Legal Information Centre for Human Rights, European Network on Statelessness and Institute on Statelessness and Inclusion

Joint Submission to the Human Rights Council at the
24th Session of the Universal Periodic Review

Estonia

1. The Legal Information Centre for Human Rights, European Network on Statelessness and Institute on Statelessness and Inclusion make this submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in Estonia.

2. The Legal Information Centre for Human Rights (LICHR) was established in 1994 with the support of three Danish non-governmental organizations (primarily the Danish Centre of Human Rights) and with the assistance of the Estonian Presidential Round Table on National Minorities, the Representative Assembly of Non-Citizens of Estonia and Tallinn City Government. The core areas of activity are: provision of access to justice and protection of human rights; legal aid; analysis of the human rights and ethnic minorities' rights situation; monitoring of Estonian legislation; contribution to the integration process and inter-ethnic dialogue in society; and legal training in the sphere of human rights.

3. The European Network on Statelessness (ENS) is a civil society alliance of NGOs, lawyers, academics and other independent experts committed to addressing statelessness in Europe, Based in London, it currently has 100 members (including 55 organisations) in over 30 European countries. ENS organises its work around three pillars – namely, law & policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.

4. The Institute on Statelessness and Inclusion (the Institute) is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Its work combines research, education, and advocacy, and it provides expertise to civil society, academia, the UN and governments.

5. This joint submission focuses on the issue of statelessness and access to nationality in Estonia, which has presented a significant challenge to the full enjoyment of human rights in the country for many years. It draws on the multiple years of research, advocacy, awareness raising, litigation and direct support related experience both in Estonia and internationally, of the submitting organisations.

6. In 1991, when Estonia regained its independence, citizenship was extended only to the citizens of the pre-war Estonia and their descendants. As a result, as much as a third of Estonia's population (the Soviet-era settlers) became stateless, including many who were born and had lived since birth in Estonia. According to UNHCR's global population statistics, as of mid-2014 – almost a quarter-century after independence – there were still 89,533 stateless persons in Estonia.[1] Those affected in this manner are known within the Estonian legal system as "*persons with undetermined citizenship*" (määratlemata kodakondsusega isikud) and enjoy a stable legal status and broad range of rights. Nevertheless, they face restrictions in respect of certain rights, in particular those relating to political participation. This submission offers information in respect to measures that have been taken to address the situation of persons of undetermined citizenship, as well as the broader framework relating to other cases of statelessness that may arise in the country.

The Universal Periodic Review of Estonia under the First Cycle

7. On 28th March 2011 Estonia was subject to the First Cycle of the Universal Periodic Review. During this review Ecuador recommended that Estonia "*Resolve the problem of persons without citizenship, and prevent such cases from arising in the future".* Estonia accepted this recommendation, indicating that it had been examined by and enjoyed the support of Estonia. Since 2011, the country has indeed taken considerable steps to prevent new cases of statelessness and some measures to improve access to citizenship for those currently affected by statelessness. The details of this progress, as well as a number of outstanding issues, are presented below.

Estonia's International Obligations

8. Estonia has ratified most core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD). Estonia has made no reservations to the articles that relate to the right to nationality in any of these instruments. Nevertheless, Estonia is not a party to any instruments dealing specifically with statelessness. It has not acceded to the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness or to the European Convention on Nationality.

Estonia and Statelessness

[1] UNHCR, Mid-Year Trends 2014, available at: http://www.unhcr.org/54aa91d89.html.

9. As mentioned in the introduction, after independence, Estonia's new citizenship regime led to a situation of large-scale statelessness among Soviet-era settlers, mainly persons of Russian ethnicity. This issue has since been regularly raised by both domestic and international actors. In the 1990s, the OSCE High Commissioner on National Minorities (HCNM), Max van der Stoel, provided a number of recommendations to Estonia on the issue and recommendations have also come from the Council of Europe, the UN human rights treaty bodies and the Universal Periodic Review process (as shown above). For instance, in 2014, the UN Committee on the Elimination of Racial Discrimination expressed its concern over the situation of stateless persons in Estonia, recommending that the state "*intensify efforts to reduce the number of persons with undetermined citizenship including by shortening the length of the procedure for the acquisition of citizenship"* and *"ease further the naturalization requirements for persons under 15 years of age"*.[2] The Committee also recommended that Estonia *"raise awareness about statelessness among stakeholders and introduce mechanisms to help national and local institutions to effectively identify stateless persons"* and *"consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness."*[3]

10. Despite such international pressure, Estonian policy on citizenship has remained conservative, without major domestic debates after the adoption of Citizenship Act of 1992. On 21 January 2015 the Riigikogu (Estonian parliament) adopted new amendments to the Citizenship Act directly related to the children's right to a nationality. However, despite these positive developments certain flaws remain in Estonian legislation and practice. Resultantly, some children continue to remain at risk of becoming stateless. Since the year 2000, the number of naturalisations of stateless persons has been low, having fallen significantly since the 1990s. Moreover, there is currently no statelessness determination procedure, which hinders the state's ability to ensure protection for stateless persons, especially in the migration context.

Children's right to nationality[4]

1. The current legal framework in Estonia and its implementation can result in childhood statelessness, despite Estonia's obligations under Article's 2, 3, 7 and 8 CRC. Article 2 prohibits discrimination on grounds including race, national, ethnic or social origin and Article 3.1 states that *"in all actions concerning children… the best interests of the child shall be a primary consideration."* Article 7 CRC obligates the state to register the child

[2] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth and eleventh periodic reports of Estonia*, CERD/C/EST/CO/10-11, 22 September 2014, Para 11 (a) and (c).

[3] *Ibid.,* Para 11 (d) and (e).

[4] For a detailed analysis see the ENS/LICHR working paper, *Ending Childhood Statelessness – A study on Estonia,* June 2015, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/Estonia.pdf

immediately after birth and bestows on the child the right, from birth, to a name and nationality. States are obligated to implement these rights, *"in particular where the child would otherwise be stateless."* Article 8 CRC obligates states to respect the child's right to an identity *"including nationality, name and family relations"*.

2. A 1998 amendment to the 1992 Citizenship Act proclaimed that children, born in Estonia after 26 February 1992, whose parents are of "undetermined citizenship" and who have lived in Estonia for at least five years, are eligible, at their parents' request, to gain Estonian citizenship through naturalisation without the precondition of passing citizenship examinations. Yet, not all parents have chosen (or reached joint consent) to do so, or knew about the procedure. As a result, children are still being born into statelessness. According to government data, on 18 August 2014, there were 936 stateless children who had been born in the country.[5]

3. On 21 January 2015, the Riigikogu adopted new amendments to the Citizenship Act, two of which directly relate to the children's right to a nationality. This is very welcome news as according to the Estonian Ministry of the Interior, approximately 300 children were being born stateless in Estonia every year.[6] The law will come into force in January 2016 and will introduce the following key changes:

   a) A stateless child born in Estonia to stateless parents (or as the government classifies them – parents with "undetermined citizenship") who have lived in Estonia for at least 5 years before the child's birth will automatically acquire citizenship – with the possibility that the parents may 'opt out' on behalf of their child within one year from birth. It is also significant to note that this rule can also be applied retroactively to qualifying children who are under the age of 15. Before the amendment, citizenship could be acquired only upon application and it was necessary to have the consent of both parents, which presented a barrier to the acquisition of nationality for some children in practice.

   b) Persons aged under 18, who have another citizenship in addition to the Estonian one, cannot be deprived of Estonian citizenship until the age of majority. Thus, the law allows minors to possess, in addition to the Estonian citizenship, the citizenship of another country and to choose which to maintain upon reaching adulthood.

4. However despite these positive developments certain flaws remain in the Estonian legislation and practice that allow children to remain at risk of becoming stateless. The most significant of these are the following:

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[5] Explanation note to the amendment to the Citizenship Act (nr737), available at: http://www.riigikogu.ee/download/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4/ab5f780c-3b11-4bb3-8f5b-d819ec8deaa4

[6] *Ibid.*

a) Retroactive application of the new amendments to the Citizenship act is limited to those who have not yet attained the age of 15, and therefore anyone above that age who was born on the territory stateless cannot benefit.

b) In addition, the condition of 5 years residence in the country by the parents, prior to the birth of the child, may act to disqualify some children of stateless parents from obtaining citizenship.

c) The possibility for parents to "opt out" of Estonian nationality on behalf of their child within the first year of their life may continue to cause situations in which the parents' views on citizenship engender childhood statelessness.

d) The law does not make any provision for access to Estonian nationality for children born in Estonia and whose parents hold the citizenship of another country, if they would otherwise be stateless.

e) The law does not include a provision about access to Estonian nationality for children born outside of Estonia whose parents are "persons of undetermined nationality" with residence in Estonia, even if they would otherwise be stateless (as is the case, for instance, in the Ukraine).[7]

f) For children who benefit from dual nationality, when they become adults, they have to renounce either the citizenship of Estonia or the other country within three years. At present, it is not clear whether provision has been made for an information campaign or other efforts to disseminate information about these steps to the public and what the consequences would be of failing to renounce the foreign nationality within this timeframe.

g) As mentioned, Estonia is not a party to the 1961 Convention on the Reduction of Statelessness or the European Convention on Nationality which contain key international safeguards relating to the realisation of children's right to a nationality. It is crucial that the state recognise the need for elaborating safeguards to prevent statelessness for all otherwise stateless children born in the territory and accession to these instruments forms a key part of an integrated response.

Naturalisation for stateless persons

5. Since the year 2000, the number of naturalisations of stateless persons has been low, having fallen significantly since the 1990s. The issue has since been raised regularly by UN and Council of Europe committees and expert bodies, and by numerous other

[7] K. Kolesen, *Tackling Childhood Statelessness in Ukraine,* May 2015, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/Research_electronic%20version_.pdf

international actors.[8] In 2014 the UN Committee against Torture recommended that Estonia *"adopt legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens, including by revisiting the requirements for the granting of citizenship"*.[9]

6. The 2015 amendment to the Citizenship Act has also brought about positive change on this issue. Estonian language requirements for elderly applicants for citizenship will be simplified. This is very important as for many, often elderly individuals whose first language is Russian, it was difficult to pass the stringent Estonian language and constitution exams. Nevertheless, the naturalisation requirements for stateless persons remain difficult for some stateless persons to meet. The condition of a permanent legal income may, for instance, pose a particular challenge for many stateless persons and delay their access to nationality in practice. This issue has not been addressed by the most recent amendment and will continue to obstruct access to nationality and thereby the resolution of statelessness.

Protection of stateless persons

7. Estonia is one of only four countries in the European Union that is not a party to the 1954 Convention relating to the Status of Stateless Persons. This is the case in spite of the pledge made by the delegation of the European Union to the United Nations in 2012 on behalf of all EU member states that "*the EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness*".[10] Moreover, there is currently no statelessness determination procedure in Estonia, which hinders the state's ability to ensure protection for stateless persons, especially in the migration context. As a result, there is a gap in terms of the protection of stateless persons on Estonian territory who do not fall within the special regulations made for "persons of undetermined citizenship".

8. In this respect, it should be noted that despite the near universal ratification by European Union states of the 1954 Statelessness Convention, relatively few states yet have in place dedicated procedures to identify stateless persons on their territories and thereby properly afford them the obligations owing under the Convention or wider international human rights law. This absence contrasts sharply with the existence of

[8] One can point out several recent examples. The topic was raised in the recommendations of the Committee on the Elimination of Racial Discrimination (CERD): see CERD/C/EST/CO/8-9 (2010), item 15; and CERD/C/EST/CO/10-11 (2014), item 11; and in the recommendation of the Committee on Economic, Social and Cultural Rights: E/C.12/EST/CO/2 (2011), item 9.

[9] Committee against Torture, *Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session* (6-31 May 2013).

[10] See: http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf

dedicated asylum determination procedures in almost all those European states that have acceded to the 1951 Refugee Convention. Recent research[11] reveals that the absence of a route by which stateless persons can regularise their status leaves these individuals at risk of a range of human rights abuses. Many stateless persons find themselves destitute and/or subjected to long term immigration detention despite there being no prospect of return. Few are in a position to break this cycle, and as a consequence are left in legal limbo for years. Recent awareness-raising efforts by ENS and other civil society actors have sought to draw greater attention to this issue[12], as well as share good practices[13] which would help address this.

Recommendations

9. As the Human Rights Council has stated that "[t]he second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review",[14] these recommendations relate back to and build on the recommendation by Ecuador during the First Cycle UPR of Estonia on 28th March 2011, that Estonia "*Resolve the problem of persons without citizenship, and prevent such cases from arising in the future*".

10. In this regard, the co-submitting organisations note that despite recent welcome reforms, Estonia still falls short of fulfilling international obligations with respect to the right to a nationality and has failed to establish a legal framework for the protection of stateless persons beyond the specific in situ population of "persons of undetermined citizenship". Based on our collective and continuous research, advocacy and engagement on the issue of statelessness and in relation to the points made in this submission, in order to address fully the situation of statelessness in the country, it is recommended that:

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[11] See for example mapping studies conducted by UNHCR in Belgium, Finland, Iceland, Malta, the Netherlands and the UK, available at: http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&skip=0&query=Mapping+Statelessness&coi

[12] See for example European Network on Statelessness, *Still Stateless, Still Suffering – Why Europe Must Act Now to Protect Statelss Persons*, October 2014, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Still_Stateless_Still_Suffering_online%20version_2.pdf

[13] See for example European Network on Statelessness, *Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons,* December 2013, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Statelessness%20determination%20and%20the%20protection%20status%20of%20stateless%20persons%20ENG.pdf

[14] Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, UN Doc. A/HRC/RES/16/21, April 2011, Annex 1, Para 6.

a) Estonia accede the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

b) Estonia ensure that legislation and policy is enforced that allows access to Estonian nationality for all stateless children born in Estonia, regardless of the residence or citizenship status of the parents.

c) Estonia explore the possibility of providing access to Estonian nationality for children born outside of Estonia to Estonian "persons of undetermined citizenship", if they would otherwise be stateless.

d) Estonia establish a statelessness determination procedure to ensure that protection is provided to stateless persons whose situation is not regulated by those measures relating to the "persons of undetermined citizenship".

e) Estonia adopt measures to further facilitate the naturalisation of all stateless persons on its territory.

f) Estonia pay serious attention to the critical remarks by UN, Council of Europe and other international experts and organisations and actively and positively respond to their recommendations.