

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 38 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*).

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 (Mol) has exclusive responsibility over policy and planning for asylum and migration issues. The Police and Border Guard Board (PBGB) is the authority tasked with border management, asylum procedures, residence permits and various other matters related to internal security. It also operates the migration detention centre located near Tallinn in a newly-built prison-like building. The Social Insurance Board (SIB) is responsible for arranging the settlement of refugees and beneficiaries of subsidiary protection into the territory of a local government. SIB has outsourced some of these tasks to a government-owned enterprise *AS Hoolekandeteenused*, which also manages the two reception centres for asylum-seekers in Vao and Vägeva villages.

The Mol and the Ministry of Culture (MoC) are responsible for implementation of the State policy on the integration of third-country nationals, including stateless persons. The MoC also supervises the activities of the Integration Foundation, which is tasked with promoting integration processes in Estonia, coordinating activities related to immigration and emigration, publishing information in this regard and producing overviews. There are also a few civil society organisations that provide legal/social assistance and engage in advocacy.

Refugees and Asylum-Seekers: Estonia is host to a comparatively small refugee population. 334 beneficiaries of international protection were recorded at the end of 2019 by the authorities. There were 104 new asylum applications lodged in 2019. The top countries of origin were Russian Federation (32) and Turkey (22) with other countries numbering 5 or less. In 2019, 60 persons were granted refugee or subsidiary protection status. Estonia also until 2019 participated in the EU resettlement scheme, having resettled, among others, 66 Syrian refugees from Turkey since 2016. UNHCR commends Estonia's participation in resettlement and encourages Estonia to continue finding ways to participate in global solidarity including through means of relocation and resettlement.

Stateless Persons: According to the Estonian Police and Border Guard Board, at the end of 2019, the total number of "persons with undetermined citizenship" holding a valid residence permit or a right of residence was 75,599. "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. 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. However, they may not participate in Parliamentary or EU elections and may not hold certain public and civil service functions. 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 arrived to Estonia in a migratory context and who have not been granted a legal basis for residing in Estonia.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 122.123: “Continue its efforts in providing migrants and other sectors in vulnerable situation greater access to health, education, and other social services, in the face of increased number of migrants entering Europe (Philippines)”.

Estonia has taken commendable steps to strengthen its capacity in the areas of reception and integration in order to receive the refugees it has committed to accept under the EU’s Emergency Relocation and Resettlement Schemes and otherwise. Since publication of the UNHCR Study *“Integration of refugees in Estonia: Participation and Empowerment”* in December 2016¹, the Government of Estonia has implemented several UNHCR recommendations, including, inter alia, to increase the number of hours for studying Estonian and to introduce a wage subsidy program supporting Estonian employers who hire refugees. Estonia has also implemented several other initiatives to support adaptation and integration of refugees, including enhancement of the support person service and other initiatives, that have resulted in significantly lower secondary movements than other Baltic States. In UNHCR’s recent consultations with refugees, integration support is ranked highly in most areas. UNHCR welcomes these efforts and appreciates the willingness of the Government and other partners to continue the dialogue on the integration of refugees.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

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

Linked to 2nd cycle UPR recommendation no. 123.55 “Avoid detaining asylum seekers and ensure all asylum seekers the right to lodge asylum applications at border-crossing points and in transit zones (Brazil)”.

Access to the territory and national asylum procedure for persons in need of international protection remains a concern to UNHCR. NGO reports indicate that asylum-seekers were denied the right to lodge asylum applications at border-crossing points with Russia or in transit zones (i.e. Tallinn Airport). Instead, they were either persuaded not to apply because

¹ UN High Commissioner for Refugees (UNHCR), *Integration of refugees in Estonia - Participation and Empowerment*, December 2016, available at: <http://www.refworld.org/docid/586e251d4.html> .

of lack of prospects to be recognized or advised to return to the country of origin, or, at least initially, refused to accept asylum application.²

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 border-crossing points. Persons who apply for asylum at the border points are thus limited in their access to an effective remedy before a court against the decisions taken at the border. The issue of access to asylum has also recently been highlighted by the Human Rights Committee.³

Recommendations:

UNHCR recommends that the Government of Estonia:

- a) Accelerate efforts to establish an effective protection-sensitive border entry system;
- b) Ensure respect for all procedural guarantees, including access to information and legal aid, 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;
- c) Establish an independent monitoring system at border crossing points in cooperation with relevant partners;
- d) Amend the Act on Granting International Protection to Aliens with provisions introducing the right to rebut a presumption of safety when the safe country of origin and the safe third country concepts are applied in the first instance procedure.

Issue 2: Statelessness

Linked to 2nd cycle UPR recommendations no. 122.124 “Work actively to reduce the number of stateless residents in the country (Iceland)”; also 122.125; 123.13; 123.15; 123.16; 123.17; 123.18; 123.19; 123.53; and, 123.54.

Estonia is the only country in Northern Europe which has not acceded to either of the UN Statelessness Conventions, and is one of just three EU Member States (including Poland and Cyprus) which are not yet State Parties to the *1954 Convention*.⁴ Domestic law contains no definition of a stateless person and there is no separate mechanism for the identification and determination of stateless persons. Consequently, there is no precise information available about stateless persons who may have come to Estonia in the migratory context and who have not been granted a legal basis for residing in Estonia or those who remain stateless due to conflict of nationality laws or other factors.⁵

Although the Estonian *Citizenship Act* was amended in 2015 and 2020 so as to provide for acquisition of citizenship for children born in Estonia whose both or one parent are stateless and who have permanently resided in Estonia for at least 5 years based on Art. 13(4), this is not fully in line with Estonia's international obligations under Article 7 of the UN

² Estonian Human Rights Centre, Human Rights in Estonia 2020: Rights of refugees and asylum-seekers, available at: <https://humanrights.ee/en/materials/inimoigused-eestis-2020/pagulaste-ja-varjupaigataotlejate-oiigused/>

³ See CCPR/C/EST/CO/4

⁴ United Nations Treaty Collection, Convention relating to the Status of Stateless Persons, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=V-3&chapter=5&clang=en. Iceland is in the final stages of joining both Conventions.

⁵ Statelessness can occur for several reasons, including discrimination against particular ethnic or religious groups, or on the basis of gender; the emergence of new States and transfers of territory between existing States; and gaps in nationality laws. For details see UNHCR resources available on: <https://www.unhcr.org/ending-statelessness> .

Convention on the Rights of the Child (CRC), which sets out every child's right to acquire a nationality from birth, "in particular where the child would otherwise be stateless".

Furthermore, UNHCR notes that stateless persons may apply for naturalization only after eight years of residence. Greater facilitation of naturalization for stateless persons would permit them to more efficiently integrate into society. Further state measures should be taken to promote the active citizenship of persons with undetermined citizenship through providing them broader work opportunities in the public and private sectors. An example of such measures is the UNHCR-supported pilot project "Internal Security Starts With You!" organised by the Estonian Academy of Security Sciences, which enabled stateless persons to learn how they can contribute to ensuring Estonia's internal security at their place of residence, encourage their active citizenship, and increase their motivation to apply for Estonian citizenship.

Recommendations:

UNHCR recommends that the Government of Estonia:

- a) Accede to the 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness;
- b) Incorporate the definition of a stateless person in domestic law, in line with the definition provided by the 1954 UN Convention Relating to the Status of Stateless Persons;
- c) Introduce a legal framework and mechanism for the effective identification, determination and protection of stateless persons;
- d) Consider providing automatic citizenship to all children born in Estonia who would otherwise be stateless, including through eliminating the permanent residency requirement from the related procedure;
- e) Take further legal, policy and/or practical steps to reduce statelessness through facilitating naturalization for stateless persons, including reducing residency requirements for naturalization applicable for stateless persons; and,
- f) Continue efforts to integrate persons with "undetermined citizenship" in Estonian society through promoting their motivation to apply for citizenship and broadening their employment opportunities both in the public and private sectors.

Additional protection challenges

Issue 3: Fair and efficient asylum procedures

Decision making within PBGB: The current decision-making competence given to the border guard officials within the PBGB 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 and the EU's Asylum Procedures Directive. While recognising that asylum decisions are not in practice regularly made by border officials, the majority of whom do not have sufficient competence to undertake refugee status determination and legal analysis of asylum applications, Estonian law does not expressly exclude this possibility. A single determining authority should be responsible for all stages of the procedure, including, for instance, the admissibility interview. 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 serious harm at the hands of the police, military or militarized groups in their countries of origin. This could undermine the perception of impartiality and the trust on the asylum procedure, which is crucial in creating the conditions conducive to the complete disclosure of the facts by the applicant.

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 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.

Vulnerability assessment: UNHCR's partners report that asylum-seekers who have been pregnant, are single parents with minor children, are victims of trafficking, torture or rape, and/or who have a disability, serious illnesses or mental health problems, do not consistently receive specialized treatment or accommodations in practice. Vulnerable asylum seekers are thus systematically not identified in the first stages of the asylum procedures and this means that necessary procedural safeguards are not in place in a way that ensures effective access to the procedure.

Recommendations:

UNHCR recommends that the Government of Estonia:

- a) Amend national legislation to ensure that responsibility for examining and deciding all first instance asylum applications. is accorded solely to the competent officials of a specialized, separate and independent unit or authority;
- b) Organize comprehensive and standardized training programmes on the identification of vulnerable applicants for the PBGB personnel; and,
- c) Ensure consistent enforcement of the obligation to identify and record the vulnerabilities and/or special needs of asylum-seekers as soon as possible and communicating this information to relevant stakeholders in order to provide necessary safeguards and support for the applicant.

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. According to Article 46(4) of the Asylum Procedures Directive (recast), the applicant must have reasonable time and facilities in order to undertake all the steps required to exercise the right of appeal.

UNHCR's study on Access to Legal Aid for Asylum-Seekers in Estonia⁶ revealed and confirmed a number of additional concerns. These include the lack of effective opportunity to apply for or be granted state legal aid in border areas (see Issue 1), lack of access to legal representation for unaccompanied children, and concerns that the legal counsellors at the Soodevahe Detention Centre and Vao and Vägeva Reception Centres are not sufficiently capacitated.

With respect to appeal procedures, there are also concerns about the quality of the legal aid provided.

Recommendations:

UNHCR recommends that the Government of Estonia:

⁶ UN High Commissioner for Refugees (UNHCR), *Access to Legal Aid for Asylum-Seekers in Estonia*, July 2019, available at: <https://www.refworld.org/docid/5d4bedea4.html>

- a) 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;
- b) 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;
- c) Amend relevant asylum legislation with provisions guaranteeing that unaccompanied children are assigned a free and qualified lawyer as soon as they are identified; and,
- d) Review the current conditions for the provision of state legal aid to asylum-seekers, especially those who are detained, and consider introducing additional safeguards ensuring that all asylum-seekers have the opportunity to consult in person with their state legal aid lawyer in a language they understand.

Issue 5: Detention of children

In Estonia, detention of children for migration purposes is allowed by law. Even though there are only a few cases of detention of children, UNHCR's position is that children should not be detained for immigration related purposes, irrespective of their legal/ migratory status or that of their parents and detention is never in their best interests.⁷ This position is based on similar approach taken by the UN Committee on the Rights of the Child⁸ and the UN Special Rapporteur on Torture.⁹ Appropriate care arrangements and community-based programs need to be in place to ensure adequate reception of children and their families, especially in the situation of emergency. The UN Committee on the Rights of the Child has also specifically recommended that Estonia amend the Act on Granting International Protection to Aliens to prohibit the detention of children.¹⁰

Recommendations:

UNHCR recommends that the Government of Estonia:

- a) Amend the Act on Granting International Protection to Aliens to prohibit the detention of children in Estonia for immigration related purposes, and explore family-based alternative care options or other suitable alternative care arrangements as determined by the competent childcare authorities.

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⁷ UN High Commissioner for Refugees (UNHCR), *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: <https://www.refworld.org/docid/5885c2434.html>

⁸ UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, 28 September 2012, para. 78-79, available at: www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2012.aspx.

⁹ UN General Assembly Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 5 March 2013 para 80, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

¹⁰ CRC/C/EST/CO/2-4.