

UNHCR Observations on the “Proposed Amendments to the Finnish Citizenship Act” [Hallituksen esitys eduskunnalle laiksi kansalaisuuslain muuttamisesta]

I. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) Representation for the Nordic and Baltic Countries is grateful to the Government of Finland for the invitation to provide observations on the “Proposed Amendments to the Finnish Citizenship Act” (Hallituksen esitys eduskunnalle laiksi kansalaisuuslain muuttamisesta) - hereafter the “Proposal”.¹
2. UNHCR offers these observations in its capacity as the Agency entrusted by the UN General Assembly with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness.² The UN General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.³ UNHCR thus has a direct interest in national legislation impacting on the prevention and reduction of statelessness and protection of stateless persons, including the implementation of the safeguards contained in international human rights treaties as well as the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) and the 1961 Convention on the Reduction of Statelessness (“1961 Convention”).⁴ The UN General Assembly has also entrusted UNHCR with the specific role foreseen in Article 11⁵ of the 1961 Statelessness Convention.⁶

¹ Sisäministeriö, Kansalaisuuslain muutos, available at:

<https://intermin.fi/hankkeet/hankesivu?tunnus=SM032:00/2020>, last accessed 3 November 2021.

² UN General Assembly, Office of the United Nations High Commissioner for Refugees: resolution / adopted by the General Assembly, 9 February 1996, A/RES/50/152, available at:

<http://www.unhcr.org/refworld/docid/3b00f31d24.html>. Reiterated in subsequent resolutions, inter alia, UN General Assembly Resolution A/RES/61/137 of 25 January 2007, available at: available at:

<https://www.refworld.org/docid/45fa902d2.html>, UN General Assembly Resolution A/RES/62/124 of 24 January 2008, available at: <https://www.refworld.org/docid/47b2fa642.html> and UN General Assembly Resolution A/RES/63/148 of 27 January 2009, available at: <https://www.refworld.org/docid/52fb51bb4.html>.

³ UN General Assembly Resolution A/RES/50/152, (Ibid), para. 15.

⁴ UNHCR, ExCom in its Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII), 6 October 2006, paras. (i) and (j). See, UNHCR, Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017, available at: <https://www.refworld.org/docid/5a2ead6b4.html>; UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>; UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html>.

⁵ Article 11 of the 1961 Convention provides for the creation of a “body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.” 1961 Convention (Ibid).

⁶ Ibid.

3. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international instruments concerning statelessness, in particular, the 1954 and 1961 Statelessness Conventions. Such guidelines are included, among others, in the UNHCR Handbook on Protection of Stateless Persons ("UNHCR Handbook")⁷ and the 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*.⁸

II. General Observations

4. At the outset, UNHCR would like to express its gratitude for Finland's significant efforts to address statelessness that have taken place before and since the launch in 2014 of UNHCR's Global Campaign to eradicate statelessness by 2024 (the #IBelong Campaign), and, more generally, for Finland's support and partnership in the global strive to end statelessness. Finland has demonstrated its support and commitment by joining the Core Group of Friends of the #IBelong Campaign that was reiterated by the Government of Finland in its pledge to continue efforts for the general avoidance of statelessness at the High-Level Segment on Statelessness in 2019.⁹
5. UNHCR also appreciates the measures taken by the Government of Finland to address the challenges in reducing and preventing statelessness in Finland that were identified in UNHCR's mapping of statelessness in Finland in 2014.¹⁰ UNHCR particularly commends Finland for the automatic grant of Finnish nationality for children born stateless in Finland and for the generally well-functioning determination of citizenship status procedure.¹¹ UNHCR also appreciates Finland's commitment to update the definitions of a child and a stateless person contained in the Citizenship Act to align them with the definitions found in international treaties, which Finland is a party to. Thus, following the adoption of this Proposal, statelessness would no longer be divided between two categories, i.e., voluntarily and involuntarily statelessness.

⁷ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>.

⁸ 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, available at: <https://www.refworld.org/docid/50d460c72.html>.

⁹ UNHCR, *High-Level Segment on Statelessness: Results and Highlights*, available at: <https://www.unhcr.org/ibelong/high-level-segment-on-statelessness-results-and-highlights/>.

¹⁰ UNHCR, *Mapping Statelessness in Finland*, November 2014, available at: <https://www.refworld.org/docid/546da8744.html>. The Mapping provides a comprehensive analysis and a set of recommendations concerning Finnish legislation, policy and administrative practices on identification, reduction and prevention of statelessness and protection of stateless persons on Finnish territory in relation to the relevant international standards, in particular, the 1954 and the 1961 Statelessness Conventions.

¹¹ *Ibid.*, p. 56.

6. Further, UNHCR notes with appreciation that several of the observations submitted by UNHCR to the preliminary investigation into the review of the Citizenship Act in August 2020¹² have been incorporated in the Proposal. This includes Section 36(2) of the Citizenship Act concerning unknown nationality as well as Section 9 related to the elimination of gender-based discrimination, including in situations where the child has two mothers. UNHCR further commends Finland for the introduction of a holistic assessment of the verification of identity.
7. UNHCR generally welcomes the Proposal, while noting that its primary objective is to clarify existing legislation rather than introducing amendments that would substantially impact the criteria for acquiring citizenship. UNHCR would, however, like to take the opportunity to put forward the following specific recommendations to ensure that the proposed amendments to the Citizenship Act uphold the rights of stateless persons to the greatest extent possible.

III. Specific Observations

Definition of a stateless person

8. The Proposal defines in Section 2 of the Citizenship Act a stateless person as someone who does not have the nationality of any State. UNHCR notes in this regard that a stateless person in Article 1(1) of the 1954 Convention is defined as follows: “For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.”
9. UNHCR thus wishes to note that in order for Finland to implement its international treaty obligations related to statelessness, a definition of a stateless person fully in line with Article 1(1) of the 1954 Convention, must capture the component of “under the operation of its law”. The reference to a State’s practice is critical, given that the analysis of how a State applies its nationality laws, in practice, in an individual case may lead to a different conclusion than one derived from a purely objective analysis of the citizenship law. A State may, in practice, not follow the letter of the law, and even go so far as to ignore its substance. The reference to “law” in the definition of statelessness in Article 1(1) of the 1954 Convention therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.¹³
10. UNHCR recalls that the 1954 Convention does not permit reservations to Article 1(1) and thus this definition is binding on all State parties to the treaty. In addition, the International Law

¹² UNHCR, Observations on the preliminary investigation into possible amendment needs pertaining to the nationality legislation, August 2020, available at https://api.hankeikkuna.fi/asiakirjat/0b553efd-20fa-47b6-907f-955c8ce4af61/adb2e13f-35f1-47d1-8029-722e07b752ff/LAUSUNTO_20200825081046.pdf.

¹³ UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at: <https://www.refworld.org/docid/4f4371b82.html>, para 17.

Commission has concluded that the definition in Article 1(1) is part of customary international law.¹⁴

Establishing nationality status

11. UNHCR welcomes the proposed amendment to Article 6(2) of the Citizenship Act to provide for a holistic assessment of the applicant's identity, which takes into account available documentation as well as consideration of other evidence, including personal testimonies, where limited or no documentary evidence regarding an individual's personal circumstances is available.
12. UNHCR is, however, concerned that, in practice, the threshold is quite high for considering a person's identity as verified.¹⁵ The Finnish Immigration Service relies on the person's ability to provide documents to support her or his claim of statelessness and if an applicant is unable to provide any documentary evidence with regard to her or his identity or nationality, in practice it is often considered a possibility that the person has a nationality. In such cases, the person's citizenship status is defined as *unknown* rather than stateless, until further information is provided. Consequently, the likelihood that the person is determined to be stateless is higher if the person is able to provide documents, such as a travel document, which supports the claim or the assumption that she or he is stateless.¹⁶
13. In UNHCR's view, when a person is determined as having an "unknown nationality", further efforts need to be made to assess the individual's nationality status and resolve it as soon as possible. Currently, a relatively large population in Finland remains registered with "unknown nationality", including almost 800 children under the age of four years.¹⁷ UNHCR thus recommends a more efficient application of the provision of the Citizenship Act, which sets out an obligation to make efforts to determine the nationality of those who have a home municipality in Finland, but whose nationality has been recorded as unknown.
14. UNHCR is particularly concerned about the high number of children registered with unknown citizenship and recalls that the principle of the best interests of the child¹⁸ must be a primary consideration in all actions concerning children, including measures concerning the child's

¹⁴ Ibid, para 2; International Law Commission, Articles on Diplomatic Protection with commentaries, 2006, available at: http://untreaty.un.org/ilc/guide/9_8.htm, p. 49, which states that the definition in Article 1 of the 1954 Convention can "no doubt be considered as having acquired a customary nature".

¹⁵ UNHCR, *Mapping Statelessness in Finland*, (No. 10), p. 34.

¹⁶ Ibid.

¹⁷ Tilastokeskus, Citizenship according to age and sex by region, 1990-2020, available at: https://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/StatFin_vrm_vaerak/statfin_vaerak_pxt_11rg.px/. According to Tilastokeskus (Statistics Finland), the number of persons registered in Finland as having an 'unknown nationality' has nearly doubled in the past decade and is higher than those registered as stateless. As of 31 December 2020, 1700 persons were recorded as having an unknown nationality, including 786 children under 4 years of age.

¹⁸ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>, art. 3(1).

nationality and avoidance of statelessness.¹⁹ A child must not be left stateless for an extended period of time but, rather, must acquire a nationality at birth or as soon as possible after birth.²⁰ This needs to be understood as entailing an obligation to avoid the registration of stateless persons as having an unknown nationality.

Statelessness Determination Procedure

15. In Finland, there is no dedicated statelessness determination procedure (“SDP”). Determination of statelessness takes place through and as part of other procedures, in particular, the asylum procedure and the determination of citizenship status procedure (“CSDP”) provided for in Section 36 of the Citizenship Act.
16. While the 1954 Convention does not prescribe a mechanism for the identification of stateless persons, it implicitly requires States to identify stateless persons within their jurisdiction so as to provide them with appropriate treatment as per their legal commitments.²¹ In UNHCR’s experience, a dedicated SDP, rather than a CSDP, is better equipped to address the specific questions related to determination of statelessness and to identify and protect beneficiaries of the 1954 Convention.
17. One important element of a specialized SDP is adapted thresholds for the burden and standard of proof in the context of statelessness. As with the burden of proof, the standard of proof or threshold of evidence necessary to determine statelessness must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. Forms of evidence to determine statelessness are set out in detail in the UNHCR Handbook on Protection of Stateless Persons,²² including testimony of the applicant, response(s) from a foreign authority to an enquiry regarding nationality status of an individual and country of origin information gathered by the State authorities.
18. In UNHCR’s view, the standard of proof should not be set so high as to prevent statelessness from being recognized, while the burden of proof should be shared between the applicant and the State. Requiring a strict standard of proof could, in UNHCR’s view, undermine the object and purpose of the 1954 Convention. States are thus advised to adopt the same standard of proof as required in refugee status determination, namely, that a finding of statelessness would

¹⁹ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, available at: <https://www.refworld.org/docid/51a84b5e4.html>, paras. 32, 37, 75-76.

²⁰ *Ibid*, art. 3, 7; UNHCR, *Guidelines on Statelessness No. 4, (No. 8)*, para. 11.

²¹ UNHCR, *Handbook on Protection of Stateless Persons*, (No. 7), para. 8; States have recognized this in relation to the establishment of refugee status determination procedures despite the 1951 Convention being silent on this matter. Please see Executive Committee Conclusion No. 8 (XXVIII) of 1977, paragraph a; Executive Committee Conclusion No. 11 (XXIX) of 1978, paragraph h; Executive Committee Conclusion No. 14 (XXX) of 1979, paragraph f; and Executive Committee Conclusion No. 16 (XXXI) of 1980, paragraph h. See UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017* (Conclusion No. 1 – 114), October 2017, HCR/IP/3/Eng/REV. 2017, available at: <https://www.refworld.org/docid/5a2ead6b4.html>.

²² UNHCR, *Handbook on Protection of Stateless Persons*, (No. 7).

be warranted where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law.²³ Specifically, in the Finnish context, a higher standard of proof for establishing statelessness also risks identifying applicants as within the category of persons with “unknown citizenship” rather than as stateless.

19. Another key element of SDP is statelessness as a stand-alone ground for the issuance of a residence permit. While a stateless person may also qualify as a refugee under the 1951 Convention relating to the Status of Refugees or other forms of international protection, not all stateless persons may benefit from this protection framework. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the Convention.²⁴ A residence permit provided to a stateless person, whether the basis is statelessness as such or some other ground, should always be of such nature that it enables full enjoyment of the rights afforded by the 1954 Convention. As reflected in Article 32 of the 1954 Convention, in the case of stateless persons only one durable solution exists: acquiring a new nationality.²⁵ Issuing residence permits of a temporary nature to stateless persons should thus be avoided.

Language Proficiency Requirements

20. UNHCR welcomes the Proposal to clarify the means by which an applicant can demonstrate language proficiency in order to acquire Finnish nationality. Such means would include professional studies carried out in Åland Islands or qualification as an accredited translator or legal interpreter. Finnish legislation already contains important measures to address different situations of vulnerability of applicants, such as in the case of persons over 65 years of age and illiterate persons. In UNHCR’s experience, stateless persons may face particular barriers concerning language proficiency requirements and therefore recommends that Finland consider applying more favourable language requirements when the applicant is stateless, in line with international obligations to ensure favourable conditions for the acquisition of nationality.
21. According to Article 32 of the 1954 Convention, States “shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”. The word *shall* implies a qualified duty on State parties to facilitate “as far as possible” the naturalization of stateless persons, without prejudice to sovereign rights of the State. While there is no definition of the term “facilitation” referred to in Article 32 of the 1954 Convention, according to the Explanatory Report to the European Convention on Nationality, the term has to be understood as ensuring favourable conditions for the acquisition of

²³ Ibid, para. 91.

²⁴ Ibid, para. 147.

²⁵ 1954 Convention, Art. 32. The right to a nationality is also enshrined in Article 15 of the Universal Declaration of Human Rights.

nationality,²⁶ including for stateless persons.²⁷ Examples of such favourable conditions include a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees.²⁸

IV. Concluding remarks

22. In light of the above, UNHCR invites Finland to consider the following recommendations:

- a. Align the definition of a stateless person in Finnish law with Article 1(1) of the 1954 Convention, by adding the phrase “under the operation of its law”;
- b. Use the category of persons with ‘unknown citizenship’ with caution in order to avoid gaps in the identification of statelessness and ensure that stateless persons can enjoy the rights to which they are entitled;
- c. Undertake research into the reasons for the relatively high number of children born in Finland registered with “unknown nationality” to assess whether children have meaningful access to the acquisition of nationality at birth as well as other challenges in establishing the statelessness of a child;
- d. Introduce the evidentiary requirement to a “reasonable degree” in the Citizenship Status Determination Procedure in Section 36 to adopt a standard which better takes into account the challenges inherent in establishing statelessness. In particular the burden of proof should be shared between the applicant and Migri, bearing in mind that the 1954 Convention only requires a negative to be proven, i.e. that the person is not considered as a national by any State under the operation of its law;
- e. Consider the further development of the current citizenship status procedure into a dedicated statelessness determination procedure to better identify and protect stateless persons, including through the granting of a renewable residence permit, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention;
- f. Introduce more favorable requirements for stateless persons in order to facilitate their naturalization in line with the 1954 Convention.

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²⁶ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <https://www.refworld.org/docid/3ae6b36618.html>, art. 6(4).

²⁷ Council of Europe, *Explanatory Report to the European Convention on Nationality*, 6 November 1997, available at: <https://rm.coe.int/16800ccde7>, para. 52.

²⁸ *Ibid*, para. 3.