these asylum seekers. The information is summarized in Table 1.4 below.

Table 1.4: Global Unaccompanied Asylum Situation (2011 – 2014)

Countries	Year			
	2011	**2012**	**2013**	**2014**
Afghanistan	35,700	36,600	36,081	59,472
China	24,400	24,100	20,220	22,277
Iraq	23,500	21,010	37,321	68,719
Syria	-	24,800	56,400	149,600
Pakistan	-	23,200	25,199	26,332

Source: UNHCR Asylum Trends (2013: 23; 2014: 25)

Asylum seekers from Afghanistan in 2010 and 2011 were respectively 31,573 and 35,700 in the 44 industrialized countries. It was found to be the largest source country having and it represents a 34% increase over 2010 figure. China was ranked the second largest source country having 24,400 applicants. This was followed by Iraq with 23,500 asylum applicants. Due to the political instability in some areas of West Africa and the Arab world, asylum-seekers from Côte d'Ivoire, Libya, Syria and other countries reached record levels in 2011 with 16,700 more claims than in 2010. In the year 2012, Afghanistan continued to be the country of origin for most asylum-seekers within the 44 industrialized countries with 36,600 asylum claimants. This was followed by the Syrian Arab Republic with 24,800 claims, Serbia with 24,300, China with 24,100 and Pakistan also with 23,200 (UNHCR Report, 2012).

In terms of regional distribution 46%, 25%, 17% and 8% of all asylum seeking individuals originated from Asia, Africa, Europe and the Americas respectively in the year 2012 (UNHCR Report, 2013). According to the UNHCR, about 866,000 asylum claims was recorded in 2014 which represents an increase of about 45 percent as compared to the year 2013 (UNHCR Report, 2014). This sudden increase and the current influx of refugees seeking asylum is of great concern to host countries. On the whole in terms of the source countries, the UNHCR Report (2012, 2013 and 2015) revealed that with 36,600, Afghanistan became single largest country from which people made asylum application claims to the 44 industrialized countries in 2012.

This was immediately followed by the Syrian Arab Republic with 24,800, Serbia with 24,300, China with 24,100 and Pakistan with 23,200 claims. In 2013 however, the Syrian Arab Republic emerged first among the five top source countries with 56,400 asylum seekers. The rest were respectively the Russian Federation, Afghanistan, Iraq, and Serbia. The top five order of ranking from the largest to the least source countries as registered in 2014 saw the Syrian Arab Republic being first and having 149,600 asylum seekers. The second was Iraq and the rest follow as third Afghanistan, fourth Serbia and the fifth being Eritrea (UNHCR Report 2012, 23, 2013, 25 and 2015, 23).

Chapter Two: Theories, Concepts and Research Methodology

2.0 Introduction

This chapter presents concepts, theories that underpin the study and the research methods chosen to analyse issues related to policies about unaccompanied asylum seeking minors in Norway. The chapter is divided into components namely definition of key concepts, theoretical framework as well as the research methodology. Among the concepts defined are asylum seeking, unaccompanied children, and the interests of the child. The theoretical framework addresses issues such as push and pulls factors, world culture and human rights, based on social justice.

2.1 Key Concepts:

2.1.1 Asylum seeking

This refers to the practise of people moving across borders in search of protection in such a way that may not fulfil the strict criteria laid down by the 1951 Convention (UNESCO, 1995-2012). Thus, it is the process by which a person seeks asylum. It is a frustrating exercise because according to the Nordic Statistical Yearbook (2010), it is not automatic that the very year an asylum is sought it will be granted the same year.

The common trend however has been that majority of applications are rejected in all countries. Closely related to asylum seeking is the term asylum seeker. An asylum seeker is a person who has made an application for asylum under the 1951 Refugee Convention on the Status of Refugees indicating that he/she has a well-grounded fear of persecution on the basis of race, religion, nationality, political belief or membership of a particular social group and for which reason cannot return to his or her country of origin (1951 Refugee Convention).

Asylum seekers have also been defined as “those who have applied for refugee status in a country, but are waiting for a decision to be made about their legal right to remain in that country” (The Church of England 2005, 1). In furtherance of the above, the Cambridge Advanced Learner’s Dictionary and Thesaurus (2014) describes an asylum seeker "*as a person who leaves his/her home country mostly due to political instability or war and moves to another*

country with the hope that the government of the destination country will offer protection and allow him/her to stay there."

It has been estimated that on average, close to 1 million persons apply for asylum on an individual basis each year. By mid-2014, more than 1.2 million people had applied as asylum-seekers. Every nation has their established institutions that decide which asylum-seekers actually qualify for international protection. Those who are found to be deserving of international protection are granted but those who are found not to be in need of any other form of international protection, can be sent back to their home countries. In Norway for instance, it is the responsibility of the police to register asylum seekers and also to verify or investigate the authenticity of their identity, find out how the asylum seeker has come to Norway and then offer the person an accommodation in an asylum centre.

In fact, asylum seekers have been described as "extremely marginalized and vulnerable people". The reason is that, "they have ceased to be under the protection of the governments of their own countries, and are unable to return home through fear of persecution" (The Church of England 2005, 13).

From the foregoing discussion, it is clear that an asylum seeker is operationally defined in this paper as a citizen of a country who has fled his/her country of origin and is seeking refuge in another country and is unwilling to go back home for the fear of persecution and that asylum seeking is the process leading to the granting of the asylum status. Asylum seeking is however defined in accordance with UNESCO (1995-2012).

2.1.2 Unaccompanied Children

In terms of who is an unaccompanied child or minor, both the UNHCR (1997) and the UN Committee on the Rights of the Child (2005) define it as "a person under 18 - unless the law applicable to the child stipulates a younger age of majority - who is separated from both parents and is not under the care of another adult who has such responsibility, whether by law or by custom". The UK Border Agency (2009b) also defines an unaccompanied asylum seeking child as a child who is below 18 years and is applying for asylum on his/her own accord; and who has been separated from both parents and not being cared for by any adult who by law or custom is responsible to do so. The term unaccompanied minor can also been defined as,

> "A third country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a

> minor who is left unaccompanied after they have entered the territory of the Member States" (European Parliament and the Council 2003/9/EC).

Additionally, the Norwegian Directorate of Immigration (UDI, 2009) also explain unaccompanied asylum seeking children as children and young people less than 18 years of age who arrive in Norway to seek asylum unaccompanied by parents or other persons who have parental responsibility for them.

All the above definitions agree on some common issues that an unaccompanied minor or child is any individual below the age of 18, who is a citizen of another country, but has been left on his/her own and is seeking asylum. In the context of this paper, the terms "children" and "minors" are used synonymously and that both terms refer to persons under the age of 18 years. Furthermore, in this paper unaccompanied children or minors are operationally defined in line with the Norwegian Immigration Directorate (UDI) as any children and young people below 18 years of age who arrive in another country to seek asylum but are unaccompanied by parents or other persons who have parental responsibility for them.

2.1.3 The Best Interest of the Child

The term best interest generally refers to the welfare of the child (Hancilova and Knauder 2011, 26). In its strictest procedural sense, determining the best interest of the child involves a laid down process intended to take key decisions that ultimately affect the child and it seeks to promote adequate child participation devoid of discrimination, involving decision makers with requisite expertise and weighing all relevant factors to come up with the best possible option for the child (UNHCR 2008b, 8).

The term best interest of the child is defined in the framework of this study according Goldstein, Freud and Solnit (1973, 22). In their book entitled 'Beyond the Best Interests of the Child', they alluded to the fact that the law singles out the child, just as custom does, for a distinct attention. Thus, laws that protect children are society's response in providing children with an environment which adequately serves their needs. To them, serving the best interest of the child is synonymous to instituting laws that recognize the need to protect the child's physical well-being and thus, the child's welfare should be the paramount consideration whenever a child's placement becomes the subject of official controversy. It thus challenges authorities to consider the child and seek his/her opinion before any decision affecting their life is made. Henaghan (1994, 1) admits that the "best interests of the child" or the "welfare of the child" principle is

and has indeed been central to legal decision-making about children for the whole of the century.

The primary legal instrument that ensures the protection of children is the 1989 Convention on the Rights of the Child (CRC). It has four main directive principles namely non-discrimination (Article 2); the best interest of the child (Article 3); right to development (Article 6) as well as right to participation (Article 12 in). The determinants of this welfare include factors such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences. The analysis and application of the best interest of the child principle must be consistent with the CRC for it is enshrined in the Article 3 (1) of the CRC that:

"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" (Article 3 (1)).

This principle calls on the three arms of governments namely the executive, parliament and the judiciary to take active steps to ensure its realization. Even though this section of the CRC enjoins governments, authorities and law makers to consider decisions made for children, it has interpretational challenges (Blakstad, 2013: 28-29) especially where instead of the best interest of the child shall be "a primary consideration" some authorities otherwise state it as "the primary consideration". The consequence of the latter is that the return policy strategy concerns can weigh more than the best interest of the child. It is in view of these interpretational challenges that the present study intends to explore and analyse the strategies put in place to find out how it reflects the interest of the child as stipulated in the convention of the rights of the child.

In their quest to operationalizing the best interest of the child principle, the New Zealand Guardianship Act (1968) Section 29a mandates a judge in the New Zealand Family Court when considering the best interests of a child to request for a specialist psychological report.

The rationale for requesting for such a report is to get expert opinion on the child's psychological or mental, emotional and social functioning, and to get an understanding of the possible psychological implications of diverse custody and access options.

As a matter of fact, the society's desire to protect children and prevent them from any harm ought to lead to the development of policies - be it social, educational or the justice systems -

for keeping children safe at all times (Goodyear-Smith and Laidlaw, 1999: 731). Studies in New Zealand and also within international circles have shown that the outcome has been positive. It thus follows incontrovertibly that any comprehensive child protection system should consist of laws, policies, procedures and practices intended to avert and deal effectively with child abuse, neglect, exploitation and violence.

The responsibility therefore rests on countries to uphold the institution and application of child protection systems, in keeping with their international obligations. A number of countries have ratified or signed the UN Convention and Protocol Relating to the Status of Refugees and by doing so, all member states came to an agreement to offer protection to refugees and also to respect the non-refoulement principle, which requires that refugees are not deported to their countries of birth where they face the risk of persecution (Castle and Miller, 2009: 188 – 189). Norway is one of the countries that have ratified the CRC (in December 1991) and it is also one of the European countries advocating so much for the rights and protection of children. Ratification by definition refers to:

"Affirmation or approval; adoption of an action that was done on one's behalf and treating that action as if it had been authorized by that person before the fact of it having been done. By ratifying an act or action, a person becomes responsible for the consequences of that act or action" (Wallace and Wild 2010, 215).

This means Norway has affirmed, approved and adopted the CRC which was instituted by the UN. By ratifying the convention, countries have to ensure that the provisions and the principles of the treaty fully reflect the realities on the ground and given legal effect in relevant domestic legislation. In case of any conflict in legislation, supremacy or preeminence should always be given to the CRC which among other issues indicate the rights to participate in the decision making processes (Article 2).

But the direct opposite seems to be the reality on the ground as far as the findings of a study conducted by Knauder and Hancilova (2011, 29) using 10 EU member states is concerned. In In fact, they make suggestions pointing to the effect that the provision of care is done only in terms of board and lodging but issues relating to the children's emotional and psychological requirements are grossly underrated. They indicated however that such specialized support services are offered only when the need be especially in cases where a child may have made attempts to commit suicide.

They further identified insensitivity of state authorities whose duty it is to protect and care for these children in destination countries coupled with insufficient budgetary allocations as the principal factors that inhibit the principle of the best interest of the child. In addition, to the extent that many guardians are unable to do not create close and regular bonds with children they are supposed to care for, the extent to which they are able to make decisions on the basis of the best interest of the child is compromised. They identified this also as one of the challenges inhibiting the principle of the best interest of the child.

In consequence, the study acknowledged that there were severe breaches in relation to what member states' obligations toward ensuring the best interest of the child as codified in international law and reality what exists on the ground. Although Norway was not among the 10 states Knauder and Hancilova (2011, 29) investigated in their study it must be emphasized, their findings I believe provide the impetus for other studies such as this to be conducted in order to ascertain how Norwegian return policy is a reflection of the policy set by the United Nations and whether or not the policy is based on 'the best interest of the child' principle.

The best interest of the child is defined in the framework of this study according Goldstein, Freud and Solnit (1973). In their book entitled 'Beyond the Best Interests of the Child', they alluded to the fact that the law singles out the child, just as custom does, for a distinct attention. Thus, laws that protect children should be society's response in providing children with an environment which adequately serves their needs. To them, serving the best interest of the child is synonymous to instituting laws that recognize the need to protect the child's physical well-being and thus, the child's welfare should be the paramount consideration whenever a child's placement becomes the subject of official controversy.

It thus challenges authorities to consider the child and seek his/her opinion before any decision affecting their life is made. Henaghan (1994, 1) admits that the "best interests of the child" or the "welfare of the child" principle is and has indeed been central to legal decision-making about children for the whole of the century.

2.2 Theoretical Framework

Policy on unaccompanied asylum seeking minor has been studied from various angles with different lenses. Whereas a number of these studies look at the media and practices of the policy (Stretmo 2012), many more have also looked at the role of the stakeholders involved in the

policy. A study conducted by Staven and Lidén (2014) also took their turn to examine the strategies put in place with a specific focus on the practices and data.

The study present, with its main focus on strategies put in place "in the best interest of the child" has chosen the push and pull theory, world culture theory and the human rights approach as a tool to understand how Norwegian return policy is a reflection of the policy set by the United Nations and on the issue of the policy being based on 'the best interest of the child'.

In doing so, some theories have to be explored to aid in addressing the principal objectives of this paper. The first of it is the push-and-pull theory which seeks to explain that there are intrinsically certain push and pull factors inherent in both the origin and destination countries that support the migration of people. Although this theory is unable to explain exclusively unaccompanied children's rationale for migration, it offers however in part a useful insight especially into the reason(s) why the children might choose Norway as their destination country which of course is important as far as the first objective of this paper is concerned.

2.2.1 Push-and-Pull Theory

This theory was first formulated by Lee Evan in 1966. It seeks to provide explanations on account of what drives the individual (the push-factor) to want to leave his or her country of birth and also the reason (the pull-factor) the individual will opt for a particular destination country such as Norway (Grujicic 2013, 13). This means that in both the source and destination countries, various forces work as a confluence to affect the arrival figures or records of any of the destination countries.

The factors that usually push asylum seekers out of their countries of birth consist of forces such as low standard of living, low economic opportunities (Boland 2010, 10), political repression and war (Castle and Miller 2009, 26) to mention but a few. The pull factors or the attractions in destination countries on the other hand are better improved standard of living, good economic opportunities, political freedom (Castle and Miller 2009, 26), level of social welfare and protection, access to work, social care and benefits (Frontex 2010, 5-23). It is apparent from the above that the drivers or push forces and the attraction or pull forces are fundamentally issues of economic prosperity, social or welfare issues as well as matters having to do with conflicts emanating from political animosity.

Contributing to the discussion, the EU Agency for Fundamental Rights (2010, 1) outlined the following as reasons why unaccompanied minors move to the EU:

> *"Escape from wars and conflicts, poverty or natural catastrophes, discrimination or persecution or serious harm, i.e. international protection (asylum); in the expectation of a better life, following economic and aspirational reasons; to join family members; as victims of trafficking in human beings destined for exploitation, such as sexual exploitation and forced labour or services"* (EU Agency for Fundamental Rights (2010, 1).

Norway as a destination country has equally been attracting unaccompanied asylum seekers for some reasons. The forces of attraction in an interview with unaccompanied minors seeking asylum in Norway by Brekke and Aarset (2009, 95) include firstly security, which is expressed in the form of human rights, protection, fair asylum process; secondly, future which is explained in terms of access to labour market, education for children, welfare state; thirdly, Networks; fourthly, immigration and asylum policy; and finally, reputation/image in terms of their conviction that Norway is a good country.

It is important therefore for governments of developed nations to support developing countries to improve upon their economies and to help create equal opportunities and access. This would go a long way to reduce this menace of influx people into developed nations. In fact, the United Nations Committee on the Rights of the Child admitted that this group of children find themselves in helpless situations at the destination countries. It is in fact the reason that it issued the General Comment No. 6 on how unaccompanied as well as separated minors are to be treated outside of their countries of birth (CRC General Comment No.6, 2005, para. 79).

From the above deliberations, it can be deduced that like other migration theories the push and pull theory fundamentally admits that there are push and pull forces that work to influence every migration. It is equally characteristic that migrants do cost-benefit-analysis of their situations before leaving their countries of birth (Castle and Miller 2009, 26). This means that before migrants move they do critical and extensive analyses of their situations and as well as the destination country they choose. The entire exercise involves a complex decision making on the part of the migrant.

The above analyses indicates that economic and political security, immigration and asylum policy; reputation/image, and the quest for greener pastures, and the existence of networks

inherent in both the source and destination countries work together as drivers on one hand and attraction on the other hand to force the individual out of his or her country of birth. This theory is mostly used because it offers us the opportunity to explain the motivations behind every migration movements. Thus, on the basis of the above analyses, one can fathom why unaccompanied asylum seeking children may choose Norway as their destination country.

It must be pointed out that most scholars hardly consider the push and pull as a theory. They see it rather as "a grouping of factors affecting migration, without considering the exact causal mechanisms" (Hagen-Zanker 2008, 9).

2.2.2 World Culture Theory

The world culture theory according to Jones et al. (2004) is mostly applied in educational research to enable them investigate how educational policies formulated within educational systems are influenced by pattern or models set by international bodies and are channeled through nations.

Similarly, this study taps into the world culture theory by relating it to the Norwegian return policy and fundamentally to ascertain how it reflects the policy framework instituted by the United Nations and to what extent the Norwegian policy addresses the interest of children who find themselves in such an unfortunate situation. For this reason, the next section explores the world culture theory.

This theory has emerged as one of the many neo-institutional theories, was pioneered by researchers from the Standford University under the instrumental leadership of John Meyer. It attempts to explain why globally there is expansion as far as mass schooling is concerned. Theoretically and in accordance with Meyer et al. (1977, 255) in Carney, Rappleye and Silova (2012, 368), the theory asserts that expansion in education does not reflect the sociopolitical and economic fabric or features of any individual nation but rather stems from the "characteristics of the contemporary world system" and impacting "all nations simultaneously". According to Meyer (1997), most features of many countries in contemporary times are a reflection of worldwide models constructed and transferred through the global culture and its associated means. Such models and their purpose as indicated by the author are highly rationalised.

Worldwide models define legitimate agendas for actions to be taken at the local levels, shaping the structures and the policies of many nation states in terms of their policies, goals and the means of attaining them. Jones et al. (2004) argued that these models that become the basis for policy formation in nation states are pioneered by international organisations such as the United Nations (UN), UNICEF, and many other of their kind.

Though there may be differences in the implementations of these models as they are affected by culture, history and socio-economic background, they are mostly affected by these legitimate agendas and this Meyer (2007), mentioned turn out to be the determinant for the formation of the main world culture theory.

Policy on asylum seeking minors in many western countries in this study is argued as not being different from those prescribed by the United Nations and as such might be the basis on which the Norwegian policy on minors seeking asylum as well as policy on their return are formulated. It is in this vein that the study has adopted the world culture theory in collaboration with human rights based on social justice to analyse the return policy on the asylum seeking minors in Norway. The concept of *legitimacy* as is enshrined in the theory will be used as a working tool in the analysis of the policy on asylum seeking minors in Norway to ascertain and see how they are consistent with those prescribed by the United Nations.

2.3 Human Rights, based on Social Justice

The third theory adopted in this paper is human rights based on social justice. As a concept, human rights can be defined as rights that are basic or fundamentally inherent to all humans and which are endorsed by laws. Human rights come in the form of treaties and declarations, guidelines and principles that have been accepted under the auspice of the United Nations (UNICEF, 2003). These laws are intrinsically basic, inseparable and very vital to humans and the development of any society. The right-based framework has been considered as the foundation on which countries take decision and follow processes to effect change because of the norms and value they represent.

Human rights, based on social justice, are one of the contemporary theories on human rights in the field of the social sciences advanced by Rawls. Rawls in Donnelly (2003, 65), on human rights distinguished political conception of justice from religious, philosophical or moral doctrine that all individuals irrespective of colour, race, gender and geographical location

should enjoy. Donnelly (2003) also argued that the political, religious and philosophical conceptions of justice in most cases overlap, this is because in tackling one the other needs to be taken care of and demands that all people are to be treated with "equal concern and respect". This point made by Donnelly (2003, 65) is the focal point of this thesis.

This then means that as humans no matter where one finds him or herself in the world whether planned or are moved by circumstances should be treated well. This by extension as far as this study is concerned, policies that deal with minors seeking asylum and on their return need to be considered and efforts be made to make sure they do not violate the basic rights of these children. Also, whatever decision is taken on these minors must indeed be in their best interest and in harmony with model which has been agreed on by the United Nations. It is also expedient that while in the receiving country or on their return, opportunities that makes life comfortable for all humans are made available for them to advance in life and for their well-being (Donnelly, 2003).

On the issue of rights based on social justices, Tilky and Barrett (2012) has said that there is the need to recognise all groups of people in decision making processes without discrimination with the aim of having their voices heard. By extension the return policy that seeks to have the best interest of the child must somehow involve minors at every stage of the processes so that its outcome will really reflect their interest.

2.4. Justification of the Theoretical Framework

There is a host of literature to examine and write about on the welfare and the return of UAMs but for sake of precision and clarity a relevant theoretical framework and a comprehensive literature overview are used. I will start with the Push and Pull factor; the push which explains why a child will leave his/ her country, and pull which explains why the child will want to live in another country or seek asylum in another country. Then is the World Culture Theory which touches on modalities and worldwide models that define legitimate agendas for actions to be taken at the local levels, shaping the structures and the policies of many nation states in terms of their policies, goals and the means of attaining them. Jones et al. (2004) argued that these models that become the basis for policy formation in nation states are pioneered by international organisations such as the United Nations (UN), UNICEF, UNCHR, and many other of their kind. Norway uses most of the United Nations laws in its own domestic laws and by so doing

has upheld institutions and application of child protection systems, in order to keep with their international obligations.

2.5 Methodology

2.5.1. Background and Choice of data

The study relied on both primary and secondary data from various sources. Information gathered has been based on both primary and secondary sources of data to help answer research questions set for the study. This involved a review of texts from books, policy documents, human rights rapporteurs, individual research papers (both qualitative and quantitative studies) and other relevant organisations like Non-Governmental Organisations for the purpose of the study.

Again, google, google scholar, and J-store were the search engines used for the search of relevant literature for the study. The study also used other websites of government and non-governmental organisations that addressed issues related to asylum seeking minors in the country under study. Many documents and texts were selected to compare the similarities and differences in the text in order to get information that are relevant for the study.

I accessed from the Norwegian administration page and accessed Government White Paper (Meld. St. 27, 2011-2012), to gain insight into how the phenomenon under study has emerged over the years.

The Norwegian Parliament web page (Stortinget.no) was accessed to gather information on Parliamentary proceedings on the issue. I further obtained relevant documents from Instillinger (Parliamentary Committee response on asylum seeking minors and reports). I did all this with the aim of gathering information and data for the study. Many documents and texts were selected to compare the similarities and differences in the text in order to obtain pieces of information that are relevant for the study. I accessed from the Norwegian administration page and accessed Government White Paper to gain insight into how the phenomenon under study has emerged over the years and the debates around it over the years. In addition "Lovdata.no" which provides access to a collection of online legal resources in Norway was used in the study to find domestic laws which was necessary for the study.

In terms of its design and analysis, the study employs the qualitative approach. It basically took the form of desk research analyzing from reports and other forms of literature to answer the research questions.

Again documents on child protection from the website Lovdata.no was accessed to find the Norwegian domestic laws on children. The stories that were selected were consistent with the objectives of the study. Articles from journals used dated back from to 2016; this was done to ensure that child welfare policies in the past are consistent and a buildup on current situations. J Store, Google Scholar were as websites for data source as most of articles there have undergone peer review and so data could be trusted.

2.5.2. Study Design

In terms of design, the study employs the qualitative approach to gather information rich data for the phenomenon under study. Qualitative approach is used because it aimed at gathering data from sources that had firsthand information from participants(Chambliss and Schutt,2009) It basically took the form of desk research analyzing from policy documents and records relevant to this study, (Schwandt, 2007:75). The study is both descriptive and explorative. This implies that data *be examined, interpreted in order to elicit meaning and develop empirical knowledge.* (Corbin & Strauss, 2008; Rapley, 2007) in (Bowen, 2009:27). Most of the documents I will analyse are government policy documents from "Regjeringen.no and Lovdata.no and others from the United Nations website. In addition written reports from the Norwegian media and other forms of literature has also be examined and interpreted.

The following questions are used as a framework to better examine, and understand the intension and purpose of the return policy:

- What is Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years?
- To what extent does the existing Norwegian policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives?

- To what extent does Norwegian's existing policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions?

In addition, the key concepts: ***asylum seeking, unaccompanied child or minor and "best interest of the child,"*** seek to clarify and make explicit the values, principles, and assumptions within the policy documents. This will help sort out the various meanings and to unpack terms loaded with values and questionable assumptions.

2.5.3 Methodological Assumptions and Beliefs

I am aware that my initial understanding may not be the only plausible interpretation of the findings. Being aware of this can have a positive influence in minimizing subjectivity. Again, by provision of theoretical framework, fully expressing and accounting for what I have sought for in documents may make both the reading and the conclusion of the study easier. I

have sought for in documents may make both the reading and the conclusion of the study easier. I therefore consider interpretation as the centre of this study in that it has to explore and recreate the ideas behind the policies by interpreting them through the theories of world culture, human rights and the best interest of the child. The study therefore relies on the hermeneutic approach *which seeks to explain their meaning and intention* (Rosenbreg, 1995:91) in (Fernandes 2007,15) *in the form of written documents and texts*. This implies that the intention in this study is to interpret the documents for understanding and not to offer explanation to the phenomenon under study.

2.5.4. Methodological Issues and Consideration

Adopting document analysis as the main method has its advantages and disadvantages. One of the advantages may be availability of documents as Merriam (2009, 155) indicates. Searching for government and public documents and books for this study was readily available both in the libraries and on the internet.

Another important advantage is the stability of the documentary material. (Merriam 2009, 155). During interviewing and observation, the researcher's presence can influence or change the phenomenon under study but documentary research does not alter what is being studied. (ibid: 155). This explains why documentary data is said to be "unobtrusive" or "non-reactive"

Reflexivity, which is the impact of the researcher's contribution to social actions under investigations will not be a problem in this study because the study does not depend on social interactions for research purpose. (Bowen 2009, 31.)

Exactness is another advantage in documentary study in that the exact names, references, and details of events make documents advantageous in the research process. These make the study cover a broad area of the phenomenon under study. (ibid, 31)

Though document analysis has many benefits, there are some disadvantages too. The purpose for which the document was produced can be a disadvantage in that the document may exist for purposes other than research (Merriam 2009, 156) and for that matter information needed for the study may be incomplete. Incomplete information suggests biased selectivity that can also influence my interpretation in the study.

I may have had a pre construed idea before the study which can also influence the phenomenon under study. Prejudice and prejudgments of the documents can also affect my interpretations. Meanings in the documents may therefore not be thoroughly explored but by using a structured framework the study can *compensate for the strengths and weaknesses in the methodology.* (Fernandes 2007, 16).

I believe that my standpoint in selection of documents will be without prejudice and that will reduce any form of bias, should there be any, and that the study will be concluded by providing a better understanding of the policies as regards to the return of UAMs.

Chapter Three: Norwegian Child Welfare Policy - Best Interests of the Child

3.0 Introduction

This chapter examines the welfare of the child in Norway in relation to the doctrine of the best interest of the child. The chapter begins with a historical background of Norwegian child welfare policies and the doctrine of the best interest of the child as it pertains to the Norwegian context.

3.1 Child Welfare in Norway

3.1.1 History of Child Welfare in Norway

All through history, child welfare system has evolved in line with changing beliefs and attitudes about what the role of government should be when it comes to protecting and caring for abused and neglected children. Early government interventions in this regard were characterized more by practical concerns about meeting the physical needs of children than by concern about the negative impacts of abuse and neglect on children's development. As public awareness about child abuse and the damage it caused grew, the importance of child protection received greater attention by government officials (Skivenes, Barn, Kriz, and Pösö, 2015, 15). Societies differ in their ways of protecting children from abuse and neglect and providing for children's needs and interests.

Norway's child welfare system dates back to the 1800s. It has become one of the viable child welfare systems in the world. Between 1600s and 1800s as Dahl (1978, 10) reports, as part of welfare measures schools were established. These schools operated as detentions centres called "tukhus". According to Befring (2005, 19), these special institutions were positioned at Grøndland area in 1841 to replace traditional punitive measures. They were christened "rescue establishment" and tasked to provide education and care for neglected children and juvenile delinquents. They were later moved to islands such as Ulfsnesoy, Lindoy and Bastoy with the aim of protecting the children from immoral influences from their environments.

The migration of these institutions to the countryside enhanced farm work in the island regions of Ulfsnesoy, Lindoy and Bastoy according and as a result, the latter part of the 1800s saw considerable move of institutions to the farm lands. These institutions later became "school homes'' in the Guardianship Board Act of 1896 (Dahl 1978, 11 and Befring 2005, 2).

To complement these efforts many other institutions such as criminal justice system, asylum and health institutions also became functional under the school system in addition to public health service for children and younger people. All this while, child welfare services were provided at regionals levels until the mid-1820s when the country begun an exercise to make it operational at the national level to replace what was been implemented earlier at different regional levels. So a law was passed in 1845 changing the country's social and political history which required each town and municipality to appoint a relief commission for the poor and so establish a board of permanent supervisors (Befring, 2005, 2).

As a way of improving upon its welfare system, on 6th June, 1896 the first ever child welfare law called the 'Act Relating to the Treatment of Neglected Children', got passed by the Norwegian parliament. This law, also called the Guardianship Board Act, has come to be the

heart of care and protection for children in Norway. This Act also focused on education and as such pursued many initiatives for children and young people and on account of that, Befring (2005, 2) acknowledged resulted in a decline in the influence of criminal justice at the time.

The thinking behind the development of the educational system during the time was that all children needed positive upbringing for them to develop. In Norway, it is the responsibility of the Ministry of Children, Equality and Social Inclusion to manage the general child welfare policy. However, when it comes to dealing with child welfare cases, it is the local child welfare services in the municipalities that handle it. Thus it is the sole responsibility of the municipalities handle individual child welfare case with the ministry having no authority whatsoever to intervene in such matters (Royal Norwegian Embassy in Washington, 2016: para. 2).

The primary objective of the child welfare service is to help children and families. Because the child welfare service is founded on the principle that children ought to stay and grow up with their parents, it places prominence on family bonds and continuity in children's upbringing. Every year the Norwegian child welfare service assists about 53,000 children in Norway out of which over 80% was in the form of freely assistive measures for children and families taken the form of advice and guidance to parents on parental practices, counselling, economic aid, day care services to mention but a few (Ibid, para. 2).

By the end of 2014 the child welfare services provided assistance to a total of 33,321 children. These children were below 18years and out of this, 21,659 children representing 65% receiving home-based treatment but the remaining were sent to either foster homes, residential care units or residences with follow-up as provided for under section 4-14 of the Child Welfare Act. In fact, the child welfare services reserves the right to place a child outside the home either permanently or temporarily with or without the consent of their parents depending on the seriousness of the issue (see section 4-20: 20). The 2015/16 report published by the Statistics Norway disclosed that about 24,658 (i.e. 74%) of the children were under the care of the child welfare service while the rest were placed outside in 2014 for reasons like behavioural problems exhibited by the child, on voluntary placements basis, or on grounds of emergency especially where the agency feels a child may not be safe staying at home (Statistics Norway, 2015).

3.1.2 Welfare with Equal and Universal Benefits

Esping-Andersen (1990, 7) referred to the system of child welfare in Norway as socially democratic based on the fact that it provides all and sundry with equal and universal welfare benefits. Also, commenting on the principles that regulate child welfare system in Norway on 7th January, 2016, the Royal Norwegian Embassy in Washington made it clear that the Norwegian Child Welfare Act affects all children in Norway, irrespective of the child's background, religion, nationality or residential status. The statement further said that the best interest of the child as enshrined in Article 3 of the CRC is the primary consideration in the work of the child welfare service (Royal Norwegian Embassy in Washington 2016, para. 2).

In spite of the fact that the child welfare service places importance on family connections and for that matter makes children's upbringing the responsibility of parents in Norway, it is fair to say that the state plays an active role in terms of the need, care as well as protection of the child (Sengupta 2013, 21). This by extension means that welfare or upbringing of the child is understood in Norway as a shared responsibility between the state on one hand and the parent(s) on the other with the state making sure that basic needs of the children below 18 years especially all less privileged under its jurisdiction are catered for until they attain the age of majority.

Thus, the state provides supportive or assistive measures which take the form of advice and guidance to parents on parental practices, counselling, economic aid, day care services, portable water, good healthcare, housing, education etc. According to Sengupta (2013, 18) several international laws are used in tandem with Norwegian laws to deal with protection and prevention of all forms of violence against the child. The Guardianship Board Act was the first Act to be enacted in 1896; however, this came into full operation on 1st September, 1900. This Act aimed at putting all "morally depraved" children in foster families, children homes or residential schools which has become the spring board for the "barnehage" system (i.e. the kindergarten system) in Norway. This law was the first of its kind in charging the state and the parents with the responsibilities of the neglected children.

Through experiences in taking care of the need of children in general and the neglected children coupled with the changing nature of society, the Guardianship Board Act which has operated for almost five decades was later replaced by the Child Welfare Act of 17th July 1953 and according to Befring (2005, 13) the new legislation did not make any difference in understanding the challenges associated with children upbringing and youth in general. The Act was not too clear and dealt with categorisation.

Sengupta (2013, 24) writes that the new Act made it possible for drastic steps to be taken to relocate children from their original place of dwelling for their own protection as the last resort when all other measures put in place proves futile. The economic grounds on which children were taken from their parents were erased as this was captured under the Social Acts. In October 2003, in order to secure the legal position of the child, Norway again amended the Human Rights Acts of 1999to include the Conventions of the Rights of the Child making it a national law that supersedes the statutory law (ibid, 17).

From the above submission, it is fairly reasonable to assume that the Norwegian child welfare services ensure equal and universal benefits. Furthermore, the submission makes it evident that Norway has integrated the UN Convention on the Rights of the Child into its child welfare law; a right that enjoins and makes it an obligation for nations to protect children in accordance with its legislation. This however cannot be taken as the gospel truth because Knauder and Hancilova (2011, 29) after investigating the situation in 10 EU countries which did not actually include Norway found that serious gaps exist in the application of the best interest of the child principle. Thus, most countries within the region do not as a matter of fact implement the principle to the letter.

Those that even apply them do so not fully but selectively especially in cases when the child may have attempted suicide. The concern of this paper however is to ascertain how the best interest of the child principle as codified in international law applies to unaccompanied asylum seeking minors in ensuring that they have equitable and universal benefit.

3.1.3 The Child Welfare Act of 1992

According to Sengupta (2013, 13), child welfare is an integral part of the entire welfare system in Norway. Befring (2005, 16) also indicated that protection of children and family is based on the Child Welfare Act of 1992 enacted by an Act of parliament. The child welfare legislation in Norway currently provides the legislative framework for child protection in Norway. The current child protection system is based on the *Child Welfare Act of 17 July 1992 No. 100 as amended, by Act of 21 June 2013 No. 63* and subsequently by *the Child Welfare Act of 18 December 2015 No. 126*. This law was introduced in an effort to reform and clarify the existing laws affecting children in Norway. The law gives authority to Child Welfare Services to offer timely intervention and to institute assistance than what was contained in the 1953 Act.

According to Ofstad and Skar (2004, 8), it is a fundamental principle in the Norwegian society that parents care for their own children, and that this principle does not conflict the public responsibilities to take measures when parents for various reasons do not fulfill their parental responsibilities. The Child Welfare Act deals with public responsibility for vulnerable children and adolescents. The Act describes the conditions, under which the government can intervene with measures for children and families, what measures can be used and the rules and regulations for the procedure (ibid, 12).

This means that whenever it comes to the knowledge of the child welfare services that a child is not being catered for in a manner that is likely to deteriorate the wellbeing of the child, they immediately intervene whether the child is with the parents or not and take custody of the child. They do this to protect children from any harm be it physical or psychological. In its attempt to enforce its laws, the Norwegian state child welfare agency called Barnevernet has been lambasted by various groups and has as well been the target of numerous international demonstrations. In the midst of all these, the agency has been resolute in its activities claiming that they intervene when the best interests of the children are involved (Berglund, 2016, para**.** 1).

A recent case in point was a news report titled, "Norway defends its child welfare laws", on 11th January, 2016. According to the report, close to 20 protest marches were staged outside Norwegian embassies and consulates in Europe and the United States of America, from Bucharest to Washington DC. These demonstrations were organized principally by Romanians and Christian organizations which include the Assemblies of God International, the Union of Romanian Pentecostal Churches of the US and Canada and several others. These demonstrators did so to register their antipathy in connection with child protection case involving 5 children "abducted" from the Norwegian-Romanian parents living in Norway. One of Norway's newspapers, *Dagen,* reported that Norway's child welfare agency, Barnevernet, intervened when they received complaints that the children were being subjected to violence and abuse **(**ibid: para**.** 1– 4).

It must be pointed out that the Norwegian child welfare service plays two key roles. Firstly, it provides support and assistance in collaboration and agreement with the child's family. This is done through assessment to find out whether adequate measures are put in place for the care of the child at home and to offer assistance where necessary. However, in very extreme cases the service uses coercion (Befring 2005, 3) as was the case of the 5 Norwegian-Romanian children

narrated above. Secondly, the welfare service stresses the need for the municipality to closely monitor conditions under which children in their municipalities live to protect them against inadequate care, social, emotional and behavioural problems at initial stages of their lives. The focus of this dual role is relief measures and prevention making child welfare occupy central place in Norwegian child upbringing policy (ibid, 3).

This legislative framework has indeed brought a change in the administration of child welfare (Befring 2005, 10). The child welfare service established under the Child Welfare Act of 1992 was made to safeguard children and young people who live in situations that can deteriorate/harm their health or development. The key principles established by the Act are: (1) the paramount nature of the child's welfare and (2) the expectations and requirements about duties of care to children.

I must say that the total responsibilities and duties of the child welfare lie with the state through the Ministry of Children and Equality while the administration part of the child services rests with the municipalities but through the Norwegian Directorate for Children, Youth and Family Affairs. Actually, the Ministry of Children Affairs takes charge of the legislative work related to children and overall guidance to sectors working with children. The regional offices for Children, Youth and Family Affairs, supervised by the Directorate of Children, Youth and Family Affairs, take charge for the provision of local welfare services to children and for investigations into cases of child maltreatment and neglect.

This study therefore summarizes the main points and elaborates on some sections in the chapters that will be relevant for the study. Specifically, it concentrates on chapters 3 and 4 of the Welfare Act 1992 in order to explain how the unaccompanied asylum-seeking minors' needs as enshrined in the Welfare Act are being catered for by the Norwegian Directorate for Immigration (UDI). The Child Welfare Act, which is the legislation covering child protection, is divided into 10 chapters and are very detailed and comprehensive; in that it has laws, policies, procedures and practices designed to prevent and respond effectively to child abuse, neglect, exploitation and violence.

3.2 Objective of the Child Welfare Act, Support and assistance

The aim of the Norwegian Child Welfare Act is to give children and young people the necessary assistance and care at the right time and to help them through a safe childhood. Thus the central

point or theme of this Act is prevention (Section 1-1). The Act also provides under sections 1-2 and 1-3 that all support services apply to every single child who is below 18years living within Norway's jurisdiction which obviously includes asylum-seeking children. The law thus frowns upon all forms of discrimination against any category children. It ensures that all children who need protection are duly provided whether they unaccompanied asylum-seeking minors or deprived children who are staying with their families (The Child Welfare Act, 1992, 7).

This by extension indicates that Norway handles the needs of asylum-seeking minors according to what the Welfare Act stipulates as enshrined in Section 95 of the Immigration Act; a provision that seeks to ensure that the child's right for protection, provision and participation are catered for in accordance with the provisions of the CRC.

3.3 Housing measures and other needs for unaccompanied refugee and asylum-seeking minors and Consideration of the child's best interests

The section 3-4 of the Act directs municipalities to provide accommodation for the asylum-seeking minors who have applied for asylum and those who on the basis of their application have been granted to stay (The Child Welfare Act, 1992, 12) and also, make assessment of their needs in order to enable them cater for other basic needs they may have. Confirming this is an article entitled, "Children who cross national borders". This article reiterates that it is the responsibility of the municipalities under the auspices of the public agency BUFETAT (Office for Children, Youth and Family Affairs) for providing the vital care, security and also to ensure that all basic needs of these minors are catered for (Chapter 5A, 30).

It is therefore no wonder that the law affirms unequivocally in section 4-1 that in the application of any of the provisions of the legislative framework, consideration should be given to the best interest of the child. This includes but not limited to need to attach value to giving the children secure and good contact with adults as well as ensuring congruity in the care they offer (The Child Welfare Act, 1992, 13). Additionally, these children have the right to education and healthcare and a representative.

According to Staver and Lidén (2014, 25), the UDI is responsible for making provision for accommodation and other basic needs for these minors whilst awaiting the outcome of their application. Thus the UDI takes charge of the administrative work on these minors whereas the municipalities, private companies and Non-Governmental Organizations (NGOs) are designated by the UDI to take the everyday care responsibilities and management of the care

centres. As at August 2014, the types of reception centres where unaccompanied asylum seeking minors between 15 and 18years were housed are shown in Table 3.1 below.

Table 3.1: Accommodations types for UAM

Description	Run by	Centre(s)
Transit Centres	Private companies (Hero)	AS and Link AS
Reception centres for UAMs	Municipalities	Sunndal and Levanger
Ordinary reception centre with a specialised UAM unit	Municipalities	Sjøvegan
Reception centre with a specialised UAM unit	privately companies (Hero)	Sandnes mottak
Reception centres	Private companies	Link AS, Tokla AS and Norsk Mottaks drift AS

Source: Circular RS 2011-034; Lidén, Ketil, Knut and Ann (2013, 26)

Furthermore, the accommodation provided for unaccompanied asylum-seeking minors (UAMs) between 15-18years is under the same regulation (within the Immigration Act Section 95) as that of adults, though the UAMs have their own units within the same centre for adults. In accordance with the immigration regulation's sections 17-28, the UDI has every right to move these minors from one centre to another and are not under any obligation to give reasons for their actions. The asylum-seekers (in this case the UAMs) have no right to appeal against such decisions (Staver and Lidén, 2014, 32). However, the UAMs can apply to the UDI to be transferred to another reception centre but the representative for the UAMs and the current reception centre must be heard by the UDI (ibid, 33). Another alternative for the UAMs is to live anywhere other than the reception centre but then the UAMs cannot receive any material provision or allowances.

From the above submission, it can be deduced that Norway has put in adequate measures to ensure that they protect the child's best interest. This has been strengthened through the child welfare legislation and the commitment of the child welfare agency to always adhere strictly to what the law stipulates. It is without a doubt that this has not been pacifying as they have constantly been facing opposition. It is equally important to acknowledge that in spite of the good work they may be doing; there may equally be some excesses which need to be addressed.

3.4 Taking children into care by the Welfare Services

As provided for under section 4-6 second paragraph, the child welfare agency occasionally takes children into care whether the parents agree or not especially in situations where children have no adult caregivers, or as per their assessment the continuous stay of the children in the home will be harmful to their development. When the need arises for the child welfare services to take children into care, the County Social Welfare Board under the provisions of Chapter 7 must take a decision on the care order. According to Section 4-12, of the Welfare Act, the child welfare services may take a child to care if it comes to their knowledge that:

- There are serious deficiencies or inadequacies in the daily care children receive, or age and development; serious shortcomings with regard to the personal contact and safety children may need given their age development.
- Failure on the part of parents to make sure that a child who is sick, disabled or has special needs receives the treatment and training that they specifically require;
- The child is maltreated or subjected to abuse and violence in the home;
- The child's health or development may be seriously harmed because the parents are unable to care adequately for the child. (The Child Welfare Act 1992, 17).

This means that the welfare services can only make an order when the above conditions are present given the child's situation at the time. It is also the case an order will not be made at all if in line with section 4-4 or by measures under section 4-10 or section 4-11, reasonable conditions can be created for the child by assistance measures. Statistics available shows that child welfare services took custody of 8,569 children aged below 18years at the end of 2014 and in the same year, 1,665 children within the same age group were subjected to care order by the child welfare services through the decision of the county social welfare board (Statistics Norway 2015, 21).

3.5 Adoption of Children

Although section 4-20 of the Child Welfare Act provides for adoption as one of its measures for protecting the child, the child welfare services hardly use it. This situation is however changing as far as Statistics available are concerned as it use has been on the increase recently. In 2008, Norway recorded 14 cases of adoption. This figure increased tremendously to 64 in the year 2015 (Statistics Norway, 2015, 28). This clearly shows that adoption cases by the child welfare services have actually been on the rise in recent times. Adoption becomes necessary when the county social welfare board deprives the biological parents of a child their parental responsibility. As a result they give their consent for the child to be adopted but the issuance of the adoption order is the responsibility of the Ministry. As per section 4-20, the following are

the reasons that may lead to the social welfare board given their consent for a child to be adopted if they notice that:

- The parents are incapable of providing the child with right care;
- The child is so attached to people and the community in which he or she lives and per their general assessment, taking away the child may cause serious problems for the child but adoption would guarantee the best interest of the child;
- The applicants seeking to adopt the child have been his or her foster parents and have in that capacity shown good faith to cater for the child as their own;
- The conditions guiding the granting of adoption per the Adoption Act are met (The Child Welfare Act 1992, 20).

3.6 The rights of parents in the event of care orders

Section 4-19 also provides that both parents and children can have access to each other. In spite of this, when children are taken into care by the County Social Welfare Board, their parents are empowered legally in their dealings with the board to choose a lawyer whose cost would be borne by the Norwegian state. Again, if the parents so wish, they could be given the opportunity to be heard by the County Social Welfare Board and are at liberty to even invite witnesses to accompany them. In any case after been heard by the County Social Welfare Board if they are not satisfied with its decision, such parents still have the right to go court to seek redress (Child Welfare Act 1992, 19).

Once a care order has been applied, it is obviously not the end of the story since once every year the child's parents are permitted to appeal to the County Social Welfare Board to reverse their decision and return the child to the custody of the parents. Apart from this on their own accord if the County Social Welfare Board gets to know that the abilities of the parents to cater for the child has improve tremendously, they reserve the right to reverse their decision even much earlier (The Norwegian Directorate for Children, Youth and Family Affairs 2016, para. 15).

3.7 Asylum seeking procedure

In Norway, the police have a dual responsibility as far as asylum seeking procedure in concerned. Their foremost responsibility with regard to the asylum seeking procedure is to investigate in order to ascertain and authenticate the identity of asylum seekers and, their second responsibility is the registration asylum seekers. They also enquire about In addition; the police try to find out by what means the asylum seeker had moved to Norway (UDI 2011, 3). When

the process of registration has ended, the asylum seeker is offered accommodation in one of the asylum centres.

After this, the Directorate of Immigration (UDI) comes in, to first, group the asylum seekers into, 'Dubliners', minors, and the like and subsequently, process their applications. They have a number of ways they use to process applications for protection. These procedures include: (1) the 48-hour procedure; (2) the Dublin procedure; (3) the procedure for unaccompanied minor asylum seeker; (4) the 3-week procedure; and (5) the procedure for ordinary cases (Ibid, 4). While some procedures involve brief interviews as well as short investigations and so determination of outcome takes few days, others involve extensive interview and long investigations and hence it takes several weeks for decision to be arrived at. It therefore follows that the procedure used and the length of the time it will take to process the application will vary from one asylum seeker to the other. To a larger extent this situation is influenced by where the asylum seekers originate or hail from as well as the kind of situation they in which they find themselves.

To simplify the registration and application process for unaccompanied asylum seekers in 2011 an on-call guardian service was set up. In fact, some measures have been instituted by the Norwegian authorities in a bid to streamline and facilitate the time involved in the processing of application especially for unaccompanied asylum seeking minors with the aim of ensuring that decisions are made early. As a result, currently it takes about 5½ months to settle unaccompanied minors obtaining asylum or protection (Staver and Lidén, 2014, 7).

3.8 Asylum procedure for unaccompanied minors

With regard to asylum procedure for unaccompanied minors, those between 15 and 18years normally do stay in units and that each child is assigned a contact person whereas children below 15years are accommodated by the Child Welfare Service in what they call care centres. In order to make sure that these children receive all the benefits due them and also to uphold their legal and financial interests, they are at all times assigned representatives (legal guardians) as well as an attorney who will help each child to apply for asylum (UDI 2011, 6 and Staver and Lidén 2014, 7).

Typically, the work of the attorney is to prepare the child for the interview and even after the interview the attorney also has a responsibility to ensure that every statement the child has made is right. More so, in an event that the child's application is denied, it is still the attorney's duty

to assist the child to make an appeal (UDI 2011, 6). These minors are given about 7 hours and 5 hours of legal assistance to adequately prepare them on their first time claim and appeal respectively (Oxford Research 2012, 37).

As a matter of necessity the Immigration Act of 2008 enjoins actors that when assessing resident permits for any of these minors, their basic ultimate concern should be the assurance of the child's best interest. For this reason, "the threshold for consenting to residence is set lower for children than adults" (Vitus and Lidén 2010, 81).

3.9. Challenges in the "welfare" of the Unaccompanied Asylum-seeking Minors (UAMs*)*

The main challenges in the provision of welfare services, are; organization of accommodation, access to healthcare and education for UAMs between 16 and 18years. The United Nations Committee on the Rights of the Child has even criticized these shortcomings and in fact, Norway has acknowledged the concerns raised by the UN and have taken steps to tackle some (but not all) of the issues in the services provided (Lidén and Staven 2013, 28).

Although UAMs between 16 and 18years also have access to healthcare and education, the case is different when education or schooling comes into play. The first reason is that before one can be allowed an upper secondary school education; the person must have already completed a primary, lower secondary school or its equivalent (Igersund 2013, 16). The second point is that only those UAMs who have legal residence permits may apply but then they are not entitled to secondary education while awaiting final decisions for their applications (ibid: 18). Although some county councils on independent decisions allow UAMs to take upper secondary education; they are not allowed to continue when their applications are rejected (Brekke and Vevstad, 2007, 23).

There is therefore uncertainty with regard to accessibility to education particularly the ones whose application was not successful as well as those who obtain permits temporarily. This situation puts their future in jeopardy. The introduction of the new provision in the Child Welfare Act Section 4-29 was targeted for UAMs who are suspected to be victims of human trafficking, and in that case, are given special treatment for their own safety (The Child Welfare Act 1992, 25). The problem with this however has been that measures put in place to determine the very susceptible minors is still an issue.

Another challenge as far the welfare of unaccompanied asylum seeking minors is concerned can be seen in terms of accommodation. Table 3.1 above shows the reception centres where unaccompanied asylum seeking minors between 15 and 18 are normally housed. These are normally two-tiered structure and in fact, the UN Committee on the Rights of the Child (UNCRC) complained in 2004 and 2010 that it is not the best. Therefore, they should be moved to care centres run by the child welfare services (Bufetat) just as their counterparts under 15years (Lidén et al. 2013, 32-35). Thus, there is the need to improve their accommodation conditions but this has not done due to lack of financial resources. There is also an issue with staffing especially the ratio of unaccompanied minors to staff as well as the number of children even in a room. Apart from this there is there are no proper security arrangements for this category of children (Lidén and Staver 2014, 32-34).

These coupled with the monthly allowance they are given to take care of food as well as medical expenses also make the children feel insecure in terms of their future, standard of living and financial ability. Lidén et al. (2013, 81) found that small allowance or pocket money is actually not enough to enjoy the co-payment policy necessary to consult your doctor, be referred to a specialist and in addition, buy drugs. For this reason, most of these children run away before they attain the age of majority with no information about their whereabouts and even continued existence.

This gives an indication that the best interest of the child is not been sought in this regard. It is important that these problems be addressed because it can lead to serious health, social and economic problems for the individuals involved. In this regard, the United Nations must provide the necessary support for the Norwegian government to be able to maintain the children adequately. This is because whatever painful experiences they go through will continue to live with them and will blame society for their predicament. I believe because reception centres for this category of children are seen as perhaps a transition centre until they attain 18years, therefore they should manage it. Since they form the majority of the unaccompanied asylum seekers, they ought to be treated well.

This seems to support Knauder and Hancilova's (2011, 29) findings that the failure of state authorities whose duty it is to protect and care for these children in destination countries in addition to insufficient budgetary provision are the principal factors that inhibit the principle of the best interest of the child. This of course gives a clear indication that the best interest of the child is not being sought as far the challenges enumerated above are concerned and for that

matter to the extent that these children want to ensure that their interests are satisfied, most of them disappear before they turn age 18.

There has been much focus on asylum seeking children, especially on how they are taken care of and how they are returned to their home countries after their application for protection has been refused, from the past decade till now. According to Sandberg (2012, 282), children's position in immigration in Norway has come under greater attention since the CRC became a Norwegian law in 2003.

In recent years the Directorate of Immigration and the Immigration Appeals Board (UNE) have shown increased awareness of human rights and the rights of the child through conferences, seminars and papers on the different side of this issue. The New Immigration Act has led to improvement in areas where the child's rights especially "the best interest of the child") and immigration policies prevail (ibid). Thus proper care must be taken by the authorities in handling them from the time they seek asylum for protection until they are either granted asylum or returned.

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3.10 Final Rejection of Application and Return

Unaccompanied children whose application for asylum has been rejected are encouraged to voluntarily return to their country of origin or country of transit (in the case of Dubliners) between seven (7) to thirty (30) days after the final rejection of their residence application. But there are some considerations which are mostly determined by the immigration authorities. There is strong focus on motivating this group for assisted return. Unaccompanied minors with a final rejection decision are offered accommodation in ordinary reception centres until they leave Norway (Meld. St. 27, 2011-2012, 49).

3.11 The Return Policy and Practice

On the issue of Return Policy and Practices of UAMs, Norway operates on the European Return Directive because in 1999, Norway clinched to an agreement with the EU. The country also effectually joined the Schengen area in 2001. Although in the case of the EU Reception Conditions, Norway is not obliged to abide by according to Lidén and Staven (2014, 24) because being a member of the Schengen cooperation as well as the Dublin Regulation and not the EU, the implication is that Norway always finds it extremely difficult from time to time to

know aspects of the "EU acquis" that binds it as far as immigration and asylum issues are concerned. But this new Return Directive is binding and applicable to Norway because of the fact that it constitutes a development of the Schengen "acquis" (Vevstad et al. 2009, 32).

3.1.2 The European Return Directives

The purpose of the Return Directive is to define useful removal and repatriation system for children who are not legally qualified to stay based on common standards across Europe according to the European Council for Refugees and Exile (ECRE) and Save the Children (2011). The main provisions of Articles 10(1) and (2) of the Return Directive as stated by ECRE and Save the Children (2011) and relating to unaccompanied children are that:

> *"*Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return*"* (Ibid, 19).

It is clear that Article 10(1) of the Return Directive put more emphasis on the need for immigration authorities charged with making decisions on return of unaccompanied minors such as the UDI and UNE in Norway to grant assistance before making a decision on return and in line with the best interests of the child. This provision is important in highlighting the importance of giving due consideration to the best interests of the child concerned. In terms of what assistance this should be, Article 3 of the UNCRC stresses the need that the best interests, survival and development as well as the participation of such children should be ensured and also not discriminated against (UNCRC, 1989: 2).

In fact, the Article 20 puts it succinctly that member states where these children find themselves must offer special protection and assistance to them (UNCRC 1989, 6). The General Comment Number 6 of the Committee on the Rights of the Child explains that offering special protection and assistance means coming out with a lasting solution that will inure to their best interest, including possibly return and reintegration (General Comment No. 6, 2005, 12, 15 and 16). This means that even if the need be that the child should be returned the necessary assistance and support should be provided to keep him or her satisfied.

Another important aspect of the Article 10(2) is the fact that it sets out the options for immigration authorities in member states for returning unaccompanied minors, and the conditions that must be satisfied for the child on his or her return. Member states have the option to return the unaccompanied minor to either a family member, a guardian to be nominated, or to a reception with adequate facilities. With respect to the case of return to adequate reception facilities on their return, it has been observed that Member States take advantage and respond to that by returning unaccompanied minors to their countries of origin. The Returns Directive of Article 10(2) on the contrary contends that authorities of Member States are expected to offer 'adequate reception facilities' on the return of this category of children (ECRE and Save the Children, 2011, 162).

Within the norms governing the return practices that are contained in the Meld. St. 27, 2011-2012, 42), there are two types of "Return":

I. The Voluntary Assisted Return, which is defined by ECRE as the return of persons with a legal basis for remaining in the host state who have made an informed choice and have freely, consented to repatriate.

II. The Forced return is the return of those who have not given their consent and therefore may be subject to sanctions or the use of force in order to effect their removal (ECRE, 2011: 68).

The Norwegian policy on return of unaccompanied minors has it that all individuals without legal right to stay in Norway are expected to return to their home country voluntarily. Unaccompanied children whose application for asylum has been rejected are encouraged to voluntarily return to their country of origin within 7 to 30 days after the final rejection of their residence application. The Norwegian Immigration Police Unit (Politietsulendingsenhet, PU) is responsible in ensuring the return of asylum seekers to their destination countries but it does its work together with some allied institutions under the UDI (UDI 2011, 5).

The return of the unaccompanied minors to their home countries does not normally occur but those that occur are normally in any one of the following three ways: forced returns, voluntary returns, and can also occur under what is described as the Dublin procedure. The forced returns are quite uncommon with the Dublin procedure being the most common of all. Under the current Dublin III procedure, there exists a system that helps to establish a mechanism to determine the member state that is responsible to process or examine the asylum applications of unaccompanied children in their quest to obtain protection (Article 4 of Regulation, 2013, No. 603 and Poptcheva, 2015, 3). As per the Dublin III regulation, the Member State where the

asylum seeker or applicant first entered is de facto responsible for examining his or her application Poptcheva, 2015, 3).

Pettersen (2007, 58) explains that only a few unaccompanied minor asylum seekers get asylum with majority obtaining residence permit based on humanitarian considerations. This stems from the fact that they are detached from their parents as well as other caretakers who are nowhere to be found. This also means that they are granted a temporary stay so that when they turn 18 they will be repatriated. For this reason, Staver and Lidén (2014, 40) acknowledged there are relatively few forced returns as majority of them are returned through the Dublin procedure.

Table 3.2 as indicated below shows the number of unaccompanied asylum seekers who are either forced to return or return voluntarily or on their own accord.

Table 3.2: UAM who returned (2009-2013)

Form of Return	Year				
	2009	**2010**	**2011**	**2012**	**2013**
Forced Returns	57	158	102	80	58
Voluntary Returns	3	5	4	7	15
Total	**60**	**163**	**106**	**87**	**83**

Source: Staver and Lidén (2014: 44); European Migration Network (2015: 5)

It can be seen that the lowest number of returns occurred in 2009 with a total number of 60 returnees. Out of this, 57 represented the case of forced returns and the remaining 3 being voluntary. However, the number of forced returns increased tremendously the following year to 158 returnees with the voluntary also rising to 5. Furthermore, in 2013 whereas the number of forced returns declined vastly to 58, the voluntary returns rather increased to 15. This is a clear indication that since 2011, the number of unaccompanied asylum seeking minors who are forced to leave Norway has been declining but then cases of voluntary returns have been increasing. (Staver and Lidén, 2014, 44 and European Migration Network, 2015, 5).

This situation may be attributed to the juicy program or package that Norwegian government has instituted or put in place to support the voluntary return of such vulnerable unaccompanied asylum seeking minors on their return. The Norwegian Government has also initiated a number of measures to encourage unaccompanied minors to return voluntarily. These include: an

increase in the return support to each unaccompanied minor to NOK 10,000; fast processing of asylum cases involving unaccompanied minors and information campaign in reception centres on return to countries of origin just to mention but a few (Meld. St. 27, 2011-2012, 46). According to Staver and Lidén (2014, 44), apart from the fact that this category of children are counseled, offered the necessary information, assisted in terms of the acquisition of their travel documents and also assessed of their reintegration needs to ensure that it serves their best interest; they are supported in kind to the tune of $7,800. This is broken into the following components:

- Accommodation support in case the child cannot stay with the family = $1,500;
- Educational support in the form of fees, books etc., vocational training, starting a business or supporting a family business = $4,500;
- Medical support: $3000; and lastly,
- Subsistence support in the form of food, clothes etc. = $1,500.

The Directorate of Immigration (UDI) relies on the International Organisation for Immigration (IOM) to facilitate the Voluntary Return Programs (VARP). The IOM is an International Organisation or body which seeks to solve migration challenges. It was founded in 1951 currently has 125 member countries including Norway in addition to all EU countries and discharges its duties in conjunction with other governmental, intergovernmental and non-governmental organizations, including UNCHR. The services offered by IOM within the voluntary return program include information and counselling to potential returnees, assistance to obtain valid travel documents, travel arrangements, post-arrival reception, onward travel to the local destination and limited follow-up (Meld. St. 27, 2011-2012, 47).

All these are done to ensure that the minor is properly reintegrated and also in accordance with Articles 10(2) of the EU Return Directive which requires that any deciding to return any unaccompanied minor, the Member State must offer him or her the necessary assistance with due consideration to their best interest. In doing so, the authorities of that Member State must ensure that he or she is returned to a member of his or her family, a nominated guardian or adequate reception facilities in their home country (ECRE and Save the Children 2011, 19). It is also in line with Articles 3 and 20 of the UNCRC (1989, 2, 6) as well as the General Comment No. 6 (2005, 12, 15, 16) which explains that protecting and assisting unaccompanied minors in their return means coming out with a lasting solution that will inure to their best interest, including possibly return and reintegration.

In fact they are constantly monitored for about 6 months or in some cases a year if the need be. The monitoring take the form of home visits and it is done by the Norwegian International Organisation of Migration (IOM) based in the returnees' country.

With regard to the forced returns, the immigration policy specifies that the forced return should be carried out as carefully as possible when children are involved. It also stresses that interests of the child shall be emphasized in such difficult situations. Furthermore, the Police in carrying out the forced deportation are to consider whether personnel with expertise on children are available to assist with transportation. The police are also urged to use minimal force. Lastly, the police shall, to the greatest extent possible, not be in uniform. (Meld. St. 27, 2011-2012, 68).

In carrying out the return the UDI undertakes tracing of the parents of unaccompanied minors in their home countries. If the return to parents or other caregivers is not applicable, the Norwegian authorities establish whether the authorities in the home countries provides child

care service so that the unaccompanied minors are sent there. In the situation where the parents or caregivers has gone into hiding before the return takes place the Norwegian Government enters into agreements with the child welfare authorities in the child's country of origin to ensure the provision of care associated with a return (Meld. St. 27, 2011-2012, 70).

In cases where the immigration authorities cannot trace the parents or the parents refuse to receive the child, it must be considered whether it is appropriate to return a child to anyone other than those who have parental responsibility. The Norwegian Government is also in the process of establishing dedicated care centres in some of the home countries of unaccompanied minors such as Afghanistan, Iraq, Ethiopia etc. to facilitate their return and reintegration (Meld. St. 27, 2011-2012, 70).

Previously the forced returnees were not given any reintegration maintenance. It is only recently, in fact in 2014, that some amounts were awarded ranging from approximately €1200 to €2400 (Staver and Lidén, 2014, 43).

From the above it can be seen that Norway has a return policy for unaccompanied minors between 15 and 18years. These are either voluntary, forced or by means of Dublin Regulation. According to Poptcheva (2015, 3), most of these children are exited through the Dublin procedure. However, in terms of actual returns, the data compiled from 2009 to 2013 in Table 3.2 shows that majority of these children are excited to their home countries by force. This

notwithstanding, a trend analysis of the figures for both forced and voluntary returns reveals a downward trend in terms of forced returns especially from 2010 to 2013 with the voluntary returns showing an upward movement generally. Again, one can deduce that the Norwegian authorities have put in adequate measures to ensure that the return of unaccompanied minors will not be a burden to them. In fact, whether they settle with a family member or not they are a package to ensure that the child's best interest is ensured. These measures are also consistent with international laws which fundamentally seek to ensure that in all dealings with these children, their best interest ought to be duly considered.

3.13 The Norwegian Welfare Act and the Best Interest of the Child

In 2003, Norway revised its Human Rights Act of 1999 by fusing into it the Convention on the Rights of the Child to become a national law with the aim of reinforcing children's position legally. As a result, the Norwegian Child Welfare Act of 1992 changed the way in which Norway dealt with child welfare; this time focusing more on preventive or protective procedures. Besides, the Act enhanced the rights of minors and their parents (Tonje 2015, 2).

In fact, for the past 3 decades the focus has shifted greatly with emphasis being placed on promoting child welfare rather than prevention. Therefore policy focus has also drifted considerably with its main drive being to protect, prevent and promote and making sure that each and every person has access to the welfare services (Ibid). At the moment, it is on the basis of the Norwegian Child Welfare Act that protection is given to minors within the family setup and this protection extends to all children within the jurisdiction as indicated in sections 1-2 and 1-3 of the Child Welfare Act (1992, 7).

The duty Child Welfare service is to help and support parents so that they will be equipped to better cater for their wards. In any case should these interventions do not produce the anticipated outcome, the next option will be to move the child into care. According to Tonje (2015, 3), the activities or dealings of the Child Welfare service are founded on the principle of the child's best interest as enshrined in the Article 3 of the Convention on the Rights of the Child. As a result, most of the recipients of the support services offered by the Child Welfare Services who represent about 80% get them within their home. This is because the state wants parents to be responsible for the upbringing of their own wards.

The preamble of section 4-1 of the fourth chapter of the Norwegian Child Welfare Act clearly indicates to the effect that in the application of the provisions of the fourth chapter of this Act due consideration or importance would be placed on measures that seek to ensure the realization of the best interest of the child. Ensuring the realization of the child's best interest means making sure that the child gets "stable and good contact with adults" and also the assurance of continuous care (The Child Welfare Act 1992, 13). The implication of this provision is that the Norwegian authorities commit to ensuring their total support for the child as long the child remains in their care. They will give them representatives or legal guardians who will be responsible for their upkeep and by so doing making sure that they seek the child's best interests. This actually is in line with Articles 3 and 18 of the UNCRC (1989, 2, 7).

Hansen and Ainsworth (2009, 435) acknowledges that the discussions on the 'best interests' has led to a significant change in child protection practices. These changes over two decades have affected family privacy. Also media interest in child protection issues has also increased globally in recent years. This has been possible because the Norwegian Child Welfare Act has as its primary objective to make sure that all children who live in deplorable circumstances receive timely assistance and the right care (The Child Welfare Act 1993, 7).

Goldstein, Solmit and Feud (1996, 13) however argued that despite these growing concerns and interest, it is still not quite clear what most national laws say as far as the 'best interest of the child' phrase is concerned. They were concerned that the seemingly nonexistence of a general agreement on what the law says about this phrase affects decision-making on children welfare and so, its interpretation is based on the individual's own whims and caprices. In fact, this is the case with most international and national laws that seek to protect the best interest of the child. An example is the Action Plan of the EU on unaccompanied children which underscored and in fact encouraged Member States that whatever action any of them will take concerning unaccompanied minors, it should be in accordance with the child's best interest principle (EU Action Plan 2010, 3). It however failed to outline what this principle actually demands.

It must be emphasized that satisfying the best interest of the child is quite a complex issue. To take a decision that will inure to the best interest of unaccompanied children in order to come out suitable solutions, a host of factors such as the child's current circumstances, his or her psychological and physical health, the state of affairs in the home country etc. should be taken into account. These factors should actually define how the child should be treated.

But the case of the Norwegian Welfare Act is quite different. This is because section 4-1 gives a clue about what most probably constitute the best interest of the child and include "giving the child stable and good contact with adults", continuous provision of care, ensuring the child take part in interviews, smooth the progress of the interviews for the child, those children who have been taken into care been allowed to be escorted by an individual he or she trusts and also the Ministry coming out with rules and regulations for representatives (The Child Welfare Act, 1993, 13). These and many other provisions inherent in the Norwegian Welfare Act and which according to the Act should be accomplished by anyone who seeks to ensure the realization of the best interest of the child.

The challenge however is that most people are reluctant to report to the Child Welfare Services even if they need assistance for fear of the unknown – their wards will probably be taken away from them. This is just one of the challenges Norwegian authorities encounter in their child protection agenda. What is important is strengthening efforts to incorporate or take into account the minors themselves by listening to their opinions on issues affect their own welfare and also foster collaboration among interested parties at various stages.

To sum up, the chapter has explored the Norwegian Child Welfare Policy as enshrined in the Child Welfare Act of 1992 in the context of the best interests of the child. From the deliberations, it has been shown quite clearly that there exists a policy that seeks to protect the interests of all children especially those under 18years. Also embedded in this policy is the Convention on the Rights of the Child which has as its central objective the promotion of the child's best interests. It has also been established that the Norwegian Child Welfare Act also upholds this phrase and for this reason devotes the chapter 4 of the Act to what it calls special measures which also enjoins the child welfare services in applying any of the provisions of the chapter consideration should be given to the best interest of the child.

This is a clear indication that the Norwegian authorities have the best interest of the child at heart at least on record. But I must quickly add that there are some obvious challenges. Some of these as Knauder and Hancilova's (2011, 29) found include failure of state authorities to protect and care for these children, and insufficient budgetary provision. The chapter disclosed that in caring for children especially unaccompanied minors, Norway is confronted with accommodation challenges as a result of which a lot of minors between 15 and 18years are put in a room. Though the law provides in section 3-4 that unaccompanied minors should be provided with appropriate housing, as a matter of fact they are housed. But their housing

condition is not really fitting; a situation which the UNCRC has twice complained about yet nothing has been done about it. Other challenges identified were staffing, financial insecurity and accessibility to education just to mention but a few. All these unresolved challenges compromise in satisfying the child's best interest especially unaccompanied asylum seeking minors.

Chapter Four: New Immigration Act of 2008

4.0 Introduction

This chapter discusses the New Immigration Act of 2008 which formally came into force in 2010. The chapter begins with brief general highlights of the New Immigration Act and what the Immigration Act says with regard to the Return of UAMs, issues about expulsion or forced return, tripartite memorandum of understanding etc.

4.1 Brief General Highlights of the New Immigration Act

This chapter focuses attention on Norway's New Immigration Act of 2008. In June 2007 an application was presented to the Norwegian parliament, Stortinget, calling for a new immigration and asylum Act. This was adopted in April 2008 but did not come into force until 1st January, 2010 after the needed modifications had been effected. Per section 75 of the Act, whereas it is the responsibility of the Stortinget to approve the provisions of the immigration regulations, the actual implementation is to be done by the King, Ministry, Immigration Appeals Board, Directorate of Immigration, police and other public authorities (Immigration Act, 2008, 37, Igersund 2013, 20).

This notwithstanding, the government has the right to make amendments to the Regulations without the Storting having to approve it. Though it lies within the purview of the UDI to process asylum applications at the initial stages, asylum seekers whose applications have been rejected can appeal to the UNE since they make the final decision. If after appealing to the UNE they are not still satisfied with their decisions too, such asylum seekers can again make appeal using the Norwegian judicial system (Vevstad 2010, 462 – 464).

The New Immigration Act updates the previous enactment in the sense that it provides clarification on some facets of migration regulations and global legal commitments. In addition to this, the current Act incorporates most of the provisions which were in the immigration regulations which hitherto only the government had authority to determine. Another significant

improvement the new Act makes is how it defines 'refugee'. It includes in its definition as provided for in section 28(a) those taking care of by article 1A of the 1951 Refugee Convention as well as in section 28(b) those who fall within the non-refoulement requirements of any international convention that Norway may be party to particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms. What this means is that all who qualify for Subsidiary Protection Status under the EU Qualification Directive also will automatically obtain refugee status under this Act (Thorud 2008, 10; Immigration Act 2008, 13).

Previously those under the subsidiary protection were expected to prove that they could maintain their family economically before they were given permit to reunite with the family. Per the new Act's definition of the refugee concept this will not any such requirement. Again, the law also provides that whenever an administrative decision seems to be incompatible with the UNHCR`s guidelines or recommendations as far as protection is concerned, the matter should be referred to the seven-member "Grand Board" of the Immigration Appeals Board (Ibid). These are a few general highlights of the New Norwegian Immigration Act which came into force on 1st January, 2010.

Though the Act touches on many different issues when it comes to the regulation and controls of foreigners entering, exiting, residing and working in the Norwegian Kingdom, for the purpose of this study only the aspect of the New Immigration Act that relates to the return of unaccompanied asylum seeking minors was considered.

4.2 Return of UAMs and the Immigration Act

The last three paragraphs of the Section 90 of the Immigration Act touches on the removal of an unaccompanied minor from the jurisdiction. The seventh paragraph of section 90 states that "*an unaccompanied minor may only be forcibly removed to a family member, an appointed guardian or to some other appropriate care arrangement. The King may by regulations make further provisions"*. The further provisions in this case means that the King will have to set time limit within which the unaccompanied minor must leave the jurisdiction if he or she chooses to return voluntarily or the King will come out with the modalities and the necessary monitoring mechanisms if the return should be carried out by force.

The fifth paragraph of section 90 provides that generally the time limit set is between seven (7) and thirty (30) days but a much longer time limit can be allowed if the need be. For voluntary returns, the time limit is usually seven (7) days. This is usually done when there is evidence that:

- He or she will not abide by the directive to leave;
- The application was turn down on because he or she had falsified the information;
- He or she is a threat to public order;
- He or she should be transferred to another Dublin participating country as in the first paragraph (b) of section 32;
- He or she is rejected or expelled at the outer borders of the Schengen area, or
- Under the first paragraph (b), (c), (e) and second paragraph of section 66 or sections 67 or 68.

However, in an instance that the foreigner raises any of the conditions stated in section 28 in the course of implementing an administrative decision requiring the foreigner to leave the realm, and cannot be ascertained that the provision being referred to has already been taking into account, the police shall have no choice than to defer the implementation and refer the case to the authority that has made the administrative decision (Immigration Act 2008, 45).

This gives credence to the Chapter 9 of Meld. St. 27 (2011-2012, 81-89). This is a white paper which is constantly been improved by the help of public comments and which, given additional hearings, are further polished and sent to the Norwegian Parliament. It gives all rules and regulations for the return of the UAMs. Though most of the rules, regulations and practices of the return of UAMs in the white paper fall under the Immigration Act, no reference is made to that effect in the white paper. Under Sections 17, 18 and 76, UAMs are required to exit the country as soon as their applications are finally rejected. What seems to becoming the norm is that the moment some unaccompanied minors get to know that their application for resident permit has been turn down; they vanish into thin air from the reception.

The focus of this study is on children 15 and 18years who are not qualified to be granted resident permit. It follows therefore that these children are predisposed and will not be able to tell what bothers them better compared to their adult counterparts. In like manner, a return situation that may be acceptable for the adult might probable lead to a disdainful and humiliating treatment if the child is returned without proper care (Igersund 2013, 21).

According to the General Comment No. 6 when it comes to the protection of unaccompanied minors, one of the gaps that have been identified in terms of how they are treated is the fact that a number of them get only temporary status which means when they turn 18 the permit will cease to apply. This implication therefore is that these unaccompanied minors will eventually have to return either voluntarily or by force. However, only few effective returns usually do occur (General Comment No. 6, 2005, 5 and Igersund 2013, 49). The Separated Children in Europe Programme (SCEP) also contends that to the extent that the durable solution is grounded on a decision that only allows the child to stay up to 18years, it cannot be touted as durable (SCEP 2009, 33).

Concerning unaccompanied minors who are returned by force there is little evidence as to what becomes of them when they finally return. As indicated in the previous chapter, it is only recently about two years ago that Norway begun to give them some reintegration maintenance which ranges from approximately €1200 to €2400 (Staver and Lidén, 2014, 43). To ensure that unaccompanied minors are properly treated the General Comment No. 6 (2005, 9) points it out that all countries ought to respect the non-refoulement obligations which is founded on the international human rights, humanitarian and refugee law. More importantly, countries must respect article 33 of the 1951 Refugee Convention and in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT).

The Article 3 of both CAT and the European Convention for the protection of human rights and fundamental freedoms (ECHR) explains that the principle of non-refoulement extends to or affects everybody including unaccompanied children who have been granted temporary protection. For this reason Norway cannot return to any country where the life the unaccompanied minor will be endangered (Igersund, 2013, 49). Per seventh paragraph of Article 90 of the Norwegian Immigration, there is no doubt that unaccompanied minors are from time to time forcibly sent back to their home countries. Again Table 3.2 above also confirms that since 2009 some unaccompanied minors have been forcibly returned. How can one determine whether Norway has breached its obligations under non-refoulement?

This can be ascertained from whether Norway has instituted a monitoring system and to what extent is it effective and transparent. Being aware that Norway participates in the EU Return Directive, per Article 8(6) it has the obligation to "provide for an effective forced-return monitoring". But the Norwegian Organisation for Asylum Seekers ([NOAS], 2013: 23) discovered that Norway has not been able to meet this obligation. This is because practically

the Trandum Detention Centre is only centre that they are able to monitor and no-one else. As per the Directive Member States are expected to monitor all aspects of the processes involved in the return. The implication is that there is more to be done in terms of the monitoring situation.

The fact that the asylum seeking minors whose applications have been turned down resort to running away gives an indication that the return practices do not go well with them. Looking back to the substantive rights of the minors in the CRC which fall into three categories; i.e. protection, provision and participation, one can argue that Norway may be doing what it has in its capacity as a nation to treat the UAMs according to the CRC and what the "best interest of the child" entails but then there is lack of "participation" from the side of the children on the issue of return.

4.3 Expulsion or Forced Return

The first paragraph (b), (c), (e) as well as the second paragraph of section 66, sections 67 and 68 of the Immigration Act also address the issue of expulsion of foreigners and this applies to both foreigners who have and those who do not have resident permit. Specifically, whereas the section 66 deals with circumstances under which foreigners without resident permit can be expelled from Norway, the section 67 considers those with a temporary permit and the section 68 touches on the expulsion of those with a permanent resident permit. In all these instances what will warrant the expulsion of the foreigner include committing offence that is punishable by more than three months imprisonment, or having committed the criminal offence prior to receiving the temporal or permanent residence permit, in contravention of the General Civil Penal Code, refusal to adhere to time limit to leave the jurisdiction just to mention but a few (Immigration Act 2008, 33 – 34).

Unlike the section 90 which makes specific reference to unaccompanied children in seventh paragraph, neither of the sections cited above does do same. This means that the conditions for expulsion as enshrined in the Immigration Act applies to unaccompanied minors as well. It is in section 70 under the requirement of proportionality that the case of children in general comes in and even in such instances it is indicated that the child's best interest ought to be taken into account (Ibid, 35, 43).

A case in point was the expulsion of UAMs by the Justice Minister sometime back which received a lot of attention and criticisms particularly from some leading members of the Liberal Party and the Christian Democrats Party accusing the Justice Minister as having let them down. For them the Justice Minister had not heeded to the consensus they reached to stop the deportation of refugees with children who had been in Norway for several years (Berglund 2015, 23). For the Christian Democratic Party, the assurance of the rights of asylum seeking children is a topmost priority. Responding these accusations, the Justice Minister explained that it was due to a mix-up between himself and the police whose responsibility it is to carry out expulsions (ibid).

This in fact is a clear admission of the fact that a blunder had been committed. For this reason, the authorities came into an agreement that provisions should be made for those children and families deported or expelled to come back to Norway; but under certain conditions. Some of the conditions are that those who were deported can apply again and come back to Norway but they have to apply for the renewal of their permits every year. It is worth of note that prior to the expulsion in the case of Afghans the Ministry of Foreign Affairs of the Islamic Republic of Afghanistan sent a message to the Norwegian authorities raising concerns about Norway's deportation of these minors particularly raising critical issues such as terrible security conditions, economic situations, lack of shelter and education possibilities as well as the absence of suitable environment for early childhood or for securing the child's interests or otherwise. They even suggested that Norway should consider the option of voluntary return instead. But the authorities will not heed to any of them.

4.4 Tripartite Memorandum of Understanding

In 2011, Norway, Afghanistan and the UNHCR signed a tripartite Memorandum of Understanding (MoU) in relation to voluntary returns. The parties agreed that the European Return Platform for Unaccompanied Minors (ERPUM) will guide the return of UAMs whose asylum application has been unsuccessful and have therefore received final rejection. Within the MoU is a section titled "special measures" which contains guidelines that apply specifically to Afghanistan in relation to the return of its unaccompanied and separated children. In fact, prior to the signing of the tripartite Memorandum of Understanding (MoU), the Human Rights Watch (HRW) wrote to Norway's Ministry of Children, Equity and Social Inclusion requesting them to take their time because they noticed the authorities were in a rush to return migrant children (Sandelson and Bostock 2015, 28).

Not only did the HRW realized that authorities were rushing to return the children, they also learned that the Norwegian authorities and the government were actually getting ready to return the unaccompanied minors to institutions in their home countries. Upon enquiry, the HRW was informed that the purported return arrangements involved unaccompanied asylum seeking minors who come from war-ravaged countries such as Iraq, Somalia and Afghanistan and whose application for protection had been rejected (ibid). The Article 10 of the EU Return Directive urges Member States to ensure that unaccompanied children are returned to a family member, a nominated guardian, or better still adequate reception facilities have been put in place for the child (Directive 2008/115/EC). Will the institutions in these war-torn have adequate reception facilities?

This situation obviously contravenes Article 3(1) of the CRC which states that "[i]n 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" (CRC, 1989: 2). Again Article 10(2) of the EU Return Directive which requires that any deciding to return any unaccompanied minor, the Member States must offer him or her the necessary assistance with due consideration to their best interest (ECRE and Save the Children 2011, 19).

In compliance with the above articles, Norway is expected to first think about the safety of the children. I do not think sending the children back to their war-torn countries will be in their best interest. Furthermore, the General Comment No. 6 points it out that all countries ought to respect the non-refoulement obligations. In satisfying this obligation under the Convention, no state should send any child or children back to their home country where there exist noticeable signs or obvious reasons to believe that the child's life will be in danger (CRC General Comment No. 6, 2005: para. 27). The principle of non-refoulement extends to everybody including unaccompanied children who have been granted temporary protection (ECHR, 1950: Article 3 and CAT, 1984: Article 3). This situation does not seem to be in line with the principle of non-refoulement that Norway is a party to.

The second paragraph of section 73 of the Norwegian Immigration Act under the 'Absolute protection against refoulement' also states that no foreigner should be consigned to anywhere they would find themselves in the situation described in the first paragraph (b) of section 28. The situation described in the paragraph referred to in section 28 indicates a situation where the foreigner stands the "risk of being subjected to a death penalty, torture or other inhuman or

degrading or punishment upon return to his or her country of origin" (13). What is the guarantee that these children who hailed from the above mentioned war-torn areas will not fall victim to any of the circumstances described above?

The fact of the matter is that Norway should be aware of and bound by all the obligations and measures they have to follow in returning unaccompanied minors. Authorities can therefore not ignore all of a sudden its own laws, that of the EU and the United Nations.

4.4.1 Breaking Own Laws and violating UN Laws

A critical analysis of the of the above situation gives an indication that Norway is breaking its own laws and that of the United Nations by sending the minors back to their war affected home countries where their lives will be in danger. The Afghanistan situation described by the authorities gives no room for protection of the UAMs. It may as well be noticed that the agreement on the Tripartite MoU has also been breached as the UAMs from Afghanistan were forcibly returned. The communication sent by Ministry of Foreign Affairs of the Islamic Republic of Afghanistan stated clearly that the UAMs cannot live in any condition conducive for a child to grow up. Surprisingly, Norway is known to be a child friendly country with a pleasant child welfare legislation that protects children including UAMs who are in the country, as explained in Chapter three. In the Immigration Act, the rights and the best interest of the child are mentioned (3^{rd}, 2^{nd}, 3^{rd}, 1^{st} paragraphs of sections 38, 42, 49, 70 respectively just to mention but a few). But all these doctrines "vanished into thin air" one night as the UAMs were deported on the grounds that "a return opportunity" cropped up. In fact, throughout my reading of the Child Welfare Act and the Immigration Act, I never came across any provision that states: "should a return opportunity" crop up, deport UAMs. No wonder as a consequence to this the explanation given on the deportation of the UAMs was neither accepted by the Labour Party (Arbeidet Parti) nor the Christian Democratic Party (KrF).

Chapter Five: Analysis of Policies, Practices and Debates

5.0 Introduction

This section also focuses on the analysis of policies, practices and debates as far as the subject matter of this study is concerned. It is structured along the lines of the research objectives as enumerated in the chapter one of this study.

5.1 Why UAMs generally choose their destination countries

The traditional thinking when it comes to the reason asylum seekers choose to flee from their home countries is that they are compelled (Brekke and Aarset 2009, 3). Of course, one can be compelled or forced to escape his or her countries due to a number of reasons. Currently, there are models that explain debates in terms of why asylum seeking minors behave the way they

do. There are those thinkers who underscore that the actor is autonomous and at the same time rational. Thus the actors are on their own, know what they want and so take the necessary decision. Other theorists also focus on factors beyond the control of the individuals or actors (Brekke and Aarset 2009, 2–3).

With respect to the first group, it is believed the actors have available preferences from which they choose best. What is means is that the asylum seekers may have a number of destinations available to them. After careful analysis of the pros and cons of each, they will choose the one that best suits their preference. This is called the rational action model. The theory of Oded Stack is an example. The main lesson from theory is risk aversion. According to Stack (1995, 11), by way of rational choice, a family may decide to let the members travel to different countries or regions.

By so doing, they will be in a position to minimize their risk should there be changes in the domestic labour market. In other words, "do not put your eggs in one basket". Practically, this makes a lot of sense. What this means is that given any two alternatives, the person will choose the one with the slightest possible risk. The rational action model can help us comprehend how asylum seeking minors who moves from one country to the other seeking asylum acts and behaves. Here, information or knowledge about the various countries is extremely crucial. Thus, the asylum seeker needs this information to enable him or her do the ranking of countries they want to seek protection (Ibid).

The second presents a social model emphasizing that the actor is interested in both social and economic gains and takes into account the context within which actions take place in terms of “institutions, traditions, structures, rules and regulations. As indicated in chapter two, in any migration situation, there are push and pull factors. The push factors are usually what pertain in the home country which drives the asylum seeker with the pull being conditions in the destination countries. In this section only the pull factors will be considered. This is because the objective is to analyse policies in Norway that attract asylum seekers to apply for protection.

Havinga and Böcker (1999, 18) have explained that there are multiplicities of factors that unaccompanied asylum seekers consider and that they differ from one destination country to the other. What this means is that there are certain forces peculiar to the Norwegian economy that makes it end point for most asylum seeking minors. Presenting evidence from Belgium, the Netherlands and the UK, they identified Social network as the single most important pull

factor in each of these destination countries. The implication of this is that majority of asylum seeking minors look for protection in countries where they have relations. Apart from this, whereas in Belgium and the UK past colonial ties influenced to a greater extent asylum seekers' choice, it was not the case in the Netherland.

This situation can also be explained by the fact that the Dutch has no history of colonizing most of the third world countries. Even the few they went, they did so for the purpose of trade. In consistent with Stack's (1995: 11) theory of rational action model, Havinga and Böcker (1999, 18) found that asylum seeking minors will deliberately apply for protection in a country in which their possible risk is slightest in the sense that they have a relative or a friend whom they can run to. This could explain why in Norway most of these children run away according to Lidén et al. (2013, 81) before they turn 18years with no information about their whereabouts and continued existence.

The outcome of a study by Robinson and Segrott (2002, 62) conducted in Britain also revealed that factor such as democracy and protection of fundamental human rights do not count when asylum seeking want to select where to seek protection because all EU countries have these two fundamental traits. Apart from these they found four factors that made asylum seekers prefer one destination country to another which includes existence of family and friends, language, cultural ties and perceptions or images of the country. Other pull factors include perception of destination country, family and friends (Biljeveld and Taselaar 2000, 14), network, policy measures, that is faster application procedure (Jennissen et.al. 2009, 179).

The behaviour of unaccompanied asylum seekers as discussed above is consistent with the rational action model. It has also been shown that there are varying factors that pull asylum seekers to a particular destination to apply for protection. What turns out to be the dominant pull factor as far the various findings revealed as concerned, is the presence social network or family and friends. This particular factor seems to run through all the debates as far as the choice of a destination country for asylum seekers is concerned. The implication therefore is that countries that have granted protection and hosted more asylum seekers over the years should expect to receive more and more applications because the presence of social network or family and friends as the findings of this study is pointing to seems to have larger explanatory value in attracting more asylum seekers.

5.2 Why UAMs choose Norway as their destination country

Data presented in Table 1.2 in chapter one indicates there have been substantial changes in asylum seekers of diverse nationalities applying for protection in Norway over the years. In 2008, 2009 and mid-year 2015, Norway recorded the highest cases of asylum applications of 1,374, 2,500 and 5,297 respectively from only unaccompanied minor with diverse nationalities. This situation puts a lot of stress on facilities and calls for realignment of budgetary allocations. It is therefore important to find out what makes this asylum seeking minors settle on Norway. Though a number of such factors have been discussed in the previous section but the conditions might not be the same and so the factors may not apply in Norway's situation. It is important to properly situate the discussion.

Robinson and Segrott's study (2002: 62) designed what they called the triangle of reasons and cited language and past cultural ties as imperative in pulling asylum seekers to Britain. A critical analysis of these pull factors based on interview gave an indication that these pull factors cannot appropriately describe the Norwegian situation. As a result, an alternative triangle of reasons has been designed that fits the Norwegian condition. Specifically, five key factors make unaccompanied asylum seeking minors finally end their journey in Norway. These forces are *reputation, asylum policy, networks, future and security* (Brekke and Aarset, 2009: 84).

Reputation: Norway is generally perceived as a good country. It did not earn this on a silver platter but conscious efforts that have taken the country years to build: as one can see in the history of "Child Welfare in Norway". Reputation is synonymous to image. Over the years, Norway has tried as much as possible to maintain its good image or reputation through its policies and principles. The factors that contributed to Norway having the reputation or image as a good country include its respect for freedom and human rights as well as democracy. Robinson and Segrott (2002, 62) indicate that these are factors that all EU countries adhere to. Therefore, they do not really count when it comes to asylum seekers choosing a particular destination country. This cannot be wholly true because it is not all countries that really commit to it. It is how Norway commits to ensuring its realization that why the country has been touted as good country.

Asylum policy: Norway has also instituted strong asylum policy especially for asylum seeking unaccompanied minors. There is fairness in the processing of asylum applications (Brekke and Aarset 2009, 84). There is the policy that those unaccompanied asylum seeker between 15 and 18 whose asylum applications are rejected whom they cannot return because they lack proper care situation to return to are given temporary permit till they turn 18. Apart from this, there

are policies with regard to the assignment of a legal aid and representatives to these asylum seeking unaccompanied minors, their living arrangements and material provisions, return practices as well as their reintegration (Staver and Lidén 2014, 16, 24, 44). These are spelt out clearly in the Child Welfare Act and the Immigration Act to mention a few.

Networks, future and security: The network as used here refers to the presence of relative and friends or social connections (Biljeveld and Taselaar 2000,14; Robinson and Segrott, 2002: 62). The asylum seeker indicated that they were confident that their association with Norway would give them the needed future they have also always wanted. This is so because opportunities abound in the country that will help them improve their livelihoods (Brekke and Aarset 2009, 84). Thus some asylum seekers settle on Norway to seek greener pastures. There are so many ways this happens. Firstly, those asylum seeking minors whose applications get through and get the opportunity to educate themselves and through this they can change their fortunes.

Again, even those whose applications are turned down, when they turn 18years, according the EU Return Directive requires that in consideration of their best interest, there should be adequate reception facilities for them on their return (UNCRC 1989, 2, 6; ECRE and Save the Children 2011, 19). In compliance with this directive, Norway has instituted reintegration voluntary return support package in which unaccompanied asylum seekers who return voluntarily are rewarded in kind to the tune of $7,800 (Staver and Lidén 2014, 44). Since 2014, even those who are forcibly returned also receive from €1200 to €2400 (Ibid, 43). In terms of security, reference is made to Norway's respect for human dignity and just treatment of persons within the Norwegian society and also in asylum procedures. Section 38 of the Immigration Act for instance provides and strengthens the existence of the security. It addresses the given of a resident permit on grounds of strong humanitarian considerations. In determining whether there is need for humanitarian consideration, one of the factors the Immigration Act prescribes according to second paragraph(a) of section 38 is that "the foreigner is an unaccompanied minor who would be without proper care if he or she were returned" (20).

5.3 Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years

Norway is an associated member of the European Union. There is a strong policy direction as far the return of this category of unaccompanied asylum seeking minors is concerned. In terms

of return policy, it applies the European Return Directive. The purpose of this is to standardize removal and repatriation. There is also the Dublin II Regulation. According to the Article 15(3) this regulation, also called the Humanitarian Clause, if it comes to the notice of Member States that the UAM has a family member(s) in a Dublin participating country and is in a position to cater for child, "Member States shall, if possible, unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor" (Dublin II Regulation 2010, 25).

The regulations affect all 28 EU Member States plus the four associated countries namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. The associated countries are Iceland, Liechtenstein, Norway and Switzerland.

All unaccompanied asylum seeking minors who have overstayed their welcomes are supposed to return. What this means is that all unaccompanied minors between 16 and 18years whose applications are rejected are returned. But then those who they are unable to return mostly for the reason that they will not get proper care when they ar return them to. Therefore, on humanitarian grounds these are granted a temporary permit until they turn 18years. Thus, it cannot be renewed (Staver and Lidén, 2014, 6; Immigration Act 2008, section 38 paragraph 2a, 20).

Per section 90 of the Immigration Act in terms of the return policy, there exist (1) voluntary returns of unaccompanied children and (2) forced returns of unaccompanied children. Thus there are unaccompanied children who return voluntarily and those who are forced to return because they have overstayed their welcome rendering their continued stay illegal. Furthermore when the application is rejected, it is expected that the unaccompanied asylum seeking minor will leave voluntarily rather than forced return. If he or she decides to exit voluntarily, the Directive allows them up to 30 days to organize themselves although in some instances Member States hardly grants this period (Directive 2008/115/EC).

The Article 10 of the Directive which deals specifically with UAMs however requests Norway to ensure that before authorities take a decision to return any UAM all organizations to assist the child in this regard must do so in his or her best interest. Additionally Norway must ensure that the child or children are returned to a family member, a nominated guardian, or better still adequate reception facilities have been put in place for the child. It however fails to stipulate

what reception facilities are adequate back home. Per the Directive, as long as the child has not received the final decision on his or her application, the Directive will not apply.

In view of this, Norway has done quite well in terms of the reintegration package put in place for voluntary returnees. To be specific they are rewarded on their return to the tune of $7,800 apportioned as follows:

- Accommodation support in case the child cannot stay with the family = $1,500;
- Educational support in the form of fees, books etc., vocational training, starting a business or supporting a family business = $4,500;
- Medical support: $3000; and lastly,
- Subsistence support in the form of food, clothes etc. = $1,500.

In addition to this, they are constantly monitored for about 6 months or in some cases a year if the need be. The monitoring takes the form of home visits which is done by the Norwegian International Organisation of Migration (IOM) based in the returnees' country.

Although the EU Return Directive did not specifically prescribe what reception facilities would be considered adequate, you will agree probably with me that the above reintegration package is quite phenomenal.

But then the same cannot be said of the forced returnees. They receive 'peanut' compared to what their voluntary counterparts are getting on their return and even that is was just about two years ago that forced returnees started receiving reintegration allowance of €1200 to €2400. In my opinion, this is unfair and in my view contravenes the EU Return Directive they should be returned to adequate reception facilities. As I have indicated above, although the directive did not specifically propose what reception facilities would be adequate, in my view this is nowhere near adequate compared that of their voluntary returnees. Let me emphasize that the directive did not make any discrimination.

Let me further indicate that in as much as there are pull factors, there are equally push factors which obviously include opportunities to better future. As a matter of fact as long as these push factors exist, unaccompanied minors will always be on the move. Therefore they also must be properly reintegrated just as their voluntary returnees. Additionally, they also should be monitored. I believe this is where Norway's is not doing quite well and for that matter the return program should be modified. If it is about budgetary constraints, other bodies such the EU, United Nations, the World Bank etc. can be appealed to for support in this regard.

5.4 How Norway's policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives

The General Comment No. 6 of the CRC makes it quite clear that no state should send any child or children back to their home country where there exist noticeable signs or there are reasons to believe that the child's life will be in danger (CRC General Comment No. 6, para. 27). The United Nations Guidelines do not forbid the deportation of a child whose application for protection has not been successful. It however enjoins states to respect the principle of non-refoulement that they have obligations to protect child's right to life as well as his or her subsistence and development (Article 6 of CRC). In the same vein, Article 37 of CRC charges states not to subject any child to cruelty, or any form of inhuman treatments and to treat children with dignity.

In addition to this, section 28 as well as the first and third paragraphs of section 73 of the Norwegian Immigration Act recognizes the above international obligations and makes further provisions for them. But in some cases these provisions have been grossly violated. With regard to this, the Norwegian policy on deportation can be said to be consistent with the United Nations Guidelines and the European Directives.

The inadequacies arise when it comes to forced deportations or returns. As a result, there have been instances of gross violations of the United Nations Guidelines and the European Directives. A case in point was the forcible deportation of unaccompanied asylum seeking minors from war-torn regions of Iraq, Somalia and Afghanistan whose application for protection had been rejected in 2011 ((Sandelson and Bostock 2015, 28).

Hearing about this arrangement by Norway, the Ministry of Foreign Affairs of the Islamic Republic of Afghanistan sent a communication to Norway stating that the UAMs on their return cannot live in any condition conducive for a child to grow. Again, the Human Rights Watch (HRW) wrote to Norway's Ministry of Children, Equity and Social Inclusion requesting them to take their time because they noticed the authorities were in a rush to return migrant children. It is also interesting to note that at that time Norway, Afghanistan and the UNHCR were at the verge of signing a tripartite Memorandum of Understanding (MoU) that was to use the European Return Platform for Unaccompanied Minors (ERPUM) that was to return the minors voluntarily. These were all ignored and eventually the UAMs were deported on the grounds

that ‘a return opportunity’ cropped up. Thus, they returned the UAMs to some institutions in the home countries (Ibid).

This action by the Norwegian authorities was inconsistent with United Nations Guidelines, the European Directives and even Norway’s own Immigration laws. It is unimaginable what return policy authorities applied in this case. This is because by virtue of this action, Article 333 of the 1951 Refugee convention, Articles 3(1), 6 and 7 of the CRC, Article 10(2) of the EU Return Directive and sections 28 and 73 of the Norwegian Immigration Act were all grossly violated. Was it the case that the ‘return opportunity’ consideration outweighed the best interest consideration? Obviously the return opportunity consideration far outweighed the provisions inherent in the above stated United Nations Guidelines, the European Directives and even Norway’s own Immigration laws and above all the best interest consideration and for which reason they could not listen to the advice from both the Ministry of Foreign Affairs of Afghanistan and the HRW.

The fact of the matter is that Norway ought to be aware of all these obligations. It baffles me how Norwegian authorities can ignore all of a sudden its own laws, that of the EU and the United Nations in the interest of a so called return opportunity. It is also particularly noteworthy that it is with forced returns or deportations that Norway seems to have some inadequacies. It is thus becoming obvious that where there is violation, it is most probable that it is associated with forced returns or deportations. It is in such cases that one might probably say the Norwegian policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives.

5.5 How Norway’s existing policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions

The Article 3 (1) of the General Comment No. 14 of CRC states that:

“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” (2013, para. 1).

This general comment provides for the right of the child to have his or her best interests taken as a primary consideration. It also seeks to let state parties understand the need to have the best

interest of children assessed and apply it as a primary consideration or, better still as the paramount consideration. As a result, it calls for attitudinal change in ensuring that children are respected by all as "rights holders" (General Comment No. 14, 2013, para. 1).

The application of this principle according to the UNHCR Guidelines on Determining the Best Interests of the Child (2008) can be done in three practical ways. These consist of:

- Identifying durable (short and long-term) solution that is most appropriate for UAMs;
- Decisions taking in respect of temporary care for UAMs in some special conditions;
- Decisions involving taking children into care even if it is against the parents will.

This means that states must understand the child's needs and immediately find lasting solution to those needs. Fundamentally, best interests concern the child's and as a matter of fact, for any state to demonstrate its desire and preparedness to protect children and prevent them from any harm, authorities are expected to design policies - be it social, educational, health or the justice systems – that will seek to protect and keep children safe at all times (Goodyear-Smith and Laidlaw 1999, 731).

By implication, to determine that Norway's existing policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions such as those cited above, we must see it in its policies or policy instruments.

The Immigration for example underscores the principle of the child's best interests and goes on to say it should be the ultimate concern in any assessment. On resident permit, the third paragraph of section 38 for instance states that, "In cases concerning children, the best interests of the child shall be a fundamental consideration". For this reason, this Act and the UDI guidelines set the much lower requirement for children than that of adults. What this means is that there are some situations that minors will find themselves in and still be granted residence permit based on humanitarian grounds but if an adult were to be in that same situation he or she will not simply qualify (Vitus and Lidén 201, 78; UDI guidelines PN 2012-011). Thus, in the application of any of the immigration regulations, the child's best interest principle ought to be considered.

The Child Welfare Act also emphasizes the best interest of the child as a fundamental consideration particularly the chapter 4 from section 4-1 to 4-31). At the time of registration the child's best interest principle is considered because the Child Welfare Act says so. UAMs usually are assigned representatives when registering the asylum claims. As part of the

responsibilities, the representative is to make sure that decisions that are made are in the child's best interest. That the representative must support the child by ensuring that the child receive suitable care, health care, language support, housing, as well as education. This also means the representative has to be there when the UAM is to be interviewed by the UDI. Again, the representative offers advice, does all the advocacy works for the child and even helps in the efforts to trace the child parents (Staver and Lidén 2014, 15). In all these the state bears the cost.

These are all done to ensure that the child gets the needed support both in the short-term and long-term. The Child Welfare Services intervene in the interest of the child when they get to know that a child is living in a deplorable condition, is maltreated, subjected to abuse and violence in the home, child's health or development may be seriously harmed because the parents are unable to care adequately for the child (The Child Welfare Act 1992, 17). This is what the UNHCR describes as the practical ways of determining the best interest of the child.

With respect to the return of unaccompanied children between 16 and 18 years, the Immigration Act equally emphasizes the best interest of the child. Specifically, the seventh paragraph of section 90 of the Immigration Act indicates that an UAM should be forcibly returned only to either "a family member, an appointed guardian or to some other appropriate care arrangement". Again as indicated earlier, the European Return Directive, the Dublin II Regulation and also the EU Action Plan which prescribes return directives which Norway applies are all aimed to support the best interest of the child. The Humanitarian Clause Article 15(3) under the Dublin II regulation for instance is founded on the best interest of the child principle. The EU Action Plan on unaccompanied minors (2010-2014) also places "the standards established by the UN Convention on the Rights of the Child at the heart of any EU action concerning unaccompanied minors" (Donnell, 2014, 30).

On the basis of the above and the discussions held earlier from the first two sections of this chapter, it can be inferred that Norway's voluntary return of unaccompanied minors is consistent with the best interest of the child principle. This is because it is in line with the seventh section 90 of the Immigration Act. For it ensures that, the returnees are properly reintegrated with proper return program. But as established earlier, the same cannot be said of the forced returns.

In many cases analysed earlier, forced returns carried out by Norway do not go well and the arrangement does not properly reintegrate the returnees. Although the seventh paragraph of

section 90 specifically mentions that forced returns of UAMs should be carried out only when they are been returned to either a member from the family, a guardian or a suitable care arrangement. In practice however, this is done effectively only in cases of voluntary return. Therefore, it can be said that whereas voluntary return policy in Norway is consistent with the best interest of the child principle as advocated by various international conventions such as the CRC, EU Returns Directive, Dublin II or III Regulations, the EU Action Plan (2010 -2014) to mention a few, its forced return does not.

5.6 Conclusion

The study has been conducted with the objective of examining Norway's policy on the returning (deportation) of unaccompanied asylum seeking minors as well as the strategies put in place in the best interest of the child. Specifically, it sought to find out among other things the reason unaccompanied minors choose Norway as their destination country; existing policy regarding the return or deportation of same. A qualitative approach was used in the research process by analysing various documents, conventions and laws as far as the subject matter is concerned.

After a careful analysis has been carried out, on the basis of the research objectives the study therefore makes the following conclusion. In the first place, UAMs settle on Norway as the destination country because to them Norway has a reputation as a good country, it has also instituted strong asylum policy especially for asylum seeking unaccompanied minors, they have social connections, there abound opportunities for a better future and also there is respect for human dignity and all persons are justly treated within the Norwegian society. These factors therefore pull them to settle on Norway.

Concerning Norway's existing policy direction regarding the return of unaccompanied children between 16 and 18 years, the study found that Norway applies the European Return Directive. The Dublin II Regulations also guide the country and also the EU Action Plan (2010 – 2014). In view of this, Norway has done quite well in terms of the reintegration package put in place for both forced and voluntary returnees. Therefore it can be said that Norway has a strong policy direction as far the return of this category of unaccompanied asylum seeking minors is concerned.

On the issues of how Norway's policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European

Directives, it was found that Norway's return policy in principle does not differ from those of the United Nations and the European Directives. How it carries out its forced returns or deportations is what seems to have some inadequacies. It is in that direction that one might probably conclude that the Norwegian policy concerning the return of unaccompanied children between 16 and 18 years differ from the United Nations Guidelines and the European Directives.

When it comes to whether Norway's existing policy regarding the return of unaccompanied children between 16 and 18 years adhere to the best interest of the child as advocated by various international conventions, it was found again that there are issues with concerning its forced deportation. Therefore the conclusion drawn is that whereas voluntary return policy in Norway is consistent with the best interest of the child principle as advocated by various international conventions, its forced return does not.

On the basis of the above, it can be concluded that Norway has a policy on the return or deportation of unaccompanied asylum seeking minors between the ages of 16 and 18 years and that generally the strategies put in place are in the best interest of the child but there is also the need for improvements in some aspects especially in connection with forced returns.

5.7 Recommendations

In line with the findings and conclusion the following recommendations are made for policy action. It is therefore recommended that:

- The principle of the best interests of the child should be applied in all cases as a primary consideration as far as decisions affecting the return or deportation of the child is concerned and must be consistent with Article 3, UN Convention on the Rights of the Child 1989 especially in the case of voluntary returns.
- The reintegration program and package for forced returns should also be enhanced to enable the returnees properly settle in their countries of origin. On return like it is done for voluntary returnees, forced returnees must as well be monitored for at least six months.

- Organization of accommodation for UAMs between 16 and 18years should be enhanced. Preferably, they should be moved to care centres run by the child welfare services (Bufetat) just as their counterparts under 15years.
- Forced Returns should be streamlined and properly organized in such a way that the child's best interests are taken care of adequately.

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