

## UNHCR Observations on the proposal for a Draft Law amending the Law of the Republic of Lithuania on Citizenship (Reg. No 20-6597)

### I. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) Representation for Northern Europe (RNE) appreciates the opportunity to present its comments to the proposal for a Draft Law Amending the Law of the Republic of Lithuania on Citizenship (hereinafter – ‘Law Proposal’).
2. UNHCR offers the following comments 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.<sup>1</sup> The General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.<sup>2</sup> It has also entrusted UNHCR with the specific role foreseen in article 11 of the 1961 Convention on the Reduction of Statelessness.<sup>3</sup>
3. Furthermore, UNHCR’s Executive Committee has requested UNHCR to provide technical advice with respect to nationality legislation and other relevant legislation with a view to ensuring adoption and implementation of safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality.<sup>4</sup> It further requested UNHCR to undertake “targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons”.<sup>5</sup>
4. UNHCR thus has a direct interest in national legislation of countries impacting on the prevention or reduction of statelessness and protection of stateless persons, including implementation of safeguards contained in international human rights treaties, as well as those set out in the 1954 Convention relating to the Status of Stateless Persons<sup>6</sup> (1954 Convention) and the 1961 Convention on the Reduction of Statelessness<sup>7</sup> (1964 Convention).

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<sup>1</sup> 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: <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>.

<sup>2</sup> UN General Assembly Resolution A/RES/50/152, see above footnote 1, para. 15.

<sup>3</sup> 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.”

<sup>4</sup> Executive Committee of the High Commissioner’s Programme, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) - 2006*, 6 October 2006, No. 106 (LVII), paras. (i) and (j), available at: <https://www.refworld.org/docid/453497302.html>.

<sup>5</sup> *Ibidem*, para. (a).

<sup>6</sup> Lietuvos Respublikos Seimas, Lietuvos Respublikos įstatymas dėl Konvencijos dėl pilietybės neturinčių asmenų statuso ratifikavimo VIII-1475 1999-12-14, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.92596?jfwid=-y3rq83i2h>

<sup>7</sup> Lietuvos Respublikos Seimas, Lietuvos Respublikos įstatymas dėl Jungtinių Tautų konvencijos dėl asmenų be pilietybės skaičiaus mažinimo ratifikavimo, XII-268 2013-05-09, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.450742?jfwid=-y3rq83if5>.

## II. General observations

5. UNHCR notes that the Law Proposal, as outlined in the Explanatory Note<sup>8</sup>, *inter alia* aims at “broadening the group of persons acquiring the citizenship of the Republic of Lithuania by birth providing that children born to legally residing stateless persons shall acquire the citizenship of the Republic of Lithuania hence ensuring that children have citizenship at birth”.<sup>9</sup> The Explanatory Note goes on to underline that the relevant amendments are intended to implement the UNHCR recommendations on the reduction of statelessness.<sup>10</sup> UNHCR also observes that the Law Proposal encompasses several other provisions of relevance for stateless persons, notably those addressing the conditions for naturalization and other citizenship related procedures.
6. UNHCR encourages all States whose legislation does not contain full safeguards against statelessness at birth to ensure that any child born on their territory who would otherwise be stateless will acquire the nationality of the State of birth. In this respect, UNHCR takes note of the commentary contained in the Explanatory Note which maintains that the legislative initiative should “ensure the right to nationality”.<sup>11</sup>
7. Nevertheless, in the below observations, UNHCR would like to raise several issues that would have to be addressed in order to align the Law proposal fully with the provisions of the 1954 and 1961 Conventions. Furthermore, taking this opportunity, UNHCR invites the Lithuanian authorities to consider other amendments to the legislative framework with a view to facilitating naturalization of stateless persons and refugees and as specified below further alignment of national legislation to the provisions of the international law.
8. In the present comments, the terms ‘nationality’ and ‘citizenship’ are used interchangeably.

## III. Specific observations

### *Prevention of Statelessness at Birth (Articles 3 and 4 of the Law Proposal)*

9. The Law proposal introduced a new text for Article 15 (1) of the Law on Citizenship as follows:

*“A child of stateless persons who are legally resident (lith. teisėtai gyvenančių) in the Republic of Lithuania shall be a citizen of the Republic of Lithuania, irrespective of whether he was born in or outside the territory of the Republic of Lithuania, provided he has not acquired citizenship of another state at birth.”*

If compared to the current version of the provision, the amendment eliminates the requirement of permanent legal residence, hence expanding the scope of the provision *ratione personae*.

10. UNHCR understands that the proposed amendment intends to implement a pledge made by Lithuania at the High-Level Segment on Statelessness (HLS) marking the mid-way point of UNHCR’s #IBelong Campaign to end statelessness within 10 years which reads as follows:

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<sup>8</sup> Aiškinamasis raštas dėl Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 15, 18, 19, 21, 23, 24, 26, 27, 29, 33, 37, 38, 39, 40, 41, 41<sup>1</sup>, 42, 43 ir 45 straipsnių pakeitimo įstatymo projekto, available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/1f2a2d70905111eaa51db668f0092944?positionInSearchResults=8&searchModelUUID=ba6c563f-a2ef-4535-8e0c-0770f4ae7320>

<sup>9</sup> *Ibid.*, page 1

<sup>10</sup> *Ibid.* page 1 and 4.

<sup>11</sup> *Ibid.* page 4.

*“To amend the Law on Citizenship and ensure that citizenship of Lithuania is granted to children born in the territory of Lithuania if their parents are stateless persons holding a residence permit, permanent or temporary.”<sup>12</sup>*

11. UNHCR further notes that the Law Proposal provides for a revised Article 18 (4) of the Law on Citizenship. The proposed amendment exempts children applying for the Lithuanian citizenship from the requirements to pass examinations in the Lithuanian language and the fundamentals of the Constitution of the Republic of Lithuania and to have legal means of subsistence. We understand that this provision is linked *inter alia* with the current Article 18 (2) of the Law on Citizenship which reads as follows:

*“ A stateless person who was born in the territory of the Republic of Lithuania may be granted citizenship of the Republic of Lithuania, provided he has been legally permanently resident in the Republic of Lithuania for the last five years, has not acquired citizenship of another state, has the right of residence in the Republic of Lithuania at the time of the application for the granting of citizenship of the Republic of Lithuania and the decision regarding the granting of citizenship of the Republic of Lithuania and meets the conditions listed in points 3, 4, 5 and 7 of paragraph 1<sup>13</sup> of this Article.”*

12. It, therefore, appears that the proposed amendments aim at preventing cases of statelessness from arising in two ways. First, they provide for the automatic acquisition of the Lithuanian citizenship at birth by children who are currently excluded from the scope of Article 15 of the Law on Citizenship, i.e. children born to stateless parents who reside in Lithuania with temporary residence permits. Secondly, the amendments ease conditions for accessing the Lithuanian citizenship by way of an application procedure as set out in Article 18 (2) of the Citizenship Law for other children born stateless. It follows that the proposed amendments provide for a combination of modes of the acquisition of the Lithuanian citizenship, where children born to legally resident stateless persons would acquire the Lithuanian citizenship automatically at birth, while other categories of children born stateless would have to follow an application procedure, with eased requirements.

13. UNHCR acknowledges that the proposed amendments enhance access to the Lithuanian citizenship for children born stateless. However, with a view to supporting Lithuania’s efforts to fully meet the standards set out in the 1961 Convention and related obligations pursuant to other international human rights treaties to which Lithuania is a State Party, notably the 1989 United Nations Convention on the Rights of the Child<sup>14</sup> (CRC), we recommend considering some further adjustments of the proposed provisions, as specified in details below.

14. First, with regard to the lawful residence condition which is retained in the proposed Article 15 (1) of the Law on Citizenship, UNHCR would like to note that the 1961 Convention permits the requirement of “*habitual residence*” only. In addition, as explained in the UNHCR Statelessness Guidelines No 4, the notion of habitual residence may not be interpreted to mean lawful residence, and the parents of the child concerned may not be required to possess a specific type of residence in the State.<sup>15</sup>

15. Furthermore, the provisions of the 1961 Convention must be read and interpreted in light of the international human rights law. In this respect, Article 7 of the CRC sets out that every child has the right to acquire a nationality, and Article 3 of the CRC further requires that all actions concerning children, including

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<sup>12</sup> UN High Commissioner for Refugees (UNHCR), *High-Level Segment on Statelessness: Results and Highlights*, May 2020, page 63, available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

<sup>13</sup> These conditions are the knowledge of the Lithuanian Language and the foundations of the Constitution, legal means of subsistence and non-applicability of exclusion clauses.

<sup>14</sup> Lietuvos Respublikos Seimas, Dėl Jungtinių Tautų vaiko teisių konvencijos ratifikavimo, I-983 1995-07-03 available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.18370?jfwid=-y3rq82qzc>.

<sup>15</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, (UNHCR Guidelines on Statelessness No. 4), paras 36 and 37, available at: <https://www.refworld.org/docid/50d460c72.html>.

in the area of nationality, must be undertaken with the best interests of the child as a primary consideration. The CRC also addresses statelessness through its provisions on non-discrimination (Article 2) and the right of every child to preserve his or her identity (Article 8).

16. A number of General Comments (GC) of the Committee on the Rights of the Child (Committee) help to inform the meaning of the above CRC provisions when applying them to address statelessness. In addition, the Committee has consistently recommended in its Concluding Observations that States Parties review their legislation to ensure that nationality is granted to all children who are stateless or at risk of being stateless.<sup>16</sup>
17. It follows that a child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth. This should be ensured regardless of whether the child or his/her parents have lawful residence. In this respect, in its Statelessness Mapping in Lithuania<sup>17</sup>, UNHCR recommended to grant all children born on the territory of Lithuania, who would otherwise be stateless, nationality automatically at birth.
18. Secondly, Article 15, in its current and revised versions, applies to children born to parents who either both are stateless (Article 15 (1)) or where one is stateless and the other is unknown (Article 15 (2)). While the Law Proposal eliminates the requirement of permanent residence with respect to the former group, it retains this requirement for children born to parents where one is stateless and the other is unknown. To ensure equal treatment of both groups of children covered by Article 15, we recommend aligning Article 15 (2) with the revised Article (15 (1) of the Law on Citizenship.
19. Furthermore, as outlined in the UNHCR Statelessness Guidelines No 4, children can also be stateless where one or both parents possess a nationality, but neither can confer it upon their children. Restricting the application of Article 1 of the 1961 Convention to children of stateless parents is, therefore, insufficient in light of the different ways in which a child may be rendered stateless.<sup>18</sup>
20. For this reason, it is of critical importance to ensure that the national legislative framework contains effective guarantees securing access to nationality for **all children who would otherwise be stateless**. A lack of such guarantees may lead to new cases of statelessness as a result of gender-biased nationality laws in third countries that may be applicable to some children born in the territory of Lithuania, as well as conflict of nationality laws preventing parents from passing on their foreign nationality to their children who would then become stateless.
21. In this respect, it is worth recalling that today twenty-five countries continue to deny or limit women's right to pass their nationality to their own children on an equal basis with men, including Iraq, Jordan, Lebanon, Kuwait and Syria which all have gender-discriminatory nationality laws in place.<sup>19</sup> Where citizenship is determined exclusively through the father, children can be left stateless where the father himself is stateless, unknown or not married to the mother at the time of birth, or has been unable or unwilling to fulfil the administrative steps to confer his nationality to his children. Women living apart or forcefully separated from their husbands face numerous barriers already in registering their children (especially those born out of wedlock).

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<sup>16</sup> UN High Commissioner for Refugees (UNHCR), UN High Commissioner for Refugees (UNHCR) and UNICEF, CRC Convention on the Rights of the Child: Quick Reference Guide - Statelessness and Human Rights Treaties, January 2017, available at: <http://www.refworld.org/docid/58c25eb14.html>.

<sup>17</sup> UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Lithuania*, May 2016, page 88, available at: <https://www.refworld.org/docid/580f649c4.html>.

<sup>18</sup> See supra note 16, UNHCR Guidelines on Statelessness No. 4, para. 18.

<sup>19</sup> See for more details, UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2019*, 8 March 2019, available at: <https://www.refworld.org/docid/5c8120847.html>.

22. Conflicts between nationality laws may arise when a child is born to parents from different countries which apply different principles when conferring nationality, either based on descent (*jus sanguinis*) or place of birth (*jus soli*), and depend on whether or not the child was born abroad. A combination of the two principles is often the case and, as a result, a child's birthplace and parentage can entail that neither nationality may be acquired by the child at birth. Therefore, it is of critical importance to ensure that the national legislative framework provides effective response to these situations preventing children from being born stateless in Lithuania.
23. While requiring each States Party "to grant its nationality to a person born in its territory who would otherwise be stateless", Article 1 (1) of the 1961 Convention allows to either grant nationality at birth by operation of law (i.e. automatically) or subsequently upon application.
24. If Lithuania opts to continue granting nationality to some of the persons born on its territory who would otherwise be stateless by application, it then should be done in full compliance with the requirements outlined in Article 1 (1) and (2) of the 1961 Convention and must not have the effect of leaving the child stateless for a considerable period of time. In this respect, it is important to ensure that the application procedure set out in Article 18 (2) of the Law on Citizenship provides that children born stateless on the territory of Lithuania who are not covered by Article 15 guarantees have a non-discretionary right to Lithuanian citizenship. This requirement flows from Article 1 (1) of the 1961 Convention which employs the imperative wording "**shall grant its nationality**", and indicates with regard to the application procedure that "no such application may be rejected" unless one or more conditions allowed by Article 1 (2) apply.
25. In this respect, UNHCR notes that the application procedure set out in Article 18 (2) of the Law on Citizenship is essentially of discretionary nature. This is because Article 18 (2) stipulates that "a stateless person who was born in the territory of the Republic of Lithuania **may be granted citizenship** of the Republic of Lithuania", while Article 18 (6) lays down a general principle that persons who meet the eligibility conditions "shall be granted citizenship of the Republic of Lithuania having regard to the interests of the Republic of Lithuania."
26. Furthermore, Article 1 (2) of the 1961 Convention lists exhaustively conditions for granting nationality upon an application.<sup>20</sup> UNHCR acknowledges that the proposed amendments to Article 18 (4) eliminate some of the requirements which currently go beyond those permissible under Article 1(2) of the 1961 Convention, i.e. the requirements to pass examinations in the Lithuanian language and the fundamentals of the Constitution and to have legal means of subsistence.
27. The Law Proposal, however, retains the requirement stipulating that the stateless persons concerned must not fall under one or more of the exclusion clauses of Article 22 of the Law on Citizenship. Pursuant to this Article, citizenship of Lithuania may not be granted to persons who (i) prepared, attempted to commit or committed international crimes such as aggression, genocide, crimes against humanity and war crime or criminal acts against the Republic of Lithuania; (ii) prior to coming to reside in Lithuania, were sentenced to imprisonment in another state for a premeditated crime which is a grave crime under laws of Lithuania, or were punished for a grave crime in Lithuania, (iii) in accordance with the procedure laid down by law, are not entitled to obtain a document attesting to the right of permanent residence in Lithuania. UNHCR understands that the latter requirement implies that the applicants may not pose a threat to national security or public order of Lithuania.
28. The above conditions are broader than those permitted under Article 1 (2) of the 1961 Convention, which allows to exclude only those persons who have been convicted of an offence against national security or

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<sup>20</sup> See supra note 16, UNHCR Guidelines on Statelessness No. 4, paras. 36 - 48.

have been sentenced to imprisonment for a term of five years or more on a criminal charge. The Convention clause is, therefore, worded narrowly.

29. Furthermore, the condition that the person *has been legally permanently resident* (*lith. teisėtai nuolat gyvena*) and the condition of *lawful residence at the time of submission of the application* (*lith. turi teisę gyventi prašymo pateikimo metu*), as required by Article 18 (2) of the Law on Citizenship, are not in accordance with Article 1(2)(b) of the 1961 Convention, by which States may impose a **habitual residence requirement on the child**, but not a lawful residence requirement on the child. “Habitual residence” should be understood as stable and factual residence. In other words, the 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence.<sup>21</sup>
30. For the sake of legal clarity, it would also be preferable to clearly indicate in Article 18 (2) that its application should be without prejudice to Article 18 (4) of the law on Citizenship.
31. In light of the above mentioned, considering that the risk of leaving certain children stateless remains, UNHCR would like to reiterate its recommendation to include in the Law on Citizenship safeguards preventing children from being born into statelessness. In this regard, inserting provisions that clearly provide for automatic grant of Lithuanian nationality at birth to persons born in the territory who would otherwise be stateless are necessary to ensure alignment with the provisions of the 1961 Convention.
32. Should Lithuania retain the combination of modes of acquisition, it is essential that the conditions stateless persons born on the territory are required to fulfill in the application procedure do not go beyond those permitted under Article 1(2) of the 1961 Convention. To that end, the Law Proposal should be adjusted bringing it fully in line with the Convention requirements, as outlined above.

#### UNHCR recommendations:

##### UNHCR recommends:

- To include the necessary safeguards against statelessness at birth by providing for the automatic grant of Lithuanian nationality at birth to persons born in the territory **who would otherwise be stateless**, without requiring their parents to be stateless persons and regardless of whether they or their parents are legal residents.
- If Lithuania opts to continue using a combination of modes of acquisition relying on Article 1 (1) (a) and (b) of the 1961 Convention, the proposed provisions should be adjusted to bring them in full compliance with international law. In particular,
  - ✓ The procedure provided for by Article 18 (2) of the Law on Citizenship should be non-discretionary leading to the mandatory grant of citizenship to persons who fulfill the eligibility conditions;

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Lithuania*, May 2016, page 74, available at: <https://www.refworld.org/docid/580f649c4.html>.

- ✓ The eligibility conditions themselves should not go beyond those permitted pursuant to Article 1 (2) of the 1961 Convention. In this respect, the requirements that the person *has been legally permanently resident* (lith. teisėtai nuolat gyvena) and the requirement of *lawful residence at the time of submission of the application* (lith. turi teisę gyventi prašymo pateikimo metu) may not be used as a precondition for granting the Lithuanian citizenship. If Lithuania opts to continue relying on the person's attachment to the state territory, the condition of *habitual residence* (lith. įprastinė gyvenamoji vieta) as set out in Article 1 (2) (b) of the 1961 Convention should be considered instead. Moreover, the full set of exclusion clauses set out in Article 22 of the Citizenship Law may not apply to stateless persons in the application procedure pursuant to Article 18 (2) of the Citizenship Law,
- ✓ Finally, Article 15 (2) should be aligned with the revised Article 15 (1) of the Law on Citizenship, and Article 18 (2) should include a clause clarifying that its application should be without prejudice to Article 18 (4) of the Law on Citizenship.
- Taking into consideration the best interest of the child, to consider reducing the current 5 year period of residence as required by Article 18 (2) of the Law on Citizenship with a view to ensuring that the child acquires the nationality as soon as possible after birth.

### **Facilitation of naturalization**

33. Access to citizenship for refugees through naturalization is addressed in Article 34 of the 1951 Convention Relating to the Status of Refugees (hereinafter – '1951 Refugee Convention'). It reads as follows:

“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”.

This is predicated on recognition that a refugee required to remain outside of his or her home country should at some point fully integrate into the host society and participate equally in social and political life. A similar provision is found in Article 32 of the 1954 Convention Relation to the Status of Stateless Persons (hereinafter – '1954 Convention').

34. According both to Article 34 of the 1951 Refugee Convention and Article 32 of the 1954 Convention, the word “shall” implies a qualified duty on the Contracting States to facilitate “as far as possible” the naturalization of refugees and stateless persons, without prejudice to sovereign rights of the state. The articles stipulate that “in particular” costs should be reduced and the naturalization procedures expedited. It is, therefore, implied in Article 34 of the 1951 Refugee Convention and Article 32 of the 1954 Convention that the measures taken in order to facilitate naturalization of refugees and stateless persons include *inter alia* the easing of the conditions for naturalization, e.g. by reducing the period of residence required.



35. In this respect, UNHCR notes that refugees and stateless persons are equally required to meet the regular 10 years residence requirement in Lithuania. This is a significant period of time for stateless persons if compared to other EU countries. For example, in Latvia, Italy and Slovenia this is 5 years, in Sweden it is 4 years, whereas in Norway, the Netherlands, Greece, Slovak Republic, Bulgaria and Hungary stateless persons can apply for naturalization after 3 years of residence or registered domicile.
36. UNHCR, therefore, recommends considering the inclusion of new provisions in the Law on Citizenship, which would ease the conditions for naturalization of refugees and stateless persons, e.g. by reducing the period of residence required.

#### UNHCR recommendation:

##### UNHCR recommends:

- To reduce the period of residence required pursuant to Article 18 (1) of the Law on Citizenship with respect to refugees and stateless persons.

UNHCR Representation for Northern Europe, May 2020