

Observations by the UNHCR Regional Representation for the Northern Europe on the Report SOU 2013:29 "Det svenska medborgarskapet –Betänkande av Medborgarskapsutredningen"

A. Introduction

1. UNHCR appreciates the opportunity to present its observations on the Report "Det svenska medborgarskapet" (SOU 2013:29, hereafter "the Report") containing proposals for amendments to the Act on Swedish Citizenship (2001:82). UNHCR provides these comments as the agency which has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.¹ This mandate has continued to evolve as conclusions of UNHCR's Executive Committee² have been endorsed by the UN General Assembly. Over time, UNHCR has developed a recognized expertise on statelessness issues.³
2. Moreover, UNHCR has been entrusted by the UN General Assembly with a mandate to provide international protection to refugees and, together with

¹ UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, at: <http://www.unhcr.org/refworld/docid/3ae68c443f.html>.

² UN High Commissioner for Refugees, *Conclusion on International Protection*, 05 October 2001, No. 90 (LII) - 2001, para. (q), at: <http://www.unhcr.org/refworld/docid/3bd3e3024.html>; *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (y), at: <http://www.unhcr.org/refworld/docid/3f93aede7.html>; *General Conclusion on International Protection*, 08 October 2004, No. 99 (LV) - 2004, para. (aa), at: <http://www.unhcr.org/refworld/docid/41750ef74.html>; *General Conclusion on International Protection*, 07 October 2005, No. 102 (LVI) - 2005, para. (y), at: <http://www.unhcr.org/refworld/docid/43575ce3e.html>; *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), at: <http://www.unhcr.org/refworld/docid/453497302.html>.

³ In 2012, UNHCR published four Guidelines on Statelessness pursuant to its mandate responsibilities to address statelessness and which are intended to provide interpretive legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary.

Governments, seek permanent solutions to the problem of refugees⁴. Within the context of its durable solution mandate and pursuant to Article 34 in the 1951 Convention relating to the Status of Refugees, UNHCR encourages States to facilitate the local integration and naturalization of refugees.

3. The observations below relating to citizenship and statelessness are provided with a view to ensuring that the Swedish citizenship legislation is brought fully in line with the standards set out in the 1954 United Nations *Convention Relating to the Status of Stateless Persons* and the 1961 United Nations *Convention on the Reduction of Statelessness*, to which Sweden is a State Party.

B. Observations pertaining to Chapter 7 “Citizenship as an incentive to enhance integration”

5. Further to Executive Committee Conclusion No. 104, which welcomes “the practice in States with developed asylum systems of allowing refugees to integrate locally; and *calls on* these States to continue supporting refugees' ability to attain this durable solution through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization,⁵ UNHCR appreciates the integration-related proposals in the Report. While agreeing with the importance of citizenship as a facilitator of refugees' integration, UNHCR has no particular views on the details proposed in relation to the introduction of citizenship ceremonies.
6. With a view to boosting individuals' eagerness to learn Swedish, and as an incentive to integration, the Report contains a proposal to introduce provisions in the law allowing refugees and stateless individuals to acquire Swedish citizenship one year earlier than the regular 4 years residence requirement for refugees, when applicants have reached a certain level of Swedish language proficiency. Concurring with the discussion in the Report on the possible negative effects of language requirements to obtain citizenship, UNHCR welcomes the fact that the Report proposes positive and facultative incentives rather than compulsory requirements in this regard.

C. Definition of “stateless person” in Swedish legislation

7. Chapter 8 of the Report contains a number of proposals pertaining to the possibilities for stateless children to acquire Swedish citizenship (see further below). However, UNHCR notes that neither the current national legislation

⁴ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428 (V), available at <http://www.refworld.org/docid/3ae6b3628.html>

⁵ UN High Commissioner for Refugees (UNHCR), *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>

nor relevant sections of the Report contains or proposes a definition of the term “stateless” (“statslös”) or “stateless person”.

8. Whereas statelessness is a distinct category used in both the Register of the Swedish Migration Board and the Swedish Population Register, under the Swedish Tax Authority, there are no particular regulations or guidelines on recording statelessness in the two registers to ensure that the recording is consistent and conducted using the same definition. There is no automatic referral mechanism or systematic procedure between the Register of the Swedish Migration Board and the Swedish Population Register, which would ensure that personal information on a foreigner generally, including information on his/her nationality, is consistent in the two registers. In other words, it may be possible that the same person is regarded and recorded as stateless by one authority and differently by the other.
5. UNHCR considers that the lack of a clear definition of the term “stateless” and “stateless person” in the Citizenship Act or in any of the other national laws, regulations and/or guidelines in Sweden is problematic. The only legal basis for the definition is therefore the one provided in the 1954 Convention relating to the Status of Stateless Persons, which was ratified by and entered into force in Sweden in 1965.⁶ This definition, according to the International Law Commission, is now part of customary international law. It is relevant for determining the scope of application of the term “would otherwise be stateless” under the 1961 Convention.⁷
6. In view of the above, UNHCR strongly recommends that the definition of a “stateless person” contained in the 1954 Convention⁸ is incorporated into the Swedish legislation, and that steps are taken to streamline the recording by different authorities of stateless persons.

D. Observations pertaining to proposals in Chapter 8 “Citizenship for children and youngsters”

General Remarks

7. UNHCR welcomes the efforts made through the Report, to investigate if the right to citizenship for children and youngsters should be strengthened, including through the introduction of provisions on automatic acquisition of citizenship.
8. The rules for preventing statelessness among children contained in Articles 1 to 4 of the 1961 United Nations *Convention on the Reduction of Statelessness*

⁶ SÖ 1965:54

⁷ Please see International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, 49, available at: http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.

⁸ Article 1(1) of the 1954 Convention defines a stateless person as a person who is not considered as a national by any State under the operation of its law.

(hereinafter – 1961 Convention)⁹ must be read in light of later human rights treaties, which recognize every child’s right to acquire a nationality, in particular where they would otherwise be stateless. Article 7 in the 1989 United Nations *Convention on the Rights of the Child* (hereinafter – CRC)¹⁰ provides that “States Parties shall ensure the implementation of these rights [rights to a name, **nationality**, and to know and be cared for by parents] in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.**” CRC Article 3 further requires that all actions concerning children, including in the area of nationality, must be undertaken with the *best interests of the child* as a primary consideration. The right of every child to acquire a nationality (CRC Article 7) and the principle of the best interests of the child (CRC Article 3) together create a presumption that States need to provide for the **automatic acquisition** of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention.¹¹

Chapter 8.2: Automatic acquisition of citizenship for children with one parent holding Swedish citizenship

9. UNHCR welcomes the proposal to introduce a provision providing for the automatic acquisition of Swedish citizenship at birth for children with one parent holding Swedish citizenship. As correctly noted in the Report, this amendment will contribute to preventing statelessness, as the current rules in the Citizenship Act can lead to a situation where a child born abroad, to a Swedish father who is not able or willing to register his child as a Swedish citizen, can become stateless.

Chapter 8.3.1: Possibility for children, born in Sweden to parents not holding Swedish citizenship, to automatically acquire Swedish citizenship at birth

10. UNHCR welcomes the proposal to introduce automatic acquisition of citizenship for children born in Sweden to foreign nationals, and concur with the reference to CRC Article 7 as supporting such an initiative.
11. In regard to the requirement in the proposal, that the right to automatic acquisition of citizenship at birth shall only apply to children born in Sweden to foreign nationals, provided at least one of the parents holds a permanent residence permit and has been registered (“folkbokförd”) as a resident for the past 5 years prior to the birth of the child, UNHCR notes that the condition of

⁹ SÖ 1969:12

¹⁰ SÖ 1990:20

¹¹ 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. 34, available at: <http://www.refworld.org/docid/50d460c72.html>.

lawful residence of the parents may be required for the acquisition of nationality by children born stateless in Sweden, as long as the law also provides for the acquisition of nationality by children born stateless in Sweden whose parents do not meet the lawful residence requirement (see further below).

Chapter 8.3.2: Possibility for some of the children born stateless in Sweden to automatically acquire Swedish citizenship at birth

12. UNHCR welcomes the Report's recognition, that prevention of statelessness is a fundamental principle in Swedish citizenship legislation, and concurs with the Report's view that a child's right to a citizenship from birth must outweigh parents' possible wishes to prevent their child from acquiring the Swedish citizenship.
13. As noted in the UNHCR Guidelines on Statelessness No. 4,¹² Article 1 of the 1961 Convention provides Contracting States with two alternative options for granting nationality to children who would otherwise be stateless born in their territory. States can either provide for automatic acquisition of nationality upon birth pursuant to Article 1(1)(a), or for acquisition of nationality upon application pursuant to Article 1(1)(b).
14. Article 1(1)(b) of the 1961 Convention also allows Contracting States that opt to grant nationality upon application pursuant to Article 1(1)(b), to provide for the automatic grant of nationality to children born in their territory who would otherwise be stateless at an age determined by domestic law.
15. A Contracting State may apply a combination of these alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of an individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by children born in their territory who would otherwise be stateless whose parents are permanent or legal residents in the State, whereas it might require an application procedure for those whose parents are not legal residents. Any distinction in treatment of different groups, however, must serve a legitimate purpose, cannot be based on discriminatory grounds and must be reasonable and proportionate.
16. Through the proposal set out in Chapter 8.3.2 of the Report, children born in Sweden who would otherwise be stateless will automatically acquire Swedish citizenship provided at least one of the child's parents holds a permanent residence permit and is registered as a resident ("folkbokförd") in Sweden since at least 3 years. UNHCR welcomes the introduction of automatic

¹² 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, available at: <http://www.refworld.org/docid/50d460c72.html>

acquisition of citizenship for such children, as an important step towards a full implementation of Article 1 of the 1961 Convention read in conjunction with CRC Articles 7 and 3.

Chapters 8.3.3, 8.4.1 and 8.5.2: Possibility for children born in Sweden who would otherwise be stateless to acquire Swedish citizenship through application, under certain conditions

17. Pursuant to the above, in order for Sweden to fully comply with the requirements in Article 1(1) of the 1961 Convention, it must provide children born on the territory who would otherwise be stateless, and who do not have at least one parent holding a permanent residence permit and being registered as a resident over the past 3 years, with the possibility to acquire Swedish citizenship by application. However, Sweden may impose one or more of the conditions set out in Article 1(2) of the 1961 Convention for granting citizenship upon application in accordance with Article 1(1)(b).

18. The exhaustive list of permissible conditions that States may introduce under to Article 1(2) is as follows:

- (i) a fixed period for lodging an application immediately following the age of majority (Article 1(2)(a)). Where Contracting States set deadlines to receive applications at a later time from otherwise stateless individuals born in their territory, they must accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. This provision ensures that otherwise stateless individuals born in the territory of a Contracting State have a window of at least three years after majority within which to lodge their applications.
- (ii) habitual residence in the Contracting State for a fixed period, not exceeding five years immediately preceding an application nor ten years in all (Article 1(2)(b)). It is not consistent with Article 1(2) to require the possession of a specific type of residence, such as permanent residence, since the Convention only refers to a period of “*habitual residence*”, which is a notion oriented to facts as opposed to a legal status.
- (iii) restrictions on criminal history (Article 1(2)(c)). Specifically, the person concerned may be required not to have been convicted of an offence against national security or to have been sentenced to imprisonment for a term of 5 years or more on a criminal charge.
- (iv) the condition that an individual has always been stateless (Article 1(2)(d)).

19. UNHCR welcomes the proposal in Chapter 8.3.3 to extend the time frame within which an application for the acquisition of nationality can be submitted in respect of a child born stateless in the territory, from the current 5 years of age to 18 years of age.

20. UNHCR further welcomes the reduction in the number of years of residence required for acquisition of citizenship by application, from 5 to 3 years for children holding another citizenship and from 3 years to 2 years for children who are stateless. This is more generous than the minimum requirement set out in Article 1(2)(ii) and in Article 6(2)(b) of the European Convention on Nationality, and an important sign of Sweden's commitment towards preventing statelessness.
21. However, the condition of permanent residence imposed in the proposal in Chapter 8.3.3 on the acquisition of Swedish citizenship through application is not, in UNHCR's view, permissible under the 1961 Convention. As noted above, the notion of "habitual residence" in the 1961 Convention is to be understood as stable, factual residence, and does not imply a legal or formal residence requirement. Hence, the 1961 Convention does not permit State Parties to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence.¹³
22. Further arguments in support of this position can be found in Resolution (72) 1 of the Committee of Ministers of the Council of Europe on the Standardization of the Legal Concepts of "Domicile" and of "Residence".¹⁴ Annexed to this Resolution are a number of rules, No. 7 of which states: "The residence of a person is determined solely by factual criteria; it does not depend on the legal entitlement to reside". Rule No. 9 further provides: "In determining whether a residence is habitual, account is to be taken of the duration and continuity of the residence as well as of other facts of a personal or professional nature which point to durable ties between a person and his residence".
23. Moreover, while the term "habitual residence" is not defined in the 1997 European Convention on Nationality, it is defined as "a stable factual residence" in Article 1 of the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession¹⁵. In this context, UNHCR notes that the Report proposes in Chapter 10.2 that Sweden should accede to this Convention. As mentioned in the Explanatory Report to this Convention: "The reference to 'habitual residence' is based on an internationally harmonized concept of the term, as used in the Hague Conventions on Private International Law and in Resolution (72) 1 of the

¹³ 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. 41, available at: <http://www.refworld.org/docid/50d460c72.html>

¹⁴ Adopted by the Committee of Ministers on 18 January 1972 at the 206th meeting of the Ministers' Deputies, available at: <http://www.refworld.org/pdfid/510115e12.pdf>.

¹⁵ Council of Europe, *Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession*, 15 March 2006, CETS 200, Article 1(d), available at: <http://www.refworld.org/docid/4444c8584.html>.

Council of Europe [...] The term refers to a *de facto* situation and does not imply any legal or formal qualification.”¹⁶

24. Guidance on the meaning of “habitual residence”, and the distinction between this notion and “lawful residence”, can also be drawn from the Draft Articles on Diplomatic Protection that were adopted by the International Law Commission (ILC) in 2006.¹⁷ Draft Article 8(1) provides that: “A State may exercise diplomatic protection in respect of a stateless person who ... is lawfully and habitually resident in that State”. According to the ILC's Commentary to the draft Articles, the requirement of both lawful residence and habitual residence sets a high threshold. As is clear from the Commentary, “habitual residence” and “lawful residence” are thus meant to be two separate preconditions, both of which have to be met for a stateless person to be protected, meaning that “habitual residence” does not in and of itself imply “lawful residence”.
25. In view of the above, UNHCR strongly recommends that the requirement of “permanent residence” in the current legislation as well as in the proposal be amended to “habitual residence” in order to prevent stateless children born on the territory to parents who do not meet the permanent residence requirement from remaining stateless.

Chapter 8.5.2: Possibility for aliens who have turned 18 years and who hold a permanent residence permit and domicile in Sweden since a certain age, to acquire Swedish citizenship through application until the individual has turned 21 years

26. UNHCR welcomes the extension of the period within which such an individual can apply for citizenship, to 21 years. Through this proposal, otherwise stateless individuals will have a window of 2 years after the age of majority within which to lodge their application, as required by Article 1(2)(i) of the 1961 Convention.

UNHCR Regional Representation for the Northern Europe

30 September 2013

¹⁶ Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, Explanatory Report, para. 10, available at: <http://conventions.coe.int/Treaty/EN/Reports/Html/200.htm>.

¹⁷ International Law Commission, *Draft Articles on Diplomatic Protection*, 2006, Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10). Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf