



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

**Submission to the 47th Session of the Human Rights
Council's Universal Periodic Review Working Group**

April 2024

Geneva, Switzerland

NORWAY

Submission by:

ADF International
Rue du Pré-de-la-Bichette 1
1202 Geneva, Switzerland

Web: www.ADFinternational.org
Email: UN@ADFinternational.org

Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report acknowledges the positive trend of fewer children being placed in alternative care, which prevents their separation from families, and commends the legislative progress made in this regard. Nevertheless, it expresses serious concern over Norway's ongoing practice of unjustifiably separating children from their parents, a process that hinders efforts towards family reunification and disproportionately impacts migrant families.

(a) Family Separation

Background

3. Statistics and trends indicate a slowly declining but persistently high rate of children being placed in foster care or residential homes following care orders. When compared to its European counterparts, Norway's Child Welfare Services (Barnevernet), traditionally focused on early intervention, faces a notably low level of trust.¹
4. This lack of trust is especially pronounced among migrant families, who are disproportionately subjected to care measures within the Norwegian child protection framework.² Immigrant parents report feeling constantly monitored and judged by their communities and various institutions, such as schools, health centers, and the child welfare system itself. They feel pressured to conform to certain norms to be viewed as competent parents and avoid the risk of being reported.³ Moreover, social workers often interpret economic challenges and poverty as indicators of inadequate parenting or failure to provide proper care, further marginalizing these families.⁴ Given these difficulties, parents share a profound fear of potentially losing custody of their children.⁵
5. The legitimacy of the low trust and fear among families is underscored by numerous cases, some of which have reached the European Court of Human Rights (ECtHR). Since 2019, the Court has identified multiple violations of children's and parental rights.

¹ O.R. Haanaes, 'The trust in child welfare services varies greatly between European countries' (October 2023) *University of Bergen*, <https://partner.sciencenorway.no/children-society-and-culture-university-of-bergen/the-trust-in-child-welfare-services-varies-greatly-between-european-countries/2270380>. See also T. Helland, 'Protection Systems in the Czech Republic, Lithuania, Norway, Poland, Romania and Russia' (January 2019) *University of Bergen*, https://www.regjeringen.no/contentassets/2f02bf9da8a9412889593ec4178d2df3/bfd_report_final_version_170120202.pdf.

² K. Abusaleh, 'Understanding the roles and challenges of child protection employees in out-of-home care arrangements for children of minority and immigrant backgrounds in Rogaland, Norway' (June 2023) *University of Stavanger*, <https://uis.brage.unit.no/uis-xmlui/bitstream/handle/11250/3078301/no.uis%3Ainspera%3A151607012%3A105521968.pdf?sequence=1&isAllowed=y>.

³ Tembo, M.J., Studsrød, I. and Young, S., 2021. Governing the family: immigrant parents' perceptions of the controlling power of the Norwegian welfare system. *European Journal of Social Work*, 24(3), pp.492-503.

⁴ Ibid. See also: Yvisaker, S., Rugkåsa, M. and Eide, K., 2015. Silenced stories of social work with minority ethnic families in Norway. *Critical and Radical Social Work*, 3(2), pp.221-236.

⁵ Tembo, M.J., 2022. Navigating emotions in child welfare: Immigrant parents' experiences and perceptions of involvement with child welfare services in Norway. *International Social Work*, 65(2), pp.254-267.

The depth of concerns with Barnevernet has even led to the release of a documentary by the streaming service Netflix in 2023, detailing a mother's struggle with the agency.

6. In the previous Universal Periodic Review cycle, Norway received twelve recommendations urging the government to cease its unjust interference in family life within its child welfare system, and to adhere to its international human rights law obligations in this area. Norway accepted all these recommendations. Despite a reduction in the number of care orders that result in children being separated from their parents, substantial challenges still exist.⁶

Legal Framework

7. The Constitution of the Kingdom of Norway states that “everyone has the right to the respect of their privacy, and family life, their home and their communication”.⁷ Section 104 stipulates that the child’s best interest is a “fundamental consideration” in actions and decisions affecting children, and that “the authorities of the state shall create conditions that facilitate the child’s development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family.”⁸ In other words, the Norwegian Constitution states that its child protection system should first and foremost help children within their own family.
8. The Child Welfare Act in Norway governs the operations of the Child Welfare Services, detailing the measures to support children requiring protection. In 2023, significant amendments were made to the Child Welfare Act to better align Norway's practices with its international human rights commitments.⁹ These amendments, effective from January 2023, introduced several key changes, aimed at: 1) ensuring children's cultural and religious backgrounds are considered throughout all case proceedings, 2) reinforcing children's rights to care and to a family life, and 3) emphasizing the use of the least intrusive measures possible in relevant interventions.¹⁰
9. In March 2023, an expert committee tasked with evaluating ways to enhance legal protections for children and families within child protection cases presented its findings to the Minister of Children and Families.¹¹ The report revealed ongoing significant challenges within Norway's child protection system. To address these issues, the committee recommended a comprehensive set of 118 measures aimed at bolstering the legal rights of children and parents, as well as improving the quality of services provided by the child protection agencies.
10. The report acknowledged the following shortcomings:

⁶ UN Human Rights Council Report of the Working Group on the Universal Periodic Review - Norway' (28 June 2019) A/HRC/42/3.

⁷ Constitution of the Kingdom of Norway, Section 102, <https://lovdata.no/dokument/NLE/lov/1814-05-17>

⁸ Ibid., Section 104.

⁹ OSLOMET 'Norway's Child Welfare Services under scrutiny' (Oct 2023)

<https://www.oslomet.no/en/research/featured-research/norways-child-welfare-services-scrutiny>.

¹⁰ Child Welfare Act, sections 1-5 and 1-8,

<https://www.regjeringen.no/contentassets/221b1c050f72434b8fb56564af085ea7/ny-barnevernslov-1.-januar-2023-en.pdf>.

¹¹ Norway Child Expert Committee 'The Expert Committee's Report' (March 2023)

<https://barnevernsutvalget.no/english/>.

- Follow-ups with parents after a care order are inadequate and not sufficiently systematic;
- There are weaknesses when considering the experiences of parents. These deficiencies impact the quality of the help that will be provided to children and parents, and the ability to benefit from positive, knowledge-based measures that work in the best interests of children and families;
- There are grounds to question whether voluntary placements are used in the correct cases, and in this regard whether: 1) the decision-making processes are sufficiently secure, 2) the consent given by children and parents is genuine, and 3) parents and children receive adequate follow-up after a placement;
- There is a lack of system transparency;
- There is a notable fragmentation of supervision and control among stakeholders;
- Access to experts in various parts of the country, and their qualifications, are both inadequate; and
- The current legislation lacks detailed guidelines for how decision-makers should evaluate the principle of the child's best interests in child protection cases.

11. A comparative analysis of child protection systems highlighted a particular problem in Norway related to extensive discretionary powers and the challenge of ensuring equal treatment. This criticism is supported by studies indicating the absence of professional guidelines and directives necessary to guide the evaluation of child protection workers in Norway. The established understanding is that significant autonomy and discretionary power lead to variability and pose challenges to uniform treatment. Such autonomy contributes to differences in the application of legal criteria and the protection of the rights of both children and their parents.¹²

12. Furthermore, research has found that the majority of child protection workers possess a general background in social work, rather than specialized training in child protection. This underscores issues with the breadth and depth of child protection education, suggesting that its limited scope and content may impede consistent and effective child protection practices.¹³

13. Since 2019, the ECtHR (henceforth “The Court”) found in nine child welfare cases violations of the child’s or parent’s right to family life (Article 8 of the ECHR). The ECtHR’s concerns were manifold. In one case, the Court concluded that the Norwegian Child Welfare system gave up on the reunification of a child with her parents at too early a stage, by immediately defining the placement as long-term.¹⁴ In another case, the Court deplored the lack of a genuine balancing exercise between the interest of the child and its biological family and lack of consideration of developments on family

¹² T. Helland, ‘Protection Systems in the Czech Republic, Lithuania, Norway, Poland, Romania and Russia’ (January 2019) *University of Bergen*, https://www.regjeringen.no/contentassets/2f02bf9da8a9412889593ec4178d2df3/bfd_report_final_version_170120202.pdf.

¹³ A. Falch-Eriksen, M. Skivenes, ‘Right to Protection’ (March 2019) *Idunn*, <https://doi.org/10.18261/9788215031415-2019-04>.

¹⁴ K.O. and V.M. v. Norway, 2019 (<https://hudoc.echr.coe.int/fre?i=001-198580>)

life. In multiple other cases, the Court found that the contact between the children and parents has been limited more strictly than what was decided to be in the best interest of the child and his or her parents.¹⁵

14. The rather careless separation of children from parents via care orders is particularly concerning in light of a recent Norwegian study that shows the significant negative impact of a child's experience with child welfare services (CSW) on their education, health and employment in adulthood.¹⁶
15. Another study highlights the high rate of instability in foster homes due to the constant moving.¹⁷ In particular, Half of all children living in foster homes have experienced at least one move since they arrived in their first foster home (not including emergency placements). It is typical for children to move 1-2 times during their first year in foster care before the situation stabilizes. On the other hand, 67% of children in institutional care have experienced three or more moves.¹⁸

Family Separation in International Human Rights Law

16. International law distinctly articulates that the removal of children from the custody of their parents constitutes a significant interference with family life, permissible only under the most compelling circumstances.
17. The Universal Declaration of Human Rights (UDHR) through Article 12 protects the right to privacy and family life.¹⁹ This is further reinforced by Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR), which states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home..."²⁰
18. The Convention on the Rights of the Child (CRC) specifically acknowledges the importance of a family environment for the full and harmonious development of a child's personality. Consequently, Article 9 of the CRC mandates that a child should not be separated from their parents against the will of the parents, except when competent authorities, subject to judicial review, determine such separation as necessary for the child's best interests, in accordance with applicable laws and procedures.²¹
19. The CRC further stipulates 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".²² Read in conjunction with Article 5, which affirms the right of the child to receive, in a

¹⁵ Strand Lobben v. Norway, 2019; A.S. v. Norway, 2019; Abdi Ibrahim v. Norway, 2019; Hernehult v. Norway, 2020; Pedersen and others v. Norway, 2020.

¹⁶ V. Paulsen et al. 'Outcomes in adulthood among former child welfare services recipients: findings from a Norwegian registry study covering two decades' (January 2019) *European Journal of Social Work* 26(3), 411-427, <https://www.tandfonline.com/doi/full/10.1080/13691457.2021.2016646>.

¹⁷ M.Skivenes 'Improving foster care in Norway' (May 2023) *Center for Research on Discretion and Paternalism*, <https://discretion.uib.no/improving-foster-care-in-norway/>.

¹⁸ Ibid.

¹⁹ UN General Assembly, Universal Declaration of Human Rights (10 December 1948) 217 A (III), art. 12.

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 U.N.T.S. 171 (ICCPR), art. 17.

²¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), preamble.

²² Ibid., Article 3.

manner consistent with his or her evolving capacities, appropriate direction and guidance from parents and legal guardians in the exercise of his or her rights, it is clear that parents are presumed to be best positioned to know and act in the best interest of the child.²³

20. Finally, the UN Guidelines for the Alternative Care of Children emphasize that even where separation between child and parents occurs, family contacts shall be preserved to the maximum extent possible unless it is not in the child's best interest:

“All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.”²⁴

21. The Guidelines further stress that “regular and appropriate contact between the child and his/her family specifically for the purpose of reintegration should be developed, supported and monitored by the competent body”.²⁵

Recommendations

22. In light of the aforementioned, ADF International suggests the following recommendations be made to Norway:

- a. Ensure that the right to private and family life is duly implemented, in accordance with the Convention on the Rights of the Child and other applicable international human rights treaties;
- b. Ensure that the actions of Norway's child welfare services do not arbitrarily compromise family integrity, and that parents are not unjustly or discriminatorily stripped of their rights;
- c. Ensure that children who are separated from their families are not prematurely placed in long-term care and, where appropriate, are allowed to have regular contact with their parents with a view to ensuring family reintegration and prevent family separation;
- d. Ensure that financial and material poverty do not serve as the sole basis for removing a child from the care of parents within the child welfare system;
- e. Strengthen levels of transparency, supervision, and expertise within the child welfare system;
- f. Ensure that a high threshold is applied for interventions in case of child neglect and abuse to ensure family unity and consequently the best interest of the child in alignment with the Convention on the Rights of the Child.

²³ Ibid., Article 9(1); Committee Human Rights Committee, ‘General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1)’ (29 May 2013) CRC/C/GC/14, para 61.

²⁴ UN General Assembly ‘Guidelines for the Alternative Care of Children’ (18 December 2009) A/RES/64/142, Annex, para 11.

²⁵ Ibid, para 51.



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