

**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report**

**Universal Periodic Review:**

*2nd Cycle, 24th Session*

**ESTONIA**

**I. BACKGROUND INFORMATION**

Estonia acceded to both the *1951 Convention relating to the Status of Refugees* and the *1967 Protocol* (hereinafter collectively referred to as the *1951 Convention*) in 1997. Estonia is not a State party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

**Refugees and Asylum-Seekers:** The Republic of Estonia is host to a comparatively small refugee population. Some 90 beneficiaries of international protection were recorded at the end of 2014 by UNHCR. The number of asylum-seekers is on the rise. There were 143 new asylum applications lodged in 2014 (a 50 per cent increase in comparison to 2013). The top countries of origin were Ukraine (55), Sudan (22), Egypt (12) and the Russian Federation (12). In 2014, 20 persons were granted refugee status and the overall protection recognition rate was 36 per cent.

National asylum institutions were established in 1997 with the *Refugee Act*. The *Act on Granting International Protection to Aliens* (the *AGIPA*) replaced the *Refugee Act* in 2006.

The Ministry of the Interior (MoI), the Police and Border Guard Board (PBGB), the Ministry of Social Affairs (MSA) and Ministry of Culture (MoC) are the main governmental counterparts of UNHCR in Estonia. The MoI has exclusive responsibility over policy and planning for asylum and migration issues. The asylum decision-making competence is divided between several structural units of PBGB - the Aliens Division of the Migration Bureau of the Intelligence Management and Investigation Department and the four Regional Prefectures. The Aliens Division includes staff of the previously disbanded International Protection Division and is tasked, *inter alia*, with the examination of asylum applications lodged inside the territory; the granting, extension and revocation of identification documents; and with the issuance of residence and work permits for all aliens, including beneficiaries of international protection. The task of the Regional Prefectures is to register asylum applications lodged in the border areas or at border-crossing points by persons who have no legal grounds for residence in Estonia, including persons who are transferred to

Estonia on the basis of the *Dublin III Regulation*.<sup>1</sup> The border guard officials of the Regional Prefectures are also authorized to reject asylum applications lodged at the border in the accelerated procedure.

The MSA is responsible for arranging the settlement of refugees and beneficiaries of subsidiary protection into the territory of a local government. As of January 2014, the MSA outsourced this task to a private enterprise *AS Hoolekandeteenused*, which also manages the only reception centre for asylum-seekers in Vao village.

The MoC is responsible for implementation of the State policy on the integration of third-country nationals, including stateless persons. It also supervises the activities of the Integration and Migration Foundation “Our People,” which is tasked with promoting integration processes in Estonia, coordinating activities related to immigration and emigration, publishing information in this regard and producing overviews.

**Stateless Persons:** According to the PBGB, at the beginning of 2015, the total number of “persons with undetermined citizenship” holding a valid residence permit or a right of residence was 88,076. Due to the lack of a separate mechanism for the identification and determination of persons as stateless, there is no precise information available about stateless persons who have not been granted a legal basis for residing in Estonia. The MoI is responsible for policy and planning matters related to “persons with undetermined citizenship.”

“Persons with undetermined citizenship” are former USSR citizens who did not acquire Estonian or any other nationality when the country recovered its sovereignty upon the breakup of the USSR in 1991. The criteria adopted at that time did not contain safeguards to prevent statelessness and the representatives of this group were registered as “persons with undetermined citizenship.” In 1996, the Estonian Government began issuing identity documents (so-called ‘alien’s passport’) to persons with undetermined citizenship. This document serves as official identification within Estonia and allows its holders to travel abroad. UNHCR considers “persons with undetermined citizenship” to meet the definition of “stateless person[s]” in Article 1(1) of the *1954 Convention*, which is also considered part of customary international law.<sup>2</sup> According to this definition, a stateless person is “a person who is not considered as a national by any State under the operation of its law”, which must be assessed at the time of determination. This means that the determination is neither a historic nor a predictive exercise, and that it is not relevant that the person is in the process of naturalizing or has the option to acquire the nationality of a given state.<sup>3</sup>

**Current developments:** Following the critical writing by the national daily *Eesti Päevaleht*<sup>4</sup> on the insufficient support to asylum-seekers from Ukraine, the MoI announced publicly in

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<sup>1</sup> European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU) No 604/2013, available at: <http://www.refworld.org/docid/51d298f04.html>.

<sup>2</sup> The International Law Commission has concluded that this definition is part of customary international law. See the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, p. 49, available at: <http://www.refworld.org/docid/525e7929d.html>.

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 50, available at: <http://www.refworld.org/docid/53b676aa4.html>.

<sup>4</sup> “ÜRO kutsub tungivalt üles Ukraina põgenikke vastu võtma”. *Eesti Päevaleht*, 11. veebruar 2015, Kadri Ibrus. Available in Estonian at: <http://epl.delfi.ee/news/eesti/uro-kutsub-tungivalt-ules-ukraina-pogenikke-vastu-votma?id=70736249>.

March 2015 that Estonia is currently reviewing the examination of asylum applications by Ukrainian applicants, and considering introducing a new legal ground for granting residence permits on humanitarian grounds.

In general, Estonian society has limited experience and exposure to foreign cultures, and the presence of refugees may lead to feelings of fear and insecurity among Estonian nationals. According to the most recent public opinion survey,<sup>5</sup> the majority of the population feels that refugees are likely to have a negative impact on the situation in Estonia. This negative public opinion is expressed through views that refugees would burden the Estonian social system and increase unemployment, and also constitute a threat to the national security and the Estonian language and culture. The Estonian media frequently conflates economic migrants, asylum-seekers and refugees in their reports and gives wide, unchallenged publicity to xenophobic and even racist statements by political leaders and opinion makers. The first six months of 2015 have also witnessed an increase in targeted attacks against the reception centre for asylum-seekers in Vao village.

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Estonia is gradually harmonizing its national asylum legislation with the EU legal standards. In 2013, the *AGIPA* was amended with a number of new standards prohibiting automatic detention and stipulating the requisite safeguards against arbitrariness or unlawfulness of detention, including necessity and proportionality tests. In early 2015, the *Act on Obligation to Leave and Prohibition on Entry* was amended with provisions introducing administrative procedures for the use of disciplinary sanctions for individuals who violate the internal rules of the detention centre or who may cause threat to the safety of the other detainees or staff. Pursuant to Article 36 of the *AGIPA*, such disciplinary sanctions are to be equally applicable to detained asylum-seekers. The adoption of these amendments should lead to improvements in the overall conditions of detention of asylum-seekers, as well as ensuring better protection of their fundamental rights to liberty and freedom of movement. These amendments shall also contribute to the partial implementation of the 1st UPR cycle recommendation No. 77.53 (“Improve conditions in prisons and detention centres,” by the United States of America) and No. 77.54 (“Improve overall conditions of detention and ensure that all detainees are afforded, in practice, access to a lawyer and an independent medical examination, and are informed about their rights at the moment they are deprived of their liberty,” by the Czech Republic).<sup>6</sup> Both of these recommendations enjoyed the support of Estonia.

The MoI is also drafting a set of amendments to the *AGIPA*, aimed at transposing the standards set out in the *Asylum Procedures Directive (recast)*<sup>7</sup> and *Reception Conditions Directive*<sup>8</sup> by July 2015. The current text of the draft law addresses, *inter alia*, the issue of provision of free legal assistance to asylum-seekers at different stages of the asylum

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<sup>5</sup> Saar Poll Ltd, Awareness and attitudes of Estonian population towards refugees (*Eesti elanike teadlikkus ja hoiakud pagulasküsimustes 2014*), available at: [https://www.siseministeerium.ee/sites/default/files/dokumendid/Uuringud/pagulasuuring\\_aruanne\\_2014\\_avalik.pdf](https://www.siseministeerium.ee/sites/default/files/dokumendid/Uuringud/pagulasuuring_aruanne_2014_avalik.pdf).

<sup>6</sup> See: Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/EESession10.aspx>.

<sup>7</sup> European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>.

<sup>8</sup> European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html>.

procedure in Estonia. Currently, asylum-seekers have the right to seek free legal assistance pursuant to the procedure provided for in the *State Legal Aid Act*. According to this law, the granting of state-funded legal aid to asylum-seekers is subject to a discretionary decision by the administrative judge. Thus, the law foresees no specific legal safeguards which would guarantee free legal assistance to asylum-seekers, even at the appeal stage. Additionally, the provision of State legal aid is to be arranged by the Estonian Bar Association, which has limited knowledge or practical experience on asylum matters. Furthermore, Estonian civil society depends on funding by the EU Asylum, Migration and Integration Fund. There are few NGOs that have the capacity to provide free legal advice or support in kind to asylum-seekers and refugees. These amendments to the *AGIPA* regarding legal aid would contribute to the implementation of the 1st cycle UPR recommendation No. 77.88 (“Continue its efforts to improve the reception conditions of asylum-seekers, including the provision of free legal aid...” by Slovakia), which enjoyed the support of Estonia.<sup>9</sup>

The same draft law seeks to incorporate a number of other important changes and improvements into the *AGIPA*, such as the introduction of a procedure to prioritize processing of applicants with specific needs and those with manifestly well-founded cases; the incorporation of the principle of the best interests of the child at all stages of the refugee status determination (RSD) procedure; the extension of special procedural guarantees to all asylum-seeking children regardless of whether they are accompanied or not; the inclusion of parents and guardians of asylum-seeking children into the definition of “family members,” and the introduction of an obligation for all Estonian administrative institutions and persons dealing with asylum-seekers to identify applicants with specific needs as soon as possible after their submission of an asylum application.

UNHCR would like to acknowledge that steps were taken to address the problems related to the remote location of the reception centre for asylum-seekers in Illuka. The remote and isolated location had created difficulties in communication between asylum-seekers and their legal representatives and interpreters and in accessing health care, as well as difficulties arranging language classes and providing social support. At the end of 2012, the MSA contracted a private enterprise *AS Hoolekandeteenused* to assume responsibility for the reception of asylum-seekers and to identify a new more appropriate location. The reception centre started to operate in the new location (municipality of Vao) at the beginning of 2014. Although the new centre is located some 120 km from the capital Tallinn, available public transport connections are much better and the new centre is closer to schools, kindergartens and other municipal services. The opening of the reception centre for asylum-seekers in the new location contributes to the implementation of the 1st cycle UPR recommendation No. 77.88 (“Continue its efforts to improve the reception conditions of asylum-seekers, including the provision of free legal aid, in particular to those who apply for asylum at the border, and those in detention,” made by Slovakia and accepted by Estonia).<sup>10</sup>

Estonia has made an important step in further developing its national framework for the prevention and reduction of statelessness by amending the *Citizenship Act* in January 2015. The amendments, *inter alia*, provide that a child born in Estonia will acquire Estonian citizenship by naturalization at birth, if his or her parents or a single parent have been legally residing in Estonia for at least five years as of the date of the birth of the child, and they are not considered as citizens by any other State on the basis of any legal act in force. Additionally, the new Citizenship Law exempts persons over 65 years of age from the duty to

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<sup>9</sup> See para. 77.88, Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011.

<sup>10</sup> See para. 77.88, Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011.

complete the written part of the Estonian language test; lifts the requirement to prove release from their previous citizenship for beneficiaries of international protection; and shortens the maximum time for the Police and Border Guard Board's procedure for examining applications for naturalization from 9 to 6 months. The amendments will come into force on 1 January 2016 and be applied retroactively to all children below 15 years of age, as of 1 January 2016. The application of these amendments will significantly contribute to addressing the 1st cycle UPR recommendation from Ecuador: "Resolve the problem of persons without citizenship, and prevent such cases from arising in the future."<sup>11</sup>

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Issue 1: Non-refoulement, access to the territory and asylum procedures

##### Access to the territory

Access to the territory and national asylum procedure for persons in need of international protection, in particular at the Narva border-crossing point, remains a concern to UNHCR. The internal policy of the PBGB requires that a person should explicitly express his or her wish to apply for asylum. There are NGO reports<sup>12</sup> indicating that some asylum-seekers are denied the right to lodge asylum applications at border-crossing points (BCPs) or in transit zones. Instead, they are allegedly either advised to apply for asylum as soon as they are transferred to the Harku Detention Centre, or are involuntarily returned to the country from which they arrived. So far in 2015, UNHCR has documented one case where a person was initially denied access to the asylum procedure and the asylum application was registered only after an intervention from UNHCR.

Although the Estonian legislation envisages a right to appeal any administrative decision or action, including refusal of entry and rejection of an asylum application at the border or in the transit zone, it is very difficult for applicants to exercise this right in practice, due to the lack of access to free legal counselling and/or assistance at Estonian BCPs. Persons who apply for asylum at BCPs/transit zones are thus limited in their access to an effective remedy before a court against the decisions taken at the border. The Estonian NGO providing free legal assistance to asylum-seekers has informed UNHCR that it has not so far been able to ensure the provision of free legal counselling and/or information to applicants at Estonian BCPs/transit zones. The issue of provision of free legal aid, in particular for those who apply for asylum at the border and for those in detention was addressed in the 1st cycle UPR review of Estonia<sup>13</sup> as well as in the 2013 Concluding Observations<sup>14</sup> of the Committee against Torture.

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<sup>11</sup> "[R]esolve the problem of persons without citizenship, and prevent such cases from arising in the future", A/HRC/17/17, para. 77.85(recommended by Ecuador and enjoyed the support of Estonia). See: Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011.

<sup>12</sup> Estonian Refugee Council, *Asylum Year-Book 2014*, available at: <http://aastaraamat.pagulasabi.ee/>.

<sup>13</sup> See "[C]ontinue its efforts to improve the reception conditions of asylum-seekers, including the provision of free legal aid, in particular to those who apply for asylum at the border, and those in detention", para. 77.88 (recommended by Slovakia and enjoyed the support of Estonia). See: Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011.

<sup>14</sup> Please see Annex below, Committee against Torture, Concluding Observations on Estonia, CAT/C/EST/CO5, 17 June 2013.

Application of the safe country of origin, first country of asylum and safe third country concepts

UNHCR is also concerned about the provisions in the Estonian legislation that deny a right to rebut a presumption of safety in case of rejection of an asylum application on the basis of the safe country of origin and the safe third country concepts. Currently, Items 2 and 4 of Article 21(1) of the *AGIPA* authorize PBGB personnel “to terminate examination of an asylum claim by a decision to reject the asylum application” if an asylum-seeker is considered to come from a safe country of origin or it is possible to apply a first country of asylum or safe third country notion. In all three cases, Article 18(6) of the *AGIPA* further stipulates that the applicant shall be denied “an opportunity to present, orally or in written form, facts and give explanations, in person, concerning circumstances that may have essential importance in the review of his or her application for asylum, including the circumstances that may prevent the applicant’s expulsion from the country.” Consequently, asylum-seekers are deprived of essential procedural safeguards.

Asylum-seekers should be given an effective opportunity to challenge the presumption of safety of the country of origin, the first country of asylum or the safe third country during the first instance examination. This implies that asylum-seekers should enjoy effective access to free legal assistance and procedural safeguards, such as the right to remain, while at the border-crossing areas of the country. The current formulation of Article 18(6) of the *AGIPA* creates a risk of return to persecution or serious harm, in contravention of the *1951 Convention* and other relevant international instruments.

Non-refoulement obligations

UNHCR would like to express its concern over the reported incidents where individuals originating from Syria and Sudan were issued with orders to immediately leave the country by the PBGB, after allegedly indicating their intention to submit asylum applications. In UNHCR’s view, such a practice is not in line with Estonia’s obligation to respect the internationally recognized principle of *non-refoulement*. It must be stressed that this principle is not conditional upon recognized refugee status or an explicit asylum application. Rather, it applies wherever there is conduct that may expose an individual to a risk of being subject to persecution or ill-treatment in another country, for instance, during border checks, “pushbacks” or forced removals. Accordingly, the absence of an explicit and articulated request for asylum does not absolve the concerned state of its *non-refoulement* obligation.

Victims of trafficking and the right to seek asylum

UNHCR wishes to add that refugees and asylum-seekers are particularly at risk of falling victim to trafficking or smuggling due to the vulnerable and volatile situations they often face. During Estonia’s 1st cycle UPR in February 2011, several States made recommendations to continue to step up efforts to combat trafficking, paying special attention to its victims.<sup>15</sup> UNHCR supports these recommendations and urges the Estonian Government to continue these efforts. In particular, Estonia needs to develop standard operating procedures facilitating the prompt identification and referral of victims of trafficking to the asylum system, when appropriate. Moreover, RSD procedures should be improved to ensure that asylum claims from victims of trafficking are fairly and appropriately examined, since victims of trafficking who are at risk of persecution if returned to their countries of origin may qualify as refugees within the meaning of the *1951 Convention*.

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<sup>15</sup> For example, a recommendation was made to “[R]einforce protection against trafficking in persons by adopting specific legislative measures to prevent, combat and punish human trafficking” (Canada) during the 1st cycle UPR examination of Estonia and enjoyed the support of Estonia. See: Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/EESession10.aspx>.

UNHCR's *Guidelines on Victims of Trafficking* provide guidance on the adjudication of asylum applications submitted by victims or potential victims of trafficking.<sup>16</sup> Additionally, specialized programmes and policies to protect and support victims who cannot return to their countries of origin should be adopted.

### **Recommendations:**

UNHCR recommends that the Government of Estonia:

- Invest in the establishment of an effective protection-sensitive border entry system;
- Ensure respect for all procedural guarantees, including access to legal representation and effective legal remedy, for persons applying for asylum at border-crossing points, to ensure that the protection needs of refugees and other persons in need of international protection are duly recognized and *refoulement* is prevented;
- Establish an independent monitoring system at border crossing points in cooperation with relevant partners;
- Amend the *Act on Granting International Protection to Aliens* with provisions introducing the right to rebut a presumption of safety in case of rejection of an asylum application on the basis of the safe country of origin and the safe third country concepts in the course of the first instance procedure;
- Closely monitor and refrain from issuing orders to “immediately leave Estonia” in situations where there are indications that an individual may be in need of international protection or for those individuals who have already submitted an asylum claim, in line with the principle of *non-refoulement*; and
- Establish a proper referral system to the asylum procedure at the border-crossing points and inside the territory in order to ensure that the right of victims of trafficking to seek asylum is fully and duly respected.

### **Issue 2: Non-penalization of asylum-seekers for illegal entry**

UNHCR has noted with concern that as of the beginning of 2014, the Estonian authorities have started to apply a policy of penalization of asylum-seekers for illegal entry under the *Penal Code*. UNHCR has recorded a number of cases where citizens of Syria and Sudan who had entered Estonia irregularly were accused of committing a criminal offence under Item 2 of Article 258(1) of the *Penal Code* and eventually penalized by pecuniary punishments and/or sentenced to four months conditional imprisonment. In UNHCR's view, such a practice falls short of Estonia's international obligations under the *1951 Convention*.

The *1951 Convention* contains in its Article 31 a non-penalization clause, which states that “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” The rationale behind this clause is the recognition that the position of asylum-seekers differs fundamentally from that of ordinary migrants, in that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his/her physical safety or freedom are endangered. This element, as well as the fact that many asylum-seekers have experienced traumatic events and/or lack information about the asylum procedure and ways to apply or

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<sup>16</sup> UNHCR Guidelines on International Protection No.7: “*The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*”, 7 April 2006, available at: <http://www.unhcr.org/443b626b2.html>.

are hindered by language barriers, needs to be taken into account when assessing the reason(s) for an asylum-seeker's delay in submitting his/her application.

Although the *1951 Convention* does not specify interpretation of the notion of penalties, the object and purpose envisaged by Article 31 is the avoidance of penalization on account of illegal entry or illegal presence. This includes measures such as prosecution, fines and imprisonment. An overly formal approach to defining this term is not appropriate and could circumvent the fundamental protection foreseen by this norm. Any punitive measure, that is, any unnecessary limitation on the full enjoyment of rights granted to refugees under international refugee law that is applied by States against refugees who would fall under the protective clause of Article 31, could be interpreted as penalization.

In UNHCR's view, the effective implementation of the obligation under Article 31 of the *1951 Convention* requires concrete steps at the national level. In light of experience and in view of the nature of the obligation laid down in Article 31, States should take the necessary steps to ensure that asylum-seekers and refugees within its terms are not subject to penalties. Specifically, States should ensure that refugees benefiting from this provision are promptly identified, that no proceedings or penalties for illegal entry or presence are applied pending the expeditious determination of claims to refugee status and asylum, and that the relevant criteria are interpreted in light of the applicable international law and standards.

#### **Recommendation:**

UNHCR recommends that the Government of Estonia:

- Bring national legislation into compliance with Article 31 of the *1951 Convention relating to the Status of Refugees* by amending the *Penal Code* with a safeguard clause ensuring that persons exercising the right to seek asylum are released from any criminal liability for illegal entry or stay.

#### **Issue 3: Fair and efficient asylum procedures**

The current decision-making competence given to the border guard officials within the PBGB Regional Prefectures in the asylum procedure is not in compliance with relevant international and EU standards, as border guards do not meet the criteria set for a single and competent determining authority, as recalled by UNHCR's Executive Committee *Conclusion No. 8 (XXXVIII) of 1977*.<sup>17</sup> A single determining authority should be responsible for all stages of the procedure, including, for instance, the admissibility interview.<sup>18</sup> Furthermore, the designation of border guards or police as the determining authority raises issues of a potential conflict of professional interests. Moreover, it undermines the perception of confidentiality and impartiality, which is crucial in creating the conditions conducive to the complete disclosure of facts by applicants. Applicants may fear and/or mistrust law enforcement bodies and some of them may suffer from post-traumatic stress disorder as a result of their experiences in their country of origin, notably where they have suffered persecution or

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<sup>17</sup> UNHCR, *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, letter e (iii), available at: <http://www.unhcr.org/refworld/docid/3ae68c6e4.html>.

<sup>18</sup> UNHCR, *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, p. 10, available at: <http://www.refworld.org/docid/4c63ebd32.html>.

serious harm at the hands of the police, military or militarized groups in their countries of origin.<sup>19</sup>

The rationale for this approach is to ensure that the asylum decision-making process is separated from border and migration controls, hence securing an impartial and rigorous examination of asylum applications by expert personnel trained in asylum and refugee law. This is vital for minimizing the risk of administrative error that may lead to returning a person to a country where s/he may face persecution or other form of serious harm, in violation of the principle of *non-refoulement*.

Although some Estonian border guard officials have participated in training on how to conduct personal interviews and examine asylum applications, the majority of the border guard officials still do not have sufficient competence to undertake refugee status determination and legal analysis of asylum applications. The lack of skills to comprehensively assess international protection needs may result in serious risk of *refoulement* of persons in need of international protection and lead to a breach of the *1951 Convention*.

### **Recommendation:**

UNHCR recommends that the Government of Estonia:

- Amend the relevant national acts to ensure that responsibility for examining and deciding all asylum applications, and thus for assessing *non-refoulement* obligations on an individual basis, is accorded solely to the competent officials of the Aliens Division of the Migration Bureau of the PBGB Intelligence Management and Investigation Department.

### **Issue 4: Access to effective remedies**

Under Article 41 of the *AGIPA*, asylum applicants who receive a negative decision on their asylum applications have ten days to appeal that decision. UNHCR is concerned that this time frame may adversely affect asylum-seekers' access to effective legal remedy on negative asylum decisions since the majority of asylum-seekers do not speak the Estonian language; are unfamiliar with the national legal system; and may not have effective access to free and good quality legal aid. It should be emphasized that, in contrast, legal residents of Estonia benefit from a 30-day period for appeal in administrative procedures.<sup>20</sup> According to Article 46(4) of the *Asylum Procedures Directive (recast)*,<sup>21</sup> the applicant must have reasonable time and facilities in order to undertake all the steps required to exercise the right of appeal.

### **Recommendations:**

UNHCR recommends that the Government of Estonia:

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<sup>19</sup> See UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, p. 22, available at: <http://www.refworld.org/docid/4bab55752.html>.

<sup>20</sup> See Article 46 of the *2012 Estonian Code of Administrative Court Procedure*, available at: <https://www.riigiteataja.ee/en/eli/ee/527012014001/consolide>.

<sup>21</sup> European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>.

- Amend the *Act on Granting International Protection to Aliens* and other relevant legislation to provide asylum-seekers with reasonable time to appeal a negative decision; and
- Amend the *State Legal Aid Act*, in order to ensure that asylum-seekers and beneficiaries of international protection have effective access to independent, qualified and free legal advice and representation.

## Issue 5: Statelessness

Estonia is not a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*), the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*), or to the *1997 European Convention on Nationality*. The national legislation provides no framework for effective identification and protection of stateless persons, except special provisions related to “persons with undetermined citizenship” who are issued an alien’s passport. The current *Citizenship Act* and other relevant legal acts provide no definition of a stateless person and do not establish a formal procedure for the determination of statelessness.

In general, legally residing “persons with undetermined citizenship” are entitled to a set of rights and obligations that go beyond the minimum prescribed by the *1954 Convention*, though differences in treatment between this population and citizens of Estonia persist. “Persons with undetermined citizenship” may obtain long-term residence permits and vote in municipal elections, but not in any other elections, such as the Parliamentary or EU elections. In addition, they cannot hold government jobs. Socio-economic data<sup>22</sup>, as well as interviews done on behalf of UNHCR with a limited number of “persons with undetermined citizenship” indicate that they feel socially excluded from the majority community, as e.g. holders of ‘alien’s passports’ and are disadvantaged in Estonian society. For example, there is a 14.5 per cent unemployment rate among “persons with undetermined citizenship” compared to a 6.5 per cent unemployment rate among Estonian citizens. “Persons with undetermined citizenship” have a median yearly income that is 73 per cent of that of Estonian citizens, and 24.1 per cent of these persons are at risk of poverty, compared to 14.5 per cent of Estonian citizens.<sup>23</sup> In addition, in 2014, 30 per cent of the total prison population originated from the group of “persons with undetermined citizenship.”<sup>24</sup>

The naturalization of “persons with undetermined citizenship” has slowed down in recent years in Estonia.<sup>25</sup> In 2014, only 1,359 persons acquired Estonian citizenship (as compared to 1,316 in 2013; 1,331 in 2012; and 1,505 in 2011). The peak of naturalization was in the mid-1990s, with 22,773 persons granted Estonian citizenship in 1996. One main factor which seems to prevent “persons with undetermined citizenship” from naturalizing is the difficulty to learn the Estonian language to the degree required to pass the mandatory test.<sup>26</sup> In recent

<sup>22</sup> Estonian Society Monitoring 2015, see Section 10 “Conclusions and Recommendations”, available at: <http://www.kul.ee/et/eesti-uhiskonna-loimumismonitooringu-tulemused>. See also, Concluding observations of the Committee on Economic, Social and Cultural Rights, para 10, E/C.12/EST/CO/2, 16 December 2011.

<sup>23</sup> See Statistics Estonia, e.g. Table TT335 from 13 February 2015 and Table LES30 from 29 January 2015, available at: [www.stat.ee/en](http://www.stat.ee/en).

<sup>24</sup> Ministry of Justice of Estonia, Annual Report “*Kuritegevus Eestis 2014*”, available (in Estonian) at: <http://www.kriminaalpoliitika.ee/et/kuritegevus-eestis-2014>. See also Committee against Torture, Fifth periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/EST/Q/5) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24), 05 April 2012, see items 111-112.

<sup>25</sup> Estonian Society Monitoring 2015, p. 8.

<sup>26</sup> *Ibid*, p. 9.

years, Estonia has been regularly encouraged<sup>27</sup> by international actors to speed up naturalization to reduce the proportion of “persons with undetermined citizenship” in the population, especially during the country’s accession to the European Union (2004). As of 1 January 2015, according to the Population Registry, “persons with undetermined citizenship” made up 6.3 per cent of Estonia’s population. This means that sustained practical efforts to promote integration and naturalization are still needed in Estonia for years to come, as was previously recommended by Ecuador during Estonia’s 1st cycle UPR review.<sup>28</sup> UNHCR stands ready to assist the Estonian government in its efforts aimed at promoting the naturalization of “persons with undetermined citizenship”.

While Estonia is not a state party to the *1961 Convention*, it is party to the UN Convention on the Rights of the Child, which, through its Articles 3 and 7, provides that a child must acquire a nationality at birth or as soon as possible after birth.<sup>29</sup> The latest amendments to the *Citizenship Act* ensure this right to children born to stateless parents who have been legally residing in Estonia for at least five years prior to the birth of the child, and retroactively to children below 15 years of age as of 1 January 2016 when the amendments will enter into force. While this development is laudable, the amendments seem not to cover stateless children who are between 15 and 18 years of age as of 1 January 2016, children born to stateless parents who have not been legally residing in Estonia for the past five years,<sup>30</sup> and children born to parents who have a nationality but are unable to transmit their citizenship to the child due to a conflict of nationality laws.

### **Recommendations:**

UNHCR recommends that the Government of Estonia:

- Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*;
- Introduce a legal framework and mechanism for the effective identification, determination and protection of stateless persons in Estonia; and
- Take further legal, policy and/or practical steps to reduce statelessness, through facilitating naturalization or by other measures, and consider the readiness by UNHCR to assist in these efforts.

**Human Rights Liaison Unit**  
**Division of International Protection**  
**UNHCR**  
**June 2015**

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<sup>27</sup> For details, please see the below Annex with excerpts of Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedure mandate holders.

<sup>28</sup> “[R]esolve the problem of persons without citizenship, and prevent such cases from arising in the future”, A/HRC/17/17, para. 77.85 (recommended by Ecuador and enjoyed the support of Estonia). See: Report of the Working Group of the Universal Periodic Review: Estonia, A/HRC/17/17, 28 March 2011.

<sup>29</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, para. 11, available at: <http://www.refworld.org/docid/50d460c72.html>.

<sup>30</sup> States which apply the application procedure set out in Article 1(2)(b) of the 1961 Convention may impose a ‘habitual residence’ requirement on the child of maximum five years prior to the application and ten years in total. States which apply the application procedure and require a certain period of habitual residence are encouraged to provide for a period as short as possible.

## **Excerpts of Concluding Observations from 1st cycle UPR recommendations and UN Treaty Bodies**

### **- Universal Periodic Review:**

#### **ESTONIA**

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to Estonia.

#### **I. Universal Periodic Review**

##### **Report of the Working Group on the Universal Periodic Review – Seventeenth Session (28 March 2011) [A/HRC/17/17](#)**

##### **Recommendations that enjoyed the support of Estonia:**

77.14. Amend the Criminal Code, as announced in the national report, and introduce a separate provision on trafficking of human beings (Germany);

77.29. Intensify the measures for gender equality and equal treatment, particularly regarding the rights of women and the integration of national minorities, in accordance with the commitment formulated in paragraph 160 of its national report and the recommendations of the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women (Chile);

77.36. Take all necessary measures to eliminate, combat and punish all forms of discrimination and violence against women (Ecuador);

77.37. Fully implement the laws on gender equality and equal treatment, in accordance with the commitment formulated in paragraph 153 of its national report (Chile);

77.38. Promote equal employment opportunities for women and all of its national minorities (Thailand);

77.39. Continue its efforts to combat violations of women's rights, including through raising public awareness (Azerbaijan);

77.40. Reinforce the fight against all forms of racism and discrimination (Algeria);

77.45. Take all necessary measures to combat discrimination against homosexuals (Belgium);

77.46. Develop public awareness and education programs that advance tolerance on the grounds of sexual orientation and gender identity (Netherlands);

77.47. Conduct awareness-raising programmes on gender identity and sexual orientation for civil servants, including the security forces and bodies (Spain);

- 77.48. Review all necessary measures to reduce discrimination and particularly, stress the design of appropriate policies to prevent discrimination against children (Ecuador);
- 77.64. Take additional measures to prevent, combat and appropriately sanction trafficking in human beings (Republic of Moldova);
- 77.65. Reinforce protection against trafficking in persons by adopting specific legislative measures to prevent, combat and punish human trafficking (Canada);
- 77.66. Adopt effective legal measures to combat human trafficking, and swiftly prosecute perpetrators of such crimes (Islamic Republic of Iran);
- 77.67. Enact specific legislation regarding trafficking in persons (United States of America);
- 77.68. Criminalize human trafficking (Hungary);
- 77.69. Adopt effective measures to prevent, combat and punish human trafficking (Hungary);
- 77.70. Reinforce legislation and adopt effective measures to prevent, combat and punish human trafficking (Poland);
- 77.71. Cooperate further with the task force against trafficking in human beings of the Council of the Baltic Sea States (Norway);
- 77.72. Further increase its efforts to combat human trafficking (Azerbaijan);
- 77.85. Resolve the problem of persons without citizenship, and prevent such cases from arising in the future (Ecuador);
- 77.88. Continue its efforts to improve the reception conditions of asylum-seekers, including the provision of free legal aid, in particular to those who apply for asylum at the border, and those in detention (Slovakia).

**Recommendations that did not enjoy the support of Estonia:**

- 80.4. Accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness (Bosnia and Herzegovina);
- 80.13. Consider the adoption of legislative measures to criminalize specifically gender violence (Spain);
- 80.14. Establish a specific legal act for the crime of human trafficking (Norway);
- 80.17. Grant citizenship to all those who live on a permanent basis in the territory of Estonia and wish to become a citizen, grant, as a matter of urgency, the right to citizenship to all children born in Estonia of so-called non-citizens, without exception, lift the prohibition on access of membership in political parties to so-called non-citizens who have permanent residency in the country and are citizens of countries which are not members of the European Union, as well as provide non-citizens the passive right to vote in municipal elections (Russian Federation).

## II. Treaty Bodies

### Committee against Torture

Concluding Observations - Fiftieth Session (17 June 2013) [CAT/C/EST/CO/5](#)

#### **Situation of asylum-seekers**

15. The Committee is concerned:

- (a) That persons seeking asylum may not enjoy all the procedural guarantees, including the right of appeal against negative decisions, including in cases where Estonian border authorities reportedly reject, within the admissibility or accelerated procedure, all asylum applications filed by persons who have arrived in Estonia via the Russian Federation;
- (b) That the risk of *refoulement* exists with regard to decisions under the accelerated procedure made by border guards who are not trained, equipped or resourced to conduct personal interviews, examine applications for international protection and undertake the legal analysis of the asylum claims;
- (c) By the conditions prevailing in the Harku Expulsion Centre for irregular migrants, such as poor food, routine handcuffing during transfers to hospitals or courts, disproportionate use of force and verbal abuse by staff.

#### **The State party should:**

- (a) Ensure that all persons seeking asylum in the State party, including at its border-crossing points, enjoy all procedural guarantees, including the right of appeal against negative decisions, as well as access to legal assistance and interpreters;**
- (b) Ensure that decisions concerning asylum, including under the accelerated procedure, are taken by the Police and Border Guard Board (formerly the Citizenship and Migration Board) or a determining authority which meets relevant international criteria;**
- (c) Take immediate steps to improve conditions at the Harku Expulsion Centre so that they conform to international standards, and provide training and instruction to prison personnel regarding the use of force and the prohibition of verbal abuse.**

#### **Training**

16. The Committee is concerned that no specific methodologies exist to evaluate the efficiency of training or educational programmes for law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers on the absolute prohibition of torture and ill-treatment (art. 10).

#### **The State party should:**

- (a) Develop specific methodologies to evaluate the training and educational programmes provided on the absolute prohibition of torture and ill-treatment to law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers;**
- (b) Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit, inter alia, the proper diagnosis of signs of torture.**

## **Stateless persons**

22. While welcoming the significant reduction of statelessness in the State party from 32 per cent in the 1990s, and noting the information provided by the representatives of the State party, the Committee is concerned that some 7 per cent of the population continues to have “undetermined citizenship” and by the low level of registration as citizens of children born in Estonia to non-citizen parents (art. 2).

### **The State party should:**

- (a) 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;**
- (b) Consider offering language courses free of charge to all non-citizens who wish to apply for Estonian citizenship;**
- (c) Continue and enhance the efforts by the Citizenship and Migration Board to raise the awareness of parents whose children are eligible for naturalization through the simplified procedure of the requirements for citizenship, and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality;**
- (d) Ensure the effective implementation of the Integration Strategy and of the State Integration Programme for 2008–2013, and extend the Programme beyond 2013;**
- (e) Despite the information provided by the State party regarding its decision not to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness, reconsider such ratification as a matter of priority.**

## **Trafficking**

13. While welcoming amendments to the Penal Code in relation to trafficking in human beings, the Committee is concerned that the State party remains a source, transit and destination country for human trafficking, both for forced prostitution and forced labour purposes (arts. 1, 2, 4, 10, 12, 13, and 14).

### **The State party should:**

- (a) Vigorously enforce the new anti-trafficking law and take effective measures to prevent human trafficking and increase protection to its victims;**
- (b) Promptly, thoroughly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**
- (c) Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;**
- (d) Prevent the return of trafficked persons to their countries of origin where there are substantial grounds to believe that they would be in danger of torture, and enhance international cooperation with regard to preventing and punishing trafficking;**

**(e) Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecutions and punishment of acts of trafficking, and inform the general public of the criminal nature of such acts;**

**(f) Compile disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of trafficking, on the provision of redress to the victims and on the difficulties experienced in preventing such acts; and provide this information to the Committee.**

### **Committee on the Elimination of Racial Discrimination**

Concluding Observations (20 September 2014) [CERD/C/EST/CO/10-11](#)

#### **Persons with undetermined citizenship**

1. While noting the reduction in the number of persons with undetermined citizenship during the period under review, the Committee remains concerned at the persistently high number of persons with undetermined citizenship. It is also concerned that, according to the 2011 census, the national origin of 19,344 persons in the State party is unknown (art. 5).

**Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

**(a) Intensify efforts to reduce the number of persons with undetermined citizenship, including by shortening the length of the procedure for the acquisition of citizenship;**

**(b) Lessen the language requirements for naturalization, in particular for older persons;**

**(c) Ease further the naturalization requirements for persons under 15 years of age;**

**(d) Raise awareness about statelessness among stakeholders and introduce mechanisms to help national and local institutions to effectively identify stateless persons;**

**(e) Consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

#### **Ratification of other treaties**

1. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights (2008) and to the Convention on the Elimination of All Forms of Discrimination against Women (1999); the International Convention for the Protection of All Persons from Enforced Disappearance (2006); the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (1960); the Convention relating to the Status of Stateless Persons (1954); the Convention on the Reduction of Statelessness (1961) and the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003).

## **Integration Strategy**

1. The Committee is concerned by the continued overemphasis on language in the Integration Strategy, including the initiative by the Chancellor of Justice on 2 July 2012 to bring the Private Schools Act into conformity with everyone's constitutional right to being taught in Estonian, which has resulted in studies at private upper secondary schools where the language of instruction is Russian to be conducted 60 per cent in Estonian, with the introduction of compulsory instruction in Estonian for five subjects (arts. 4, 5 and 6).

**The Committee recommends that the State party:**

- (a) Continue removing punitive elements in its approach to the promotion of the official language and establish an effective mechanism to monitor the work of the Language Inspectorate;**
- (b) Allocate sufficient resources in order to generalize further the provision of free-of-charge language courses with effective methodologies to fulfil the requirements for Estonian language proficiency for persons belonging to minorities and persons with undetermined citizenship, while protecting the right to receive instruction in minority languages;**
- (c) Review its legislation which restricts the use of minority language in public services only to counties where persons belonging to minorities who are citizens of Estonia make up half of the population;**
- (d) Address the minorities' need for self-identification by facilitating, inter alia, the use of patronyms, through appropriate administrative measures;**
- (e) Provide the Committee with a full assessment of the effects of the Integration Strategy in its next periodic report.**

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- (c) Ease further the naturalization requirements for persons under 15 years of age;**
- (d) Raise awareness about statelessness among stakeholders and introduce mechanisms to help national and local institutions to effectively identify stateless persons;**
- (e) Consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

## **Prison population**

2. The Committee is concerned at the high number of non-Estonians among the prison population, which includes a significant ratio of persons of undetermined citizenship. It is also concerned that prisons and correctional facilities refuse to accept and translate complaints from prisoners that are not written in the official language, which may limit the opportunities of inmates of minority origin to file oral and written complaints. (arts. 2, 5 and 6)

**The Committee recommends that the State party ensure that there is no discrimination against prisoners on the basis of their lack of proficiency in the Estonian language and that prisoners are not penalized with regard to administrative and disciplinary matters because they do not have a sufficient understanding of the Estonian language.**