

# Children across borders - Rights and Policies

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In this talk I will have a specific focus on discrimination of unaccompanied minors (UAM) seeking asylum:

The structure is as follows:

I. What are our obligations?

II. What do we know about their situation?

II. How does a child centric State as Norway handle unaccompanied minors?

IV. Can we point at solutions?





## Unaccompanied minors (UAM) seeking asylum

- **Unaccompanied minors** - UAM – are individuals below the age of 18 that are fleeing (migrating) without caregivers and or family
  - Some are 7 some are 17
- The mere fact that they are without caregivers deem them a particular vulnerable group of individuals
- Further, many of the children have experienced abuse and violence during the migration, as well as having traumatic experiences from home country.



Source: UN 'Migrants in Libya: Insights into the experience of women and children in transit'. 2017

But, the reasons for migration differ. Some cannot stay in their home country, whereas some "chooses" to migrate. For example, the UAM's in Melilla are to a large degree children with families in Morocco that they visit regularly.

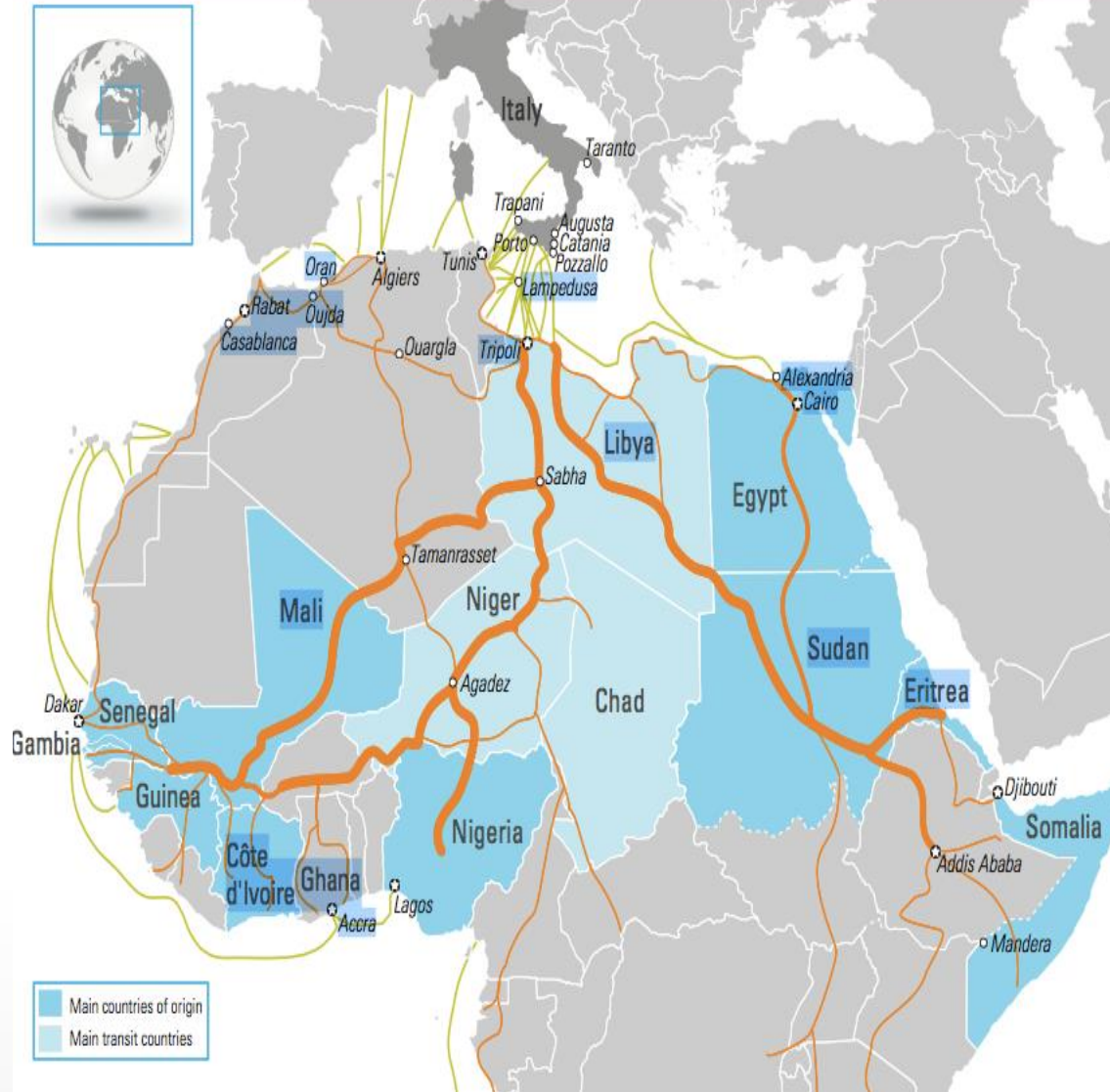
- pathway to education, training, work and Spanish residence?

Melilla is one of the main routes for migration into Europe, Italy is another.





## Central Mediterranean migration routes



Of 181,436 arrivals in Italy in 2016 via the Central Mediterranean Route, **16 per cent were children** (n=28,223)

- **90% of the children were unaccompanied**

### High Risk:

An estimated 4,579 people died crossing the Mediterranean

- **15% were children** (n=over 700)

Source: UNICEF – CHILD ALERT, 2017





I. What are our obligations?

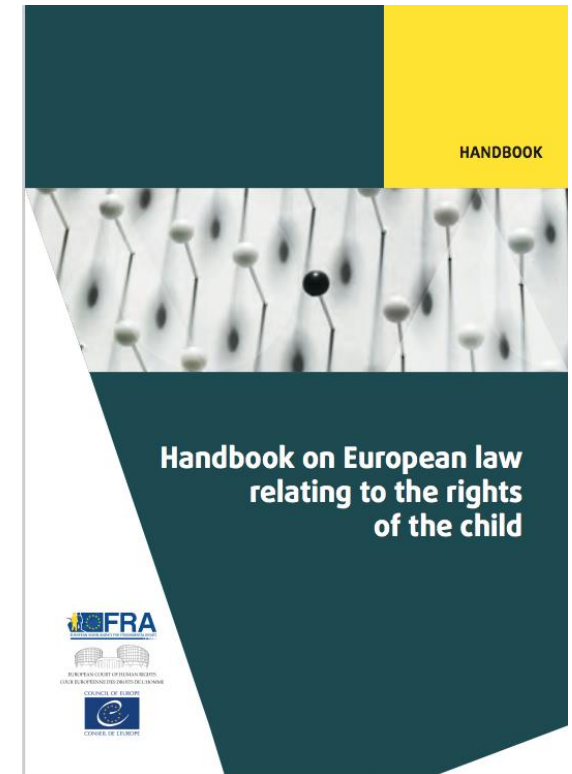




## Children have political, civil and social rights

It is legally clear that children according to EU and EU states are full fledged holders of rights. ....

(Source: Handbook 2015, p 50)





## Convention on the Rights of the Child (UNCRC)

World wide ratification of the UNCRC

- Four main principles in the UNCRC:
  1. Child's best interest (article 3)
  2. Children's participation (article 12)
  3. The right to life (article 6)
  4. Non-Discrimination (article 2)





## *CRC Article 2*

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction **without discrimination of any kind**, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (emphasize added)

Article 22







- *Article 22*
- 1. States Parties shall take appropriate measures to ensure that a child **who is seeking refugee status** or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

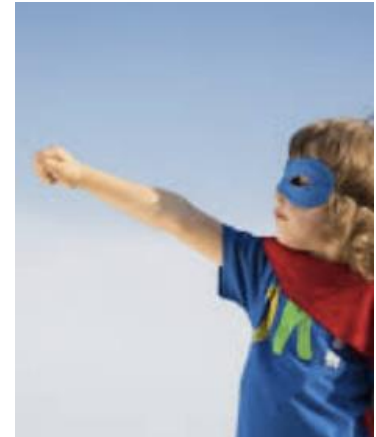
- Source: UNCRC article 22 in brief





In short: migrant children have the same right as other children and cannot be treated differently than other children

Thus, we have an obligation to secure and provide for asylum seeking children that are in our country





What are our (States) obligations when UAM are migrating?

The responsibility of the transit countries?

Children flee due to extreme conditions in their home country with the aim of survival and with a hope for a better life





## A general obligation: the right of asylum

It demands the following of a state:

- to admit a person to its territory;
- to allow the person to sojourn (temporary stay) there;
- to refrain from expelling the person;
- to refrain from extraditing the person; and,
- to refrain from prosecuting, punishing, or otherwise restricting the person's liberty.”



Source: Grahl-Madsen, 1980





## An additional right: the right to family reunification

- The Directive on the right to family reunification (2003) establishes common rules for exercising the right to family reunification in 25 EU Member States
  - But not including the United Kingdom, Ireland and Denmark
- This right create tensions, as there is a belief that UAM's are used by their families as hooks to bring the whole family into a country





## Briefly on our obligations:

- All children have political, civil and social rights as set out in the UNCRC
  - This includes UAM
- Non-discrimination provides UAM with the same rights as other children in the country
- The right to asylum includes asylum seeking UAM





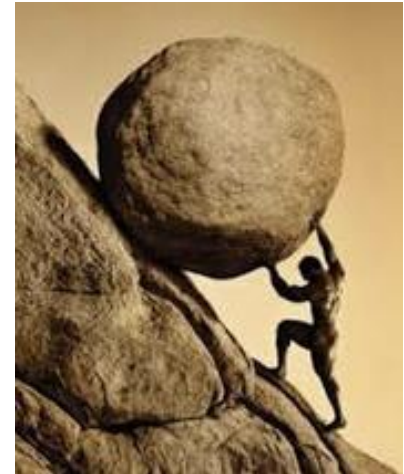
## II. What do we know about the UAM's to Europe?





## FACTS ON MIGRATION AND ASYLUMSEEKING INDIVIDUALS:

- It is an extremely difficult area
- A lot of conflicting interests
- It is enormous human suffering
- In 2015 and 2016 the influx of migrants to Europe was exceptional high







Knowledge is scarce on the situation for UAM

Difficult to retrieve accurate information

In 2014 it was registered 23 000 UAM's into Europe

In 2015 it was registered 90 000 UAM's into Europe

In 2016 it was registered 63 300 UAM's into Europe

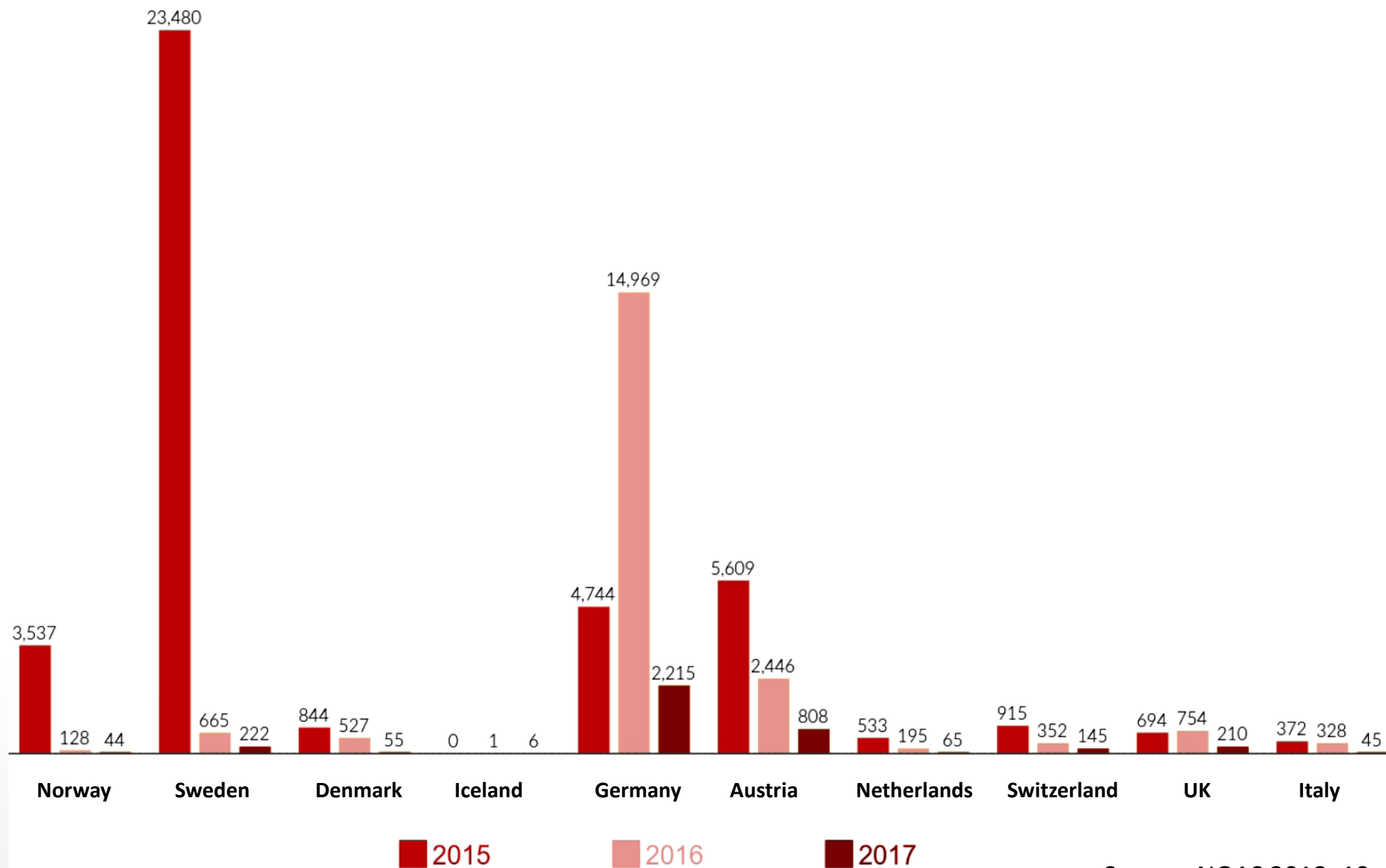
Many of these apply for asylum. We do not have a full overview, but the amount of applications to a selection of 10 countries illustrate differences between countries



Source: Eurostat



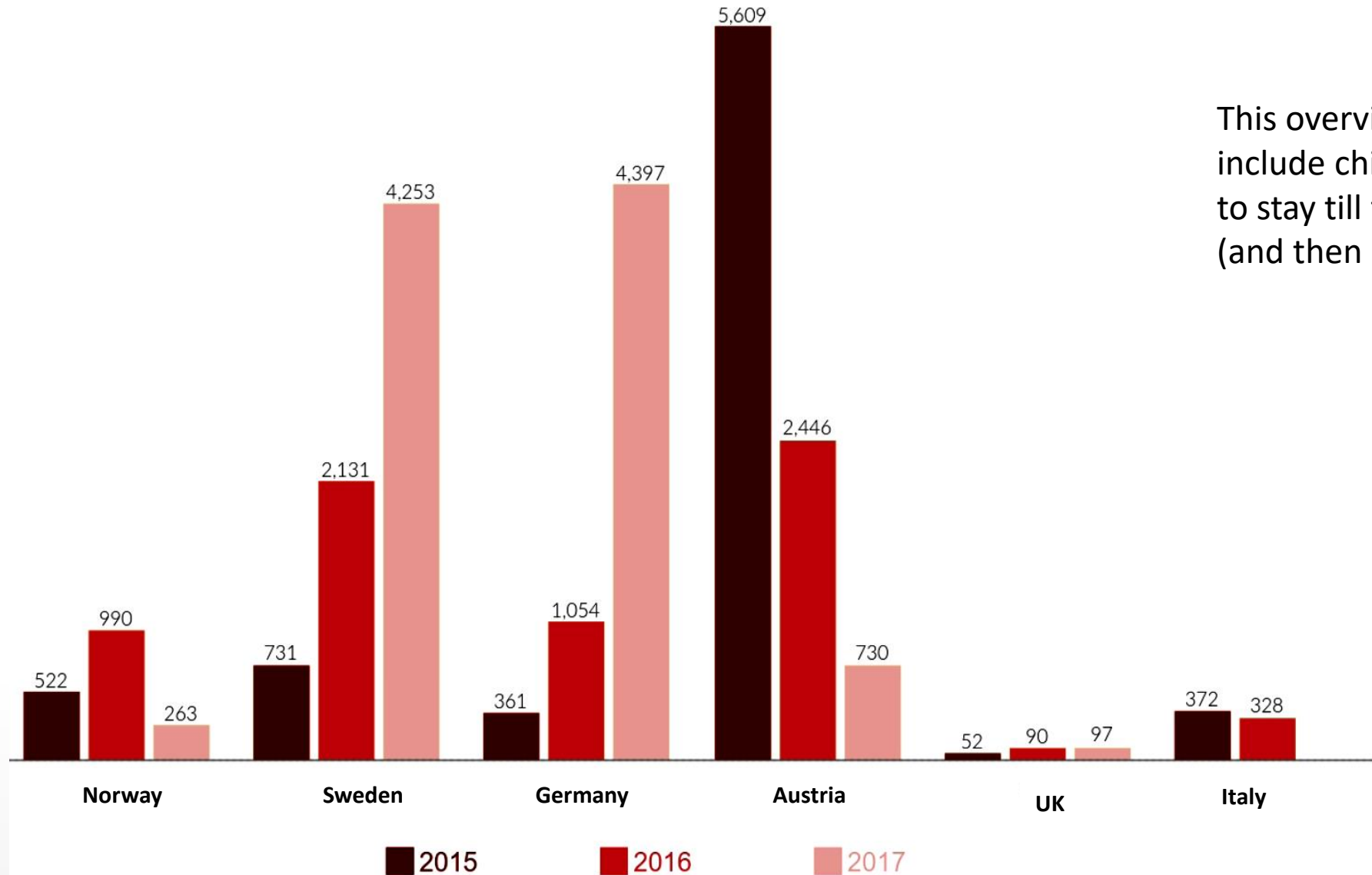
# ASYLUM APPLICATIONS for UAM, 10 European countries



Source: NOAS 2018, 19.



# ASYLUM GRANTED for UAM, 6 European countries



This overview does not include children allowed to stay till they are 18ys old, (and then are sent back home).

Source: NOAS 2018, 18.





## In brief, what do we know about the migration situation?

- Many children are involved in the migrant crisis
- Most of them are unaccompanied
- The minors are in need of substantial help and support
- Huge variation between countries in how their obligations towards children are handled
- Many countries have a practice with temporary permits for UAM's
- Many of those seeking asylum are not granted asylum – what then?
- Lack of basic information, for example about those UAM's that are not registered by official systems



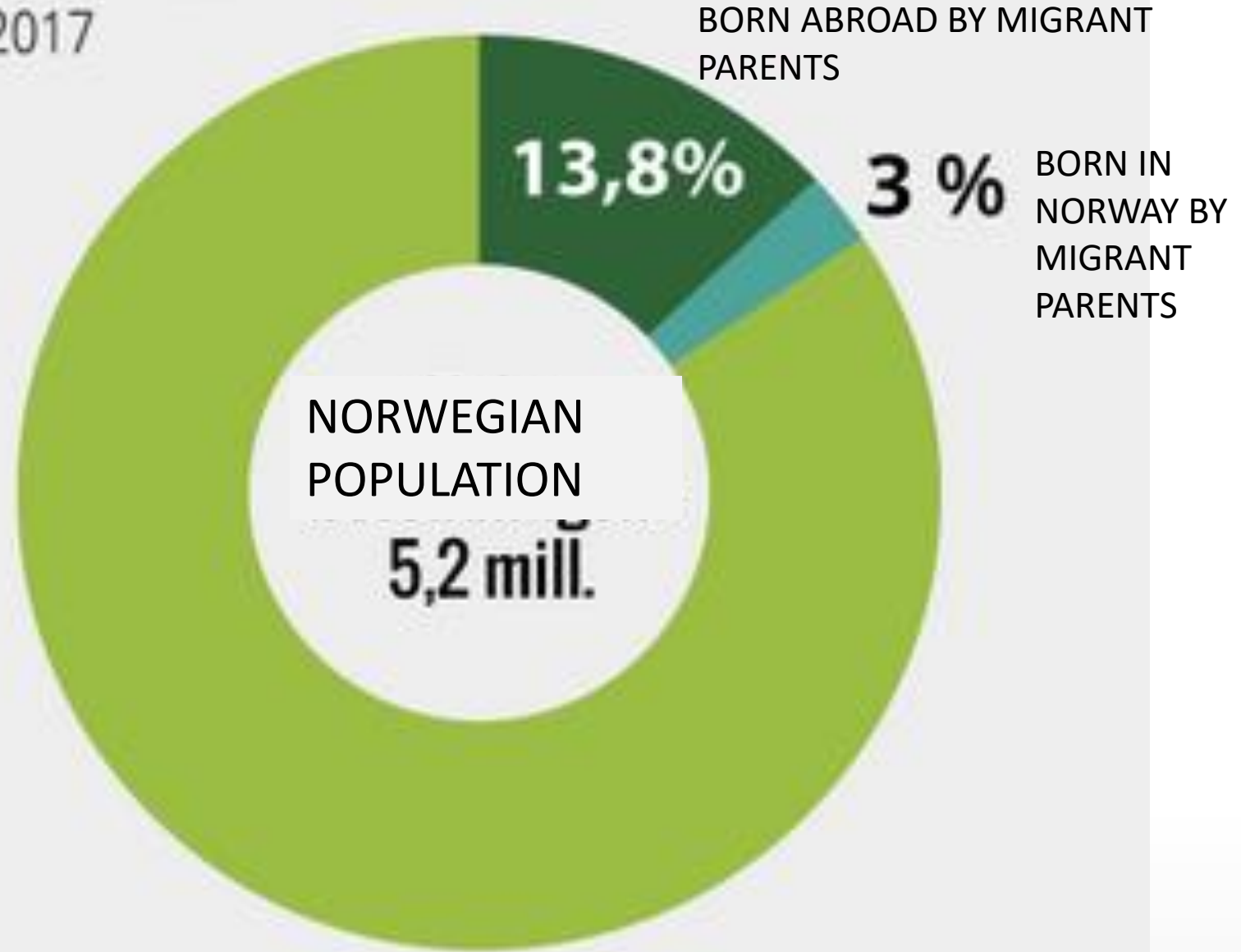


III. How does a child centric State as Norway handle asylum seeking children?





1. januar 2017



BORN ABROAD BY MIGRANT PARENTS

BORN IN NORWAY BY MIGRANT PARENTS

SOURCE: NATIONAL STATISTICS





NORWAY – Considered a child Centric state

UNCRC became **Norwegian legislation** in 2003

**Number 1** on children's rights (Kids Right Index. 2015)

- Measure of rights in relation to: Life, health, education, protection and enabling environment
  - 165 countries are included in the ranking

**Number 2** on UNICEF's well-being index, including 29 OECD countries (2013).







## UNICEF – Child well-being in 29 high income countries

Measures: material conditions; health and security; education; behavior and risk; housing and environment.

1	Netherlands
2	Norway
3	Iceland
4	Finland
5	Sweden
6	Germany
7	Luxembourg
8	Switzerland
9	Belgium
10	Ireland
11	Denmark
12	Slovenia
13	France
14	Czech Republic
15	Portugal
16	United Kingdom
17	Canada
18	Austria
19	Spain
20	Hungary
21	Poland
22	Italy
23	Estonia
23	Slovakia
25	Greece
26	United States
27	Lithuania
28	Latvia
29	Romania





## Non-discrimination is the rule

### Norwegian Constitution § 98

All people are equal under the law.  
No human being must be subject to unfair or disproportionate differential treatment.

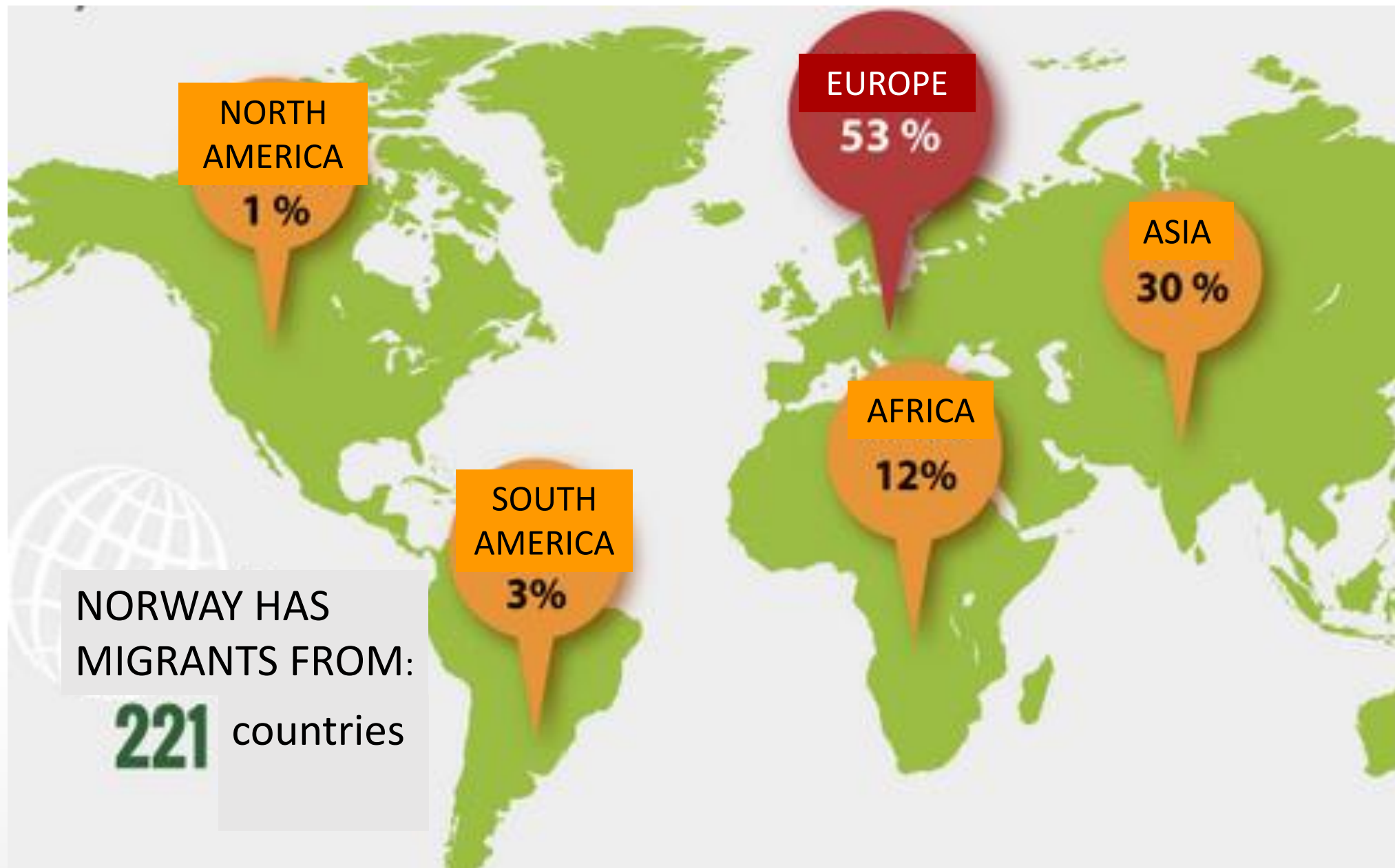
### The Norwegian Ethnicity Anti-Discrimination Act:

- Discrimination on the basis of ethnicity, religion or belief shall be prohibited. Discrimination on the basis of **national origin**, descent, skin colour and language shall also be deemed discrimination on the basis of ethnicity..... (section 6)

(emphasize added)



# Where do migrants come from



NORWAY HAS  
MIGRANTS FROM:  
**221** countries



# Migrants in Norway and WHY they have immigrated



2015

FAMILY  
39 %



WORK  
33 %



REFUGE  
22 %



EDUCATION  
6 %

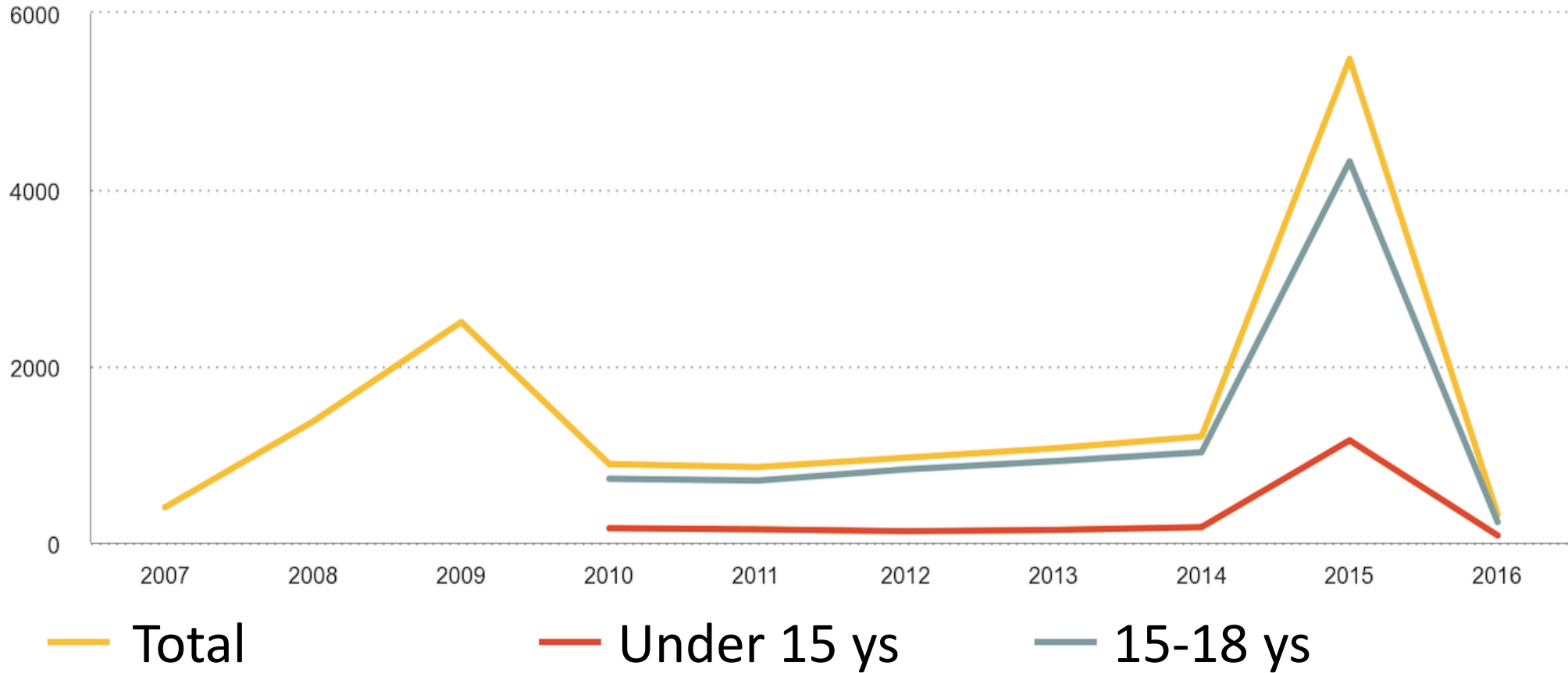


SOURCE: NATIONAL STATISTICS





# Unaccompanied children seeking asylum in Norway - 2007-2016





## Practice: how do the Norwegian state handle UAMs?

- For all UAM's, *legal guardians support* the minors during the application process.
- UAM's under 15ys old is the responsibility of the child protection system.
  - Placed in foster home or in residential unit
- Same rights as other children in public care





## Continued, Norwegian practice on UAM....

- UAMs over 15ys old is under the authority of the immigration directorate
  - Placed in reception centre for minors

This is discrimination of children based on age and status





## Continued, Norwegian practice on UAM....

Further, UAM over 15ys old may be **age tested** by a dental examination and hand X-ray, an observation and a medical examination

- The dental and hand x-ray is considered highly speculative tests without sufficient scientific basis

Using these methods are thus discrimination of UAM's right to a fair process and use of valid methods and evidence







Continued, Norwegian practice on UAM....

Limited residency permits to UAMs

Norway, as Sweden, Denmark, UK, gives non-renewable residence permit to children till they are 18 ys. old.

- If application denied, and the UAM does not have access to proper care, the UAM may receive a temporary, non-renewable residence permit that expires once they reach 18ys

Source: Linden, forthcoming, cf. Immigration Reg. Sec 8-8).



Countries like Austria, Island, Italy, Switzerland, Malta and Greece, does not does not use this practice.





## Continued, Norwegian practice on UAM....

- The asylum applications process are sooooo slow
- Due to the high number of UAM in 2015 the waiting period is near 2ys





## Brief on a child centric State as Norway handling of UAM's

We do good on some areas, but disappointingly poor on others:

- We discriminate UAM over 15ys old by placing them in reception centers
- We discriminate UAM by not processing applications swiftly
- We discriminate UAM by using insufficient methods for age testing
- We do not consider the needs of UAM that must return
- We do not take much responsibility for the minors that on their way to Norway





IV. Can we point at solutions?





## Changes on international level – Revising the right of asylum??

- In today's situation, millions of people are in a hopeless and tragic situation
- Children are dying in their pursuit of a better life
- The Right to asylum gives millions of individuals the right to receive asylum at the moment they reach a country for which they can apply for asylum
  - This right can be an immensely **strong incentive** to take risks and to use criminals to facilitate the migration

Some have suggest a revision of the right to asylum to improve the situation. The **Norwegian Director of Immigration Directorate** (UDI), Frode Forfang, suggest that European countries and other rich countries must

- a) receive significantly more quota refugees to create alternatives to human traffickers and
- B) replace the individual asylum seeker proceedings

A larger quota should be followed by a change in the right of asylum so that asylum seekers do not have an incentive to travel to Europe and other high-income countries.





## The UN High Commissioner for Refugees Filippo Grandi calls for changes!!!

Main proposals are:

- targeted measures to address the reasons why refugees are fleeing and moving onwards,
- increased safe pathways for refugees to Europe,
- and a simplified asylum system that would identify, register and process arrivals swiftly and efficiently and would go a long way to restore public trust



SOURCE: “Better Protecting Refugees in the EU and Globally”,





The first UN High Commissioner for Refugees was Fridtjof Nansen. He was a famous Norwegian pole explorer, and he established **The Nansen Pass**, which was the first approved travel document for stateless refugees.



An inspirational encouragement from the pole explorer, for us working with this complex problem, can be useful:

*" The difficult is what takes a little time.*

*The impossible is what takes a little longer."*

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