

Amicus curiae submissions of
the United Nations High Commissioner for Refugees (UNHCR)
in case number 2015/203
(Staten v/Utlendingsnemnda (Regjeringsadvokaten) v. Paravene Razaeei, Hussain Sakhi Zade, Sarina Sakhi Zade and Parya Sakhi Zade (advokat Christian Hauge))
before the Supreme Court of Norway, concerning the internal flight or relocation
alternative of Kabul, Afghanistan

I. UNHCR's mandate and role

1. The Office of the United Nations High Commissioner for Refugees (hereafter "UNHCR") has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.¹ According to its Statute, UNHCR fulfils its mandate *inter alia* by "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]"² This supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as "1951 Convention").³
2. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and complementary Guidelines on International Protection.⁴ Of particular relevance to the case before the Court are UNHCR's Guidelines on International Protection No. 4 on "Internal Flight or Relocation Alternative"⁵ and the UNHCR's Guidelines on International Protection No. 8 on

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950 A/RES/428(V), (hereafter "UNHCR Statute"), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628>.

² UNHCR Statute, para. 8(a).

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the Convention".

⁴ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html> (hereafter "UNHCR, Handbook").

⁵ UNHCR, *Guidelines on International Protection: the "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, (hereafter "UNHCR, Guidelines on IFA"), available at: <http://www.refworld.org/docid/3f2791a44.html>. The Guidelines resulted, *inter alia*, from a meeting of international legal experts which examined the subject in San Remo, Italy, in September 2001. For further information regarding their status see V. Türk, 'Introductory Note to UNHCR Guidelines on International Protection', *International Journal of Refugee Law*, vol. 15, no. 2, 2003, pp. 303–06. The UNHCR Guidelines on International Protection are issued in the context of the Agenda for Protection, which was endorsed by the Executive Committee in October 2002 at the end of UNHCR's 2000–2002 Global Consultations on International Protection. As noted on the cover page of the Guidelines, they "are intended to provide interpretative legal guidance for

Child Asylum Claims.⁶ UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of provisions of the 1951 Convention.

3. The UNHCR Handbook was drafted at the request of the Member States of the Executive Committee of the High Commissioner's Programme, the Office's governing body comprising States, including Norway.⁷ The authority of UNHCR's Handbook and Guidelines on International Protection has been widely recognized and cited in many national and regional courts. In the preparatory work to the Norwegian Immigration Act it was explicitly acknowledged that the Handbook and its status as a legal source is based on Article 35 of the 1951 Convention, which is in turn incorporated in the Norwegian Immigration Act (utlendingsloven, hereafter "the Immigration Act")⁸ § 98.⁹ Furthermore, the approach taken to IFA by UNHCR in its Guidelines on International Protection No. 4 has been followed by the European Court of Human Rights,¹⁰ and both the relevance and reasonableness tests are reflected in Article 8 of the 2011 Qualification Directive (recast).¹¹
4. According to the Norwegian Dispute Act (tvisteloven, hereafter "the Dispute Act")¹² § 15-8, written submissions may be submitted by "organisations and associations within the purpose and normal scope of the organisation" to shed light on matters of public interest. The present case concerns the method for assessing a proposed "Internal Flight or Relocation Alternative" (hereafter "IFA"), arising as part of the determination of refugee status. UNHCR has a direct interest in ensuring a proper and consistent interpretation of the 1951 Convention as part of its supervisory responsibility and makes these submissions as an *amicus curiae* in order to assist the Court in its interpretation and application of the concept of IFA in the context of applications for

governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field".

⁶ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>, (hereafter "UNHCR, Guidelines on Child Asylum Claims").

⁷ See Executive Committee Conclusion No. 8 (XXVII), 1977, *Determination of Refugee Status*, para. (g).

⁸ Lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her (utlendingsloven), unofficial English translation, available at: <https://www.regjeringen.no/en/dokumenter/immigration-act/id585772/>.

⁹ Ot.prp. nr. 75 (2006-2007) Om lov om utlendingers adgang til riket og deres opphold her (utlendingsloven) (hereafter "Ot.prp nr. 75"), available at: <https://www.regjeringen.no/no/dokumenter/otprp-nr-75-2006-2007-/id474152/>, p. 73.

¹⁰ *Salah Sheekh v. The Netherlands*, Application no. 1948/04, Council of Europe: European Court of Human Rights, 11 January 2007, available at: <http://www.refworld.org/docid/45cb3dfd2.html>

¹¹ European Union: Council of the European Union, *Directive 2011/b 95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, Article 8, available at: <http://www.refworld.org/docid/4f197df02.html>.

¹² Lov 17. juni 2005 nr. 90 om mekling og rettergang i sivile tvister (tvisteloven), unofficial English Translation, available at: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20050617-090-eng.pdf>.

international protection. Copies of the *amicus curiae* submissions were sent to the parties in the case on 3 August 2015.

5. UNHCR will clarify three aspects relevant to this case: (1) The method and procedures in applying an IFA; (2) the competence of the Court to assess the “reasonableness” of an IFA; and (3) how the best interests of the child are to be taken into account in an IFA assessment. UNHCR will only seek to address issues of legal principle arising from these points and will not address or comment on the particular facts of the proceedings.
6. These submissions do not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoys under applicable international legal instruments and recognized principles of international law.¹³

II. Method and procedures in applying an internal flight or relocation alternative (IFA)

7. The criteria for refugee status are set out in Article 1A(2) of the 1951 Convention and are to be interpreted in a liberal and humanitarian spirit, in accordance with their ordinary meaning, and in light of the object and purpose of the 1951 Convention.¹⁴ The concept of an internal flight or relocation alternative is not a stand-alone principle of refugee law, nor is it an independent or stand-alone test, rather it may in some cases be part of the holistic determination of refugee status.
8. Rather than first establishing the existence of a well-founded fear of persecution and then separately going on to determine the availability or absence of adequate national protection, the analysis should consider the totality of Article 1A(2), which expressly also includes an assessment of the applicant’s unwillingness, owing to such fear, to avail him- or herself of the protection of his or her country of origin.¹⁵
9. The consideration of the possibility of relocation requires an assessment of the **relevance** as well as the **reasonableness** of the proposed IFA.¹⁶ If it is considered **relevant** to assess an IFA, for example because the applicant’s well-founded fear of persecution is in a localized part of the country of origin only, the determination of whether the proposed IFA is a **reasonable** place requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight from the pre-flight place of origin or habitual residence, but also whether the proposed area provides a safe and meaningful alternative in the future. It is a forward-looking assessment,¹⁷ to be assessed at the date of the final decision. In August 2013,

¹³ UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, available at: <http://www.refworld.org/docid/3ae6b3902.html>.

¹⁴ UNHCR, Guidelines on IFA, para. 2.

¹⁵ UNHCR, *UNHCR intervention before the House of Lords in the case of (1) Hamid, (2) Gaafar and (3) Mohammed (Appellants) v. the Secretary of State for the Home Department (Respondent)*, December 2005, available at: <http://www.refworld.org/docid/43e9d8714.html>, para. 3.5.

¹⁶ UNHCR, Guidelines on IFA, para. 7. For further information about the relevance analysis, please see paras. 9–21 of the UNHCR Guidelines on IFA.

¹⁷ UNHCR, Guidelines on IFA, para. 8.

UNHCR issued revised Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,¹⁸ which document a deteriorating situation in Afghanistan in many areas.

10. The personal circumstances of the individual applicant, such as age, sex, health, disability, family situation and relationships, social, ethnic, cultural or religious considerations, political and social links, educational, professional and work background and opportunities, any past persecution and its psychological effects and the conditions in the proposed area of relocation, are also factors to be considered in relation to both the relevance and reasonableness aspects.¹⁹ These submissions will, however, only deal with the reasonableness component of the IFA assessment.
11. In regard to the procedural aspects, the usual rule that the burden of proving an allegation rests on the one who asserts it equally applies when IFA is being considered. Hence, the party asserting that an IFA is relevant, also has the burden to prove that the proposed area of relocation is a reasonable alternative for the individual concerned.²⁰
12. Basic rules of procedural fairness require that the asylum-seeker be given clear and adequate notice that the possibility of applying an IFA is under consideration, thereby giving the claimant the opportunity to provide evidence or arguments that IFA is not relevant in the case, or if considered relevant, that the proposed area would be unreasonable.²¹

III. The “reasonableness” analysis

13. The UNHCR Handbook explains, in the context of an individual’s “well-founded fear of persecution”, that the existence of an IFA in another part of a refugee’s country does not in itself exclude the person from refugee status:

The fear of being persecuted need not always extend to the whole territory of the refugee’s country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so. [underlined emphasis added]²²

14. The UNHCR Guidelines on IFA emphasize the fundamental importance of considering the particular circumstances of each individual applicant holistically

¹⁸ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 6 August 2013, HCR/EG/AFG/13/01, available at: <http://www.refworld.org/docid/51ffdca34.html>, p. 76. These guidelines replace and supersede the 2010 Guidelines, UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010, HCR/EG/AFG/10/04, available at: <http://www.refworld.org/docid/4d0b55c92.html>, p. 40.

¹⁹ UNHCR, Guidelines on IFA, paras. 6 and 8.

²⁰ *Ibid.*, para. 34.

²¹ *Ibid.*, paras. 6 and 35.

²² UNHCR, Handbook, para. 91.

and without undue legal technicality when considering whether internal relocation would be reasonable. As the UNHCR Guidelines on IFA clarify:

The “reasonableness test” is a useful legal tool which, while not specifically derived from the language of the 1951 Convention, has proved sufficiently flexible to address the issue of whether or not, in all the circumstances, the particular claimant could reasonably be expected to move to the proposed area to overcome his or her well-founded fear of being persecuted. It is not an analysis based on what a hypothetical “reasonable person” should be expected to do. The question is what is reasonable, both subjectively and objectively, given the individual claimant and the conditions in the proposed internal flight or relocation alternative.”²³

15. For an IFA to be reasonable, a person must be able to lead “a relatively normal life without undue hardship”. Even circumstances, which may be “normal” in the context of the country concerned, may be “unduly harsh” for the particular individual whose claim is being assessed.
16. During the course of the reasonableness analysis, the UNHCR Guidelines on IFA provide in paragraphs 28–30 that the respect for human rights and possibility for economic survival need to be considered:

Respect for human rights

28. Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that the deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical perspective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative. [underlined emphasis added]

Economic survival

29. The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level. [underlined emphasis added]

²³ UNHCR, Guidelines on IFA, para. 23.

30. *If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums of an urban area, where they would be required to live in conditions of severe hardship. [underlined emphasis added]*

The reasonableness analysis in Norwegian law

17. The Norwegian Immigration Act incorporates the refugee definition of the 1951 Convention in § 28 (1)(a) and the principles formulated in the UNHCR Guidelines on IFA, in § 28 (5). In general, all obligations contained in the 1951 Convention can be considered incorporated through the Immigration Act § 3, which requires provisions in the Act to be applied in accordance with international provisions by which Norway is bound when these are intended to strengthen the position of the individual.
18. The UNHCR Guidelines on International Protection were similarly to the Handbook mentioned in the preparatory work to the Immigration Act, and the Ministry of Justice commented in general that UNCHR's recommendations concerning "protection"²⁴ should be considered to carry considerable weight when interpreting the 1951 Convention.²⁵ In the Parliamentary bill of the Act, the majority of the Standing Committee on Local Government and Public Administration described the UNHCR Guidelines on IFA, as an "appropriate and correct framework for the reasonableness assessment".²⁶
19. The Immigration Regulation (utlendingsforskriften, hereafter "the Immigration Regulation")²⁷ § 7-1, however, referring to the Immigration Act § 38, prescribes that "it shall only be deemed to be unreasonable to direct the foreign national to seek protection in safe and accessible parts of his/her country of origin if the situation upon return will be such that the person concerned meets the conditions for a residence permit under section 38 of the Act".
20. The Immigration Act § 38 regulates residency on humanitarian grounds, which "may be granted" if the social or humanitarian circumstances relating to the return situation reach the threshold of "strong humanitarian considerations". The provision is discretionary (cf. "may be granted"), with some limitations imposed

²⁴ Ot.prp. nr. 75, p. 73: "Særlig når det gjelder UNHCRs anbefalinger om beskyttelse, må utgangspunktet være at utlendingsforvaltningen legger stor vekt på anbefalingene".

²⁵ *Ibid.*: "For øvrig vil departementet understreke at UNHCRs anbefalinger skal veie tungt ved norske myndigheters tolkning av flyktningkonvensjonen".

²⁶ Innst. O. nr. 42 (2007–2008) p. 21: [...] de utdypinger som er foretatt i UNHCRs retningslinjer, [gir] i det alt vesentlige [...] en hensiktsmessig og riktig ramme for innholdet i den skjønsmessige rimelighetsvurderingen".

²⁷ Forskrift 15. oktober 2009 nr. 1286 om utlendingers adgang til riket og deres opphold her (utlendingsforskriften), unoffisiell English translation, available at <https://www.regjeringen.no/globalassets/upload/jd/dokumenter/forskrifter/immigration-regulations.pdf>.

by the Convention on the Rights of the Child, (hereafter “CRC”)²⁸ (§ 38 (3)). In the assessment of whether to grant a permit, importance may be attached to considerations relating to immigration control (§ 38 (4)).

21. The threshold for granting residency based on humanitarian grounds under the Immigration Act § 38 is informed by *inter alia* UNE’s internal guidelines. Among factors to be considered is the applicant’s health situation and if there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit.²⁹ An applicant’s physical health situation must, according to UNE’s guidelines, be considered “acute and life threatening”,³⁰ or there must be a “serious mental illness involving psychosis or similar degree of seriousness”³¹ for the threshold to be reached.
22. Norwegian law and practice, as expressed in the Immigration Act, Immigration Regulation and UNE’s internal guidelines, takes a different approach to the reasonableness analysis of the IFA assessment than the UNHCR Guidelines on IFA. UNHCR would like to reiterate that the relevant question is whether, in the particular circumstances of the individual, relocation to the identified area of relocation would be reasonable in the sense of enabling him or her to lead “a relatively normal life without facing undue hardship”.³² If the current practice of the Immigration Act § 38 results in a different “theme of proof” (*vrderingstema*), a shifting of the burden of proof, and/or a higher threshold, UNHCR respectfully submits that the approach taken in the Immigration Act § 28 (5), as informed by the preparatory work to the Act, should take precedence over the Immigration Regulation § 7-1 (*lex superior*).
23. In this respect, UNHCR would like to emphasize that the recognition of refugee status, unlike the granting of residency on humanitarian grounds, is not discretionary, as it is based on Article 1A of the 1951 Convention and flows from a State party’s obligations under that treaty.³³

IV. Application of the principle of the best interests of the child in the IFA assessment

The Convention on the Rights of the Child

24. Article 22 of the CRC provides a comprehensive framework for the responsibilities of States Parties to all children within their jurisdiction,

²⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: <http://www.refworld.org/docid/3ae6b38f0.html>, Art. 3.

²⁹ The factors are listed in the Immigration Act § 38(2)(a)-(d).

³⁰ Unofficial translation from: IR AV 110112 *Om helsemessige forhold*, para 4.1.1: “Etter praksis må det normalt foreligge en akutt og livstruende lidelse for at den alene kan gi grunnlag for opphold i Norge”, available at: <http://www.une.no/om-oss/Interne-retningslinjer/IR-AV-110112-OM-HELSEMESSIGE-FORHOLD/>

³¹ *Ibid.*, para 4.1.2: “Etter praksis må det normalt foreligge en alvorlig sinnslidelse for at den alene skal kunne gi grunnlag for opphold i Norge”.

³² UNHCR, Guidelines on IFA, para. 7.

³³ The refugee definition incorporated in the Immigration Act § 28 (1)(a) uses the imperative verb “shall”: A foreign national “shall [...] be recognized [...]” as a refugee, whereas the Immigration Act § 38 uses the discretionary “may”: A residence permit may be granted [...].

including asylum-seeking and refugee children. The four general principles of the CRC are the prohibition of discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6), and the right to be heard (Article 12). These principles inform both the substantive and the procedural aspects of the determination of a child's application for refugee status and other forms of international protection.³⁴

25. The principle of the best interests of the child provides 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.”³⁵ The UNHCR Executive Committee has in several of its Conclusions stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child.³⁶ The principle of the best interests of the child requires that the harm be assessed from the child's perspective. For example, ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child.³⁷
26. The Committee on the Rights of the Child issues General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC. The Committee defines in its General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration,³⁸ the principle as a three-fold concept:
- 1) A substantive right: the right of the child to have his or her best interests assessed and taken as a primary consideration;
 - 2) A legal principle: meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen;
 - 3) A rule of procedure: whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.

³⁴ See further, UNHCR, Guidelines on Child Asylum Claims, para. 5. UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>.

³⁵ CRC, Art. 3.

³⁶ UNHCR, *A Thematic Compilation of Executive Committee Conclusions, 6th edition, June 2011*, available at: <http://www.refworld.org/docid/4f50cfbb2.html>; *Conclusion No. 47 (XXXVIII) – 1987 – Refugee Children*, stressing that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity, para. (d); *Conclusion No. 98 (LIV) – 2003 – Protection from Sexual Abuse and Exploitation*, providing that the best interests of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation.

³⁷ *Supra*, UNHCR, Guidelines on Child Asylum Claims, para. 10.

³⁸ UN Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (“CRC General Comment no. 14”), 29 May 2013, CRC /C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html>, para. 6 (a).

27. The Committee has further noted that “[i]t should be emphasized that the basic best-interests assessment is a general assessment of all relevant elements of the child’s best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases”.³⁹ The assessment of the child’s best interests must also include a consideration of the child’s safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (Article 19), as well as other forms of harm set out in Articles 32–39.⁴⁰ Applying a best interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, it also requires assessing the possibility of future risk and harm and other consequences of the decision for the child’s safety.⁴¹ For refugee status determination, as a forward-looking assessment of risk, the possibility of future risk is particularly relevant.
28. As explained by the Committee on the Rights of the Child, a decision concerning a child must be well reasoned and reflect that the best interests of the child has been a primary consideration:

*In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child’s best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child’s best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration.*⁴²

IFA and the best interests of the child

29. As noted above, the interpretation and application of the refugee definition, including the IFA concept, is guided by international human rights law, including the CRC in cases concerning children, whether unaccompanied or with their parents. The child’s best interests thereby inform both the relevance and reasonableness analysis of the IFA assessment.⁴³ As in the case of adults, internal relocation is only relevant where the applicant can access practically, safely and legally the place of relocation. If the child were to relocate, for

³⁹ CRC, General Comment No. 14, para. 80.

⁴⁰ *Ibid.*, para. 73.

⁴¹ *Ibid.*, para. 74.

⁴² *Ibid.*, para. 97.

⁴³ *Supra*, UNHCR, Guidelines on Child Asylum Claims, para. 55.

example, from a rural to an urban area, the protection risks in the place of relocation would also need to be examined carefully, taking into account the age, maturity, coping capacity of the child and any other relevant factors.⁴⁴

30. The UNHCR Guidelines on Child Asylum Claims highlight that an IFA which may be reasonable in the case of an adult may not be reasonable in the case of a child. The “reasonableness test” is one that is applicant-specific and, thus, not related to a hypothetical “reasonable person”. Age and the best interests of the particular child concerned are among the factors to be considered in assessing the reasonableness of a proposed place of internal relocation; and a child shall be given an opportunity to express their views, and those views shall be given due weight in line with their age and maturity (Article 12(1)). Respect for child-specific rights in the proposed place of relocation must also be considered, including but not limited to the right to life, survival and development (Article 6), family unity (Article 9), privacy and family (Article 16), highest attainable standard of health (Article 24), adequate standard of living (Article 27), and the right to education (Article 28).⁴⁵
31. The present case raises the question of whether the application of the best interests of the child to the IFA assessment requires a comparison between the situation of the child in the proposed place of relocation and the situation in country of asylum.⁴⁶ In the case of adults, the IFA assessment concentrates attention on the standards generally prevailing in the country of origin.⁴⁷ The conditions in the country of asylum are thus not generally a relevant reference point for the purposes of assessing what is considered a “normal” life or “undue hardship” as part of an IFA assessment. However, for children, the situation in the country of asylum may be relevant when assessing the best interests of the child as part of an overall IFA determination, given the particular circumstances and needs of children.
32. In relation to country of origin information, the experiences of children may not always be sufficiently reflected in the available reports and other sources. Likewise, particular attention may need to be given to the situation of girls in the country of origin. For their part, children may have only limited knowledge or memory of the conditions in the country of origin, or may be unable to explain the reasons for their persecution. For these reasons, asylum authorities need to make special efforts to gather age and gender relevant country of origin information and other supporting evidence.⁴⁸

⁴⁴ *Ibid.*, para. 54.

⁴⁵ *Supra*, UNHCR, Guidelines on Child Asylum Claims, para. 53.

⁴⁶ As accepted by the Borgating Court of Appeal in the present case, currently under appeal (LB-2013-192933).

⁴⁷ UNHCR, *UNHCR intervention before the House of Lords in the case of Secretary of State for the Home Department (Appellant) v. AH (Sudan), IG (Sudan) and NM (Sudan) (Respondents)*, 4 October 2007, available at: <http://www.refworld.org/docid/47162e8c2.html>, paras. 4.8 – 4.9.

⁴⁸ UNHCR, Guidelines on Child Asylum Claims, para. 11.

Conclusions

33. UNHCR submits that the UNHCR Guidelines on IFA provide the correct approach for assessing an Internal Flight or Relocation Alternative. This was also the position taken by the Norwegian Parliament, when the Immigration Act was drafted and enacted.
34. UNHCR, furthermore, submits that the best interests of the child are relevant factors to consider in assessing both the relevance and reasonableness aspects of an IFA. As with other elements of the refugee definition, this assessment should be informed by a human rights analysis, including in particular the CRC.
35. All of which is respectfully submitted this 3rd day of August, 2015.

UNHCR