



# Mapping **STATELESSNESS** in Estonia



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# List of abbreviations

<b>AGIPA</b>	Act on Granting International Protection to Aliens
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CRC</b>	Convention on the Rights of the Child
<b>ECHR</b>	European Convention on Human Rights
<b>ECN</b>	European Convention on Nationality
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>MoI</b>	Ministry of the Interior
<b>MISA</b>	Integration and Migration Foundation “Our People”
<b>MFA</b>	Ministry of Foreign Affairs
<b>MoC</b>	Ministry of Culture
<b>OLPEA</b>	Obligation to Leave and Prohibition on Entry Act
<b>PBGB</b>	Estonian Police and Border Guard Board
<b>PR</b>	Population Register
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UNHCR RRNE</b>	UNHCR Regional Representation for Northern Europe

# 1. Introduction

In November 2014, UNHCR launched a Global Campaign to End Statelessness in 10 Years. The strategy for the Campaign is set out in a Global Action Plan, which contains 10 actions that need to be taken to end statelessness. States are encouraged to adopt National Action Plans that include those actions necessary to end statelessness in their own national contexts. In preparation for the Campaign, the UNHCR Regional Representation for Northern Europe (UNHCR RRNE) has conducted statelessness mappings in each of the countries in the region.<sup>1</sup> The mapping in Estonia was conducted by an independent consultant, Dr. Tatjana Evas, with research assistance by Ms. Ann Väljataga. The methodology comprised desk research, consultations with governmental and non-governmental stakeholders,<sup>2</sup> as well as individual interviews with 15 persons holding the status of “undetermined citizenship” in Estonia. Dr. Evas worked under the supervision of UNHCR RRNE, which also shared a draft version of the mapping for vetting with Dr. Mart Rannut, an expert recommended by the Estonian Ministry of Foreign Affairs. In addition, the key national stakeholders in this area, namely the Ministry of the Interior, the Ministry of Culture, the Ministry of Foreign Affairs and the Police and Border Guard Board received an advance draft of the mapping for comments, which have been largely incorporated by UNHCR RRNE into this final report. UNHCR is very grateful for all the cooperation extended and for the valuable input, constructive feedback and comments provided by the stakeholders throughout the consultative process.

The information gathered through the mappings of statelessness in the countries of Northern Europe, consolidated in reports like the current one, is aimed at raising awareness and providing a better understanding among the stakeholders of the situation of stateless persons in the countries concerned, and the extent to which the international standards in this area are implemented in law and practice. UNHCR thus hopes that the findings and recommendations contained in the reports will contribute to the ongoing dialogue between UNHCR, the governments concerned, civil society, and other relevant actors on what steps may need to be taken at the national level in order to bring the respective countries’ national legal frameworks, institutional capacities, and practices fully in line with international standards in the area of prevention and reduction of statelessness and the protection of stateless persons. UNHCR, moreover, hopes that the reports can serve as a starting point for the development of National Action Plans to end statelessness in each of the countries.

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<sup>1</sup> UNHCR’s Executive Committee *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) – 2006, “Encourages UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem” in its para. (c), available at: <http://www.refworld.org/docid/453497302.html>.

<sup>2</sup> Some of these consultations were by way of written correspondence; hence the references, including in footnotes, to information contained in letters from various Government authorities to the consultant.

After an Introduction to statelessness across the globe and the international and regional legal framework for the prevention and reduction of statelessness, and protection of stateless persons in Section 1, the mapping, in Section 2, provides an overview and analysis of the numbers and basic demographic profiles of the persons who fall within the definition of a stateless person, as set out in Article 1 (1) of the 1954 *Convention Relating to the Status of Stateless Persons*<sup>3</sup> (the 1954 Convention) and which is part of customary international law. As the mapping had already begun in 2012, some of the statistics used for the analysis are derived from 2011 and 2012. Nonetheless, UNHCR RRNE has striven to include more recent statistical data wherever possible, in view of the timeframes and existing limitations. In Section 3, the mapping examines the legal and procedural framework for identifying stateless persons and determining their status, and their enjoyment of rights, vis-à-vis the standards set out in the 1954 Convention. The mapping thereafter, in Section 4, examines the measures in place to prevent statelessness from occurring in Estonia, and for reducing the stateless population, based on the standards set out in the 1961 *Convention on the Reduction of Statelessness*<sup>4</sup> (the 1961 Convention). Finally, Section 5 contains a summary of the main findings from the mapping of statelessness in Estonia, and UNHCR's overall recommendations on measures needed to bring the national legal framework, practice and administrative capacity in line with the standards set out in the 1954 and 1961 Conventions. The summary and recommendations in Section 5 are complemented by slightly more detailed conclusions and recommendations, in Sections 2.4, 3.4 and 4.4 which, together with Section 5, serve can as an Executive Summary of the mapping.

The mapping highlights both positive efforts to address statelessness in Estonia as well as current gaps and challenges, and it makes concrete recommendations designed to help bring Estonian law and practice further in line with the norms and standards reflected in the two UN Statelessness Conventions. Although Estonia is not party to these Conventions, the assessment uses them as reflections of international standards and good practice. UNHCR has taken the same approach elsewhere in Europe and beyond when conducting statelessness studies, irrespective of whether the State concerned is party to the Conventions or not. While the Statelessness Conventions are not legally binding on States that are not party to them, it is hoped that the non-contracting States will nevertheless be guided by the minimum standards of the 1954 Convention to ensure that stateless persons are able to enjoy their human rights, as well as by the safeguards to prevent statelessness set out in the 1961 Convention. Assessing the country's legal framework against the Conventions is also intended to facilitate every country's understanding of any changes that would be necessary in order to accede to the Conventions, and thereby to assist and encourage States not yet party to accede to the Conventions, consistent with UNHCR's statelessness mandate and the Global Campaign to End Statelessness. UNHCR thus hopes that this mapping can assist the relevant national actors in their efforts to address statelessness, and remains ready to support these efforts.

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<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>.

<sup>4</sup> 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>.

# 1.1 Statelessness across the globe

Statelessness is a global phenomenon. UNHCR estimates that there are at least 10 million stateless persons worldwide. The following sections look at the definition of a “stateless person,” the causes of statelessness, and the common consequences of being stateless.

## 1.1.1 Defining “a stateless person”

The definition of a “stateless person” is set forth in Article 1(1) of the 1954 Convention, which provides that a “stateless person” is “a person who is not considered as a national by any State under the operation of its law”. The International Law Commission has concluded that the Article 1(1) definition of a “stateless person” is part of customary international law.<sup>5</sup> The present report focuses on persons coming under this definition.<sup>6</sup>

The term “national” within the meaning of Article 1(1) refers to a formal bond between a person and a State, but it need not be an “effective” or “genuine” link.<sup>7</sup> The term “law” within the meaning of Article 1(1) “encompass[es] not just legislation, but also ministerial decrees, regulations, orders, judicial case law...and, where appropriate, customary practice.”<sup>8</sup> Establishing whether an individual is considered a national of a State requires an analysis of both the text of that State’s laws, as well as their application to an individual’s case.<sup>9</sup> The letter of the law, as well as the practice, must be examined, as some States may not precisely adhere to the letter of the law or might even “[go] so far as to ignore its substance.”<sup>10</sup>

A person’s nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise.<sup>11</sup> This means that, for the determination of whether a person is stateless, it is not relevant that the person is in the process of naturalizing or has the option to acquire the nationality of a given State. The question to be answered is whether, at the present moment in time, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process of acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1 (1) of the 1954 Convention.<sup>12</sup> Similarly, if, at the time of the determination, the person is in the process of losing, being deprived of, or renouncing a nationality, the person is still a national.<sup>13</sup> Furthermore, the 1954 Convention does not permit States to exclude from protection persons who have voluntarily renounced their nationality.<sup>14</sup>

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<sup>5</sup> See the International Law Commission, *Draft Articles on Diplomatic Protection with Commentaries*, 2006, p. 49 (stating that the Article 1 definition can “no doubt be considered as having acquired a customary nature”), available at: <http://www.refworld.org/docid/525e7929d.html>.

<sup>6</sup> The UNHCR *Handbook on Protection of Stateless Persons* explains that “persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as ‘*de jure*’ stateless persons,” UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 7, (“*Handbook on Protection of Stateless Persons*”), available at: <http://www.refworld.org/docid/53b676aa4.html>. Individuals who have a nationality but are outside the country of their nationality and are denied diplomatic and consular protection accorded to other nationals by their state of nationality have been referred to as “*de facto*” stateless. See UNHCR, *Expert Meeting – The Concept of Stateless Persons under International Law (“Prato Conclusions”)*, May 2010, pp. 5–8, available at: <http://www.refworld.org/docid/4ca1ae002.html>. The term “*de jure*” is not found in any international treaty and is not used in this report, yet it must be emphasized that the present report does not include “*de facto*” stateless persons.

<sup>7</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 54 and fn. 38.

<sup>8</sup> *Ibid.*, para. 22.

<sup>9</sup> *Ibid.*, para. 23, and fn. 16 (citing Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws).

<sup>10</sup> *Ibid.*, para. 24.

<sup>11</sup> *Ibid.*, para. 50.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, para. 51 and fn. 34 (distinguishing voluntary renunciation from failure to comply with formalities, but not discussing this).

As different categories of stateless persons with different entitlements to rights and residence are found in Estonia, this report will normally refer to those who Estonia considers to be “persons with undetermined citizenship” (*määratlemata kodakondsusega isikud*) by this term, in order to be as precise and clear as possible. Where such language is cumbersome, and/or where appropriate, the term “stateless” or “stateless persons” will be used to include “persons with undetermined citizenship”.

## 1.1.2 Causes of statelessness

Statelessness can be caused by numerous factors. Some of these factors are of a legal technical nature, where statelessness is caused by gaps in nationality laws or conflicts between nationality laws. States determine their own nationality laws, within certain limited restrictions imposed by international human rights law. The two main legal principles governing States’ grant of nationality at birth are *jus sanguinis* (citizenship by descent) and *jus soli* (citizenship by birth in the territory).

Conflicts in these laws are one of the several types of conflicts of law situations that can render a child stateless. For example, a child born in the territory of a *jus sanguinis* State to parents with nationality of a *jus soli* State would encounter problems obtaining any nationality if the national legislation of the two States relevant here does not contain provisions that would allow such a child to obtain citizenship.

Statelessness can also occur later in life. Some legal systems provide for mechanisms of automatic loss of nationality, for example after a long absence from the territory. Some States require that a person renounce his or her previous nationality before acquiring the nationality of that State. Withdrawal of nationality can also lead to statelessness if there is no adequate safeguard in place to prevent statelessness.

Another major cause of statelessness relates to the dissolution and separation of States, disputes about borders, transfer of territory between States, and the creation of new States. In the period of decolonization, groups of persons may have been left out of the initial body of citizens under the nationality legislation of the newly independent State. In Europe, many people were left stateless after the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia.

In addition to or underlying the aforementioned causes of statelessness, discrimination in nationality law or in practice against certain parts of the population and arbitrary deprivation of nationality contribute significantly to the creation or perpetuation of statelessness. Based on, for example, ethnicity or religious beliefs, a certain group within a State or populations living across multiple States are sometimes denied or deprived of nationality. Examples of such populations are the Rohingya in Myanmar, the Bidoon in the Arab Gulf States, and parts of the Roma population in Europe.

Discrimination on the ground of gender can also be a cause of statelessness. In some nationality laws, women are not able to pass their nationality on to their children. Moreover, women may lose their nationality upon marriage or upon dissolution of the marriage. Women’s inability to transmit their nationality to their children is especially problematic in cases where children are born out of wedlock or where the father is unknown, has passed away, has left, is stateless or is a foreigner who is unable to transmit his own nationality or unwilling to take the necessary administrative steps to do so. Today, 27 States still discriminate against women in their laws with regard to transmission of nationality to children, the majority of which can be found in Africa, Asia and the Middle East.<sup>15</sup> Further, laws that discriminate against children born out of wedlock, for example by making it more difficult for them to acquire their father’s nationality, can also contribute to statelessness.

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<sup>15</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>.

### 1.1.3 Consequences of statelessness

Most stateless persons encounter many difficulties in every aspect of daily life. Often, stateless persons do not enjoy their basic human rights. Even though the enjoyment of fundamental human rights is not formally dependent on citizenship status, many States extend human rights protection to their nationals only or to persons who reside lawfully in the country, which is not always the case of stateless persons.

Stateless persons may face obstacles accessing education or health care services, entering the labour market, travelling abroad, or owning land or other property. Stateless persons may not be able to register the birth of their child, obtain an identity document, open a bank account, inherit wealth, or get legally married. Being socially and economically excluded, stateless persons are vulnerable to abuse and destitution, and many stateless populations belong to the most marginalized and vulnerable groups worldwide.

Also, stateless persons may be detained for prolonged or repeated periods because they have no identity documents or because they are considered to be irregularly in the country, yet there is no country to which they can be returned.

## 1.2 The international and regional legal framework

In principle, questions of nationality fall within the domestic jurisdiction of each State. A State's discretion in this area is, however, limited by its international law obligations.

In its *Advisory Opinion on the Tunis and Morocco Nationality Decrees* of 1923,<sup>16</sup> the Permanent Court of International Justice stated that:

The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations.

In effect, the Permanent Court said that while nationality issues were, in principle, within domestic jurisdiction, States must, nonetheless, honour their obligations to other States as governed by the rules of international law. This approach was reiterated seven years later in the 1930 *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930 Hague Convention).<sup>17</sup> Indeed, many States commented on the Permanent Court's 1923 Advisory Opinion as it related to the preparation of the 1930 Hague Convention. Most States interpreted the Advisory Opinion as a limitation on the applicability of a State's nationality-related decisions outside that State, especially when those decisions conflict with nationality-related decisions made by other States. The 1930 Hague Convention, held under the auspices of the Assembly of the League of Nations, was the first international attempt to ensure that all persons have a nationality. Article 1 of the Convention states that:

It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.

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<sup>16</sup> *Advisory Opinion No. 4, Nationality Decrees Issued in Tunis and Morocco*, 4, Permanent Court of International Justice, 7 February 1923, available at: <http://www.refworld.org/docid/44e5c9fc4.html>.

<sup>17</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: <http://www.refworld.org/docid/3ae6b3b00.html>.

In other words, how a State exercises its right to determine who are its citizens should conform to international law. Article 15 of the 1948 *Universal Declaration of Human Rights* (UDHR) declares:

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Although Article 15 of the UDHR asserts that every person has the right to a nationality, it does not prescribe the specific nationality to which a person is entitled. To ensure that individuals are not deprived of the minimum set of rights associated with nationality, the international community developed two main treaties: the 1951 *Convention Relating to the Status of Refugees* (1951 Refugee Convention) and the 1954 Convention.<sup>18</sup>

The 1954 Convention is the primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination. The 1954 Convention entered into force in 1960 and currently has 88 States Parties.<sup>19</sup>

Due to the differing approaches taken by States with regard to acquisition and loss of nationality, some individuals continued to fall through the cracks and become stateless. Common rules were therefore essential to address the gaps. In 1950, the International Law Commission (ILC) commenced the process of drafting what would later emerge as the 1961 Convention. The 1961 Convention entered into force in 1975 and presently has 67 States Parties.<sup>20</sup>

In June 2014, UNHCR published the *Handbook on Protection of Stateless Persons*,<sup>21</sup> which provides interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers, the judiciary, and others working on statelessness. The Handbook addresses the definition of a stateless person, procedures to determine who is stateless, and the legal status of stateless persons at the national level. UNHCR's *Guidelines on Statelessness No. 4*<sup>22</sup> address the prevention of statelessness at birth under the 1961 Convention. Developed on the basis of consultations with international experts and a broad range of stakeholders, the Handbook and the Guidelines will be used in the present report to elucidate the obligations and best practices flowing from the respective Conventions.

Other international human rights instruments to which Estonia is a State Party contain provisions of relevance to nationality and statelessness. The *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Rights of the Child* (CRC), the *Convention on the Elimination of Discrimination Against Women* (CEDAW), and the *International Convention on the Elimination of Racial Discrimination* (ICERD) contain provisions on the right to a nationality, equal treatment of men and women, and the prohibition of discrimination.

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<sup>18</sup> Historically, refugees and stateless persons both received protection and assistance from the international refugee organizations that preceded UNHCR. The draft Protocol on statelessness was intended to reflect this link between refugees and stateless persons. But the urgent needs of refugees and the impending dissolution of the International Refugee Organization meant that there was not sufficient time for a detailed analysis of the situation of stateless persons at the 1951 Conference of Plenipotentiaries that had been convened to consider both issues. Thus, the 1951 Refugee Convention was adopted at the Conference, while adoption of the Protocol addressing stateless persons was postponed for a later date. The Protocol on stateless persons that had been drafted as an addendum to the 1951 Refugee Convention was made into a Convention in its own right in 1954.

<sup>19</sup> As of July 2016. UN Treaty Collection database, available at: <https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&clang=en>.

<sup>20</sup> As of July 2016. UN Treaty Collection database, available at: <https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&clang=en>.

<sup>21</sup> UNHCR, *Handbook on Protection of Stateless Persons*, see supra fn. 6.

<sup>22</sup> 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"), available at: <http://refworld.org/docid/50d460c72.html>.

In addition to these instruments, the 1951 Refugee Convention expressly applies to stateless persons who otherwise meet the definition of a refugee, as does the 1967 Protocol by implication.<sup>23</sup> Thus, a stateless person can meet the definition of a refugee and then benefit from the protection afforded to refugees by the 1951 Refugee Convention and its 1967 Protocol.

At the European regional level, the Council of Europe has adopted two instruments of particular relevance to the question of statelessness. The *European Convention on Nationality* (ECN) entered into force in 2000 and currently has 20 States Parties.<sup>24</sup> In its Article 4, the ECN states that the rules on nationality of each State Party shall be based on, among others, the principle that statelessness shall be avoided. While broader in scope, covering a range of questions relating to the acquisition and loss of nationality, this instrument contains safeguards similar to those found in the 1961 Convention. Article 6 (2) of the ECN provides a safeguard against statelessness at birth similar, though not identical, to that of the 1961 Convention. Also, Article 6 (2) provides that foundlings are to acquire nationality if they would otherwise be stateless. In addition, Article 6 (4) (g) determines that the State Party shall facilitate the acquisition of its nationality for stateless persons. Finally, Article 7 of the ECN, on the loss of nationality *ex lege* or at the initiative of a State Party, contains a safeguard against statelessness.

The *European Convention on the Avoidance of Statelessness in Relation to the Succession of States* entered into force in 2009 and currently has six States Parties.<sup>25</sup> It establishes rules for the acquisition of nationality with a view to preventing statelessness in the context of State succession. In addition to these two specific instruments, the *European Convention on Human Rights* (ECHR) is also increasingly relevant to the prevention of statelessness and the protection of stateless persons. Although the ECHR does not explicitly protect the right to a nationality, the European Court of Human Rights has recognized in its jurisprudence that the impact of the denial of citizenship on a person's social identity brings it within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.<sup>26</sup> Furthermore, the ECHR sets out rights to be enjoyed by all persons within a State's jurisdiction, whether they are the State's own nationals, foreign nationals or stateless persons.

Estonia is Party neither to the ECN nor to the European Convention on the Avoidance of Statelessness in Relation to the Succession of States, but can nonetheless look to these instruments as setting standards with respect to best practices.

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<sup>23</sup> See 1951 Convention Relating to the Status of Refugees, Art 1 (A) (2) ("Definition of the term 'refugee'").

<sup>24</sup> See Council of Europe's Treaty Office, available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=&DF=&CL=ENG>.

<sup>25</sup> See Council of Europe's Treaty Office, available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=200&CM=8&DF=&CL=ENG>.

<sup>26</sup> See *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <http://www.refworld.org/docid/509ea0852.html>.

# 2. The face of statelessness in Estonia

## 2.1 Introduction

This section provides an overview of Estonia’s domestic legal framework governing nationality and related concepts. It explains the historical context that gave rise to the group Estonia refers to as “persons with undetermined citizenship,” as well as the reason these persons are considered stateless under international law. It then provides an overview of different categories of persons in Estonia – some of whom appear in administrative statistics and others who do not – who qualify as stateless under international law, or who could be found stateless if their status was determined. This is followed by a summary of the information received from personal interviews held with 15 “persons with undetermined citizenship” in Estonia as well as from the replies to questionnaires distributed among “persons with undetermined citizenship” in prison, which, together with findings in the *Estonian Integration Monitoring Report 2015*, gives insight into these individuals’ situation and aspirations for the future. Finally, the section proposes recommendations that take into consideration the specifics of each of the categories of stateless persons living in Estonia.

### 2.1.1 Historical background

Estonia is one of the smallest countries in Europe in geographic size and in population. In June of 1940, Estonia was incorporated into the Union of Soviet Socialist Republics (USSR) and became the Estonian Soviet Socialist Republic (SSR). As a result, the citizens of the Republic of Estonia were incorporated into the Soviet citizenry. Estonian citizenship was replaced with Soviet citizenship. Between 1941 and 1944, Estonia was incorporated into the Reichskommissariat Ostland by Nazi Germany. In 1944, with the restoration of the USSR, Soviet citizenship was once again imposed upon the population of Estonia. Estonian citizenship ceased to exist *de facto*.<sup>27</sup> After the Second World War, large-scale immigration from other Soviet Republics to Estonia occurred, continuing largely unchecked until the late 1980s.<sup>28</sup> This had a significant impact on the demography of Estonia. Also, the lasting psychological effects of these historical developments on the entire population have been documented by Aili Aareleid-Tart,<sup>29</sup> and are considered to still affect efforts to reduce statelessness in Estonia.<sup>30</sup>

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<sup>27</sup> Priit Järve and Vadim Poleshchuk, *Country Report: Estonia*, EUDO Citizenship Observatory Report (2013), p. 2, available at: <http://eudo-citizenship.eu/docs/CountryReports/Estonia.pdf>.

<sup>28</sup> Christopher Williams and Thanasis D. Sfikas (eds), *Ethnicity and Nationalism in Russia, the CIS and the Baltic States*, Ashgate, 1999, p. 291.

<sup>29</sup> Aili Aareleid-Tart, *Cultural Trauma and Life Stories*, University of Helsinki, 2006, available at: <http://digar.nlib.ee/digar/show/?id=15645>.

<sup>30</sup> In the Submission of the Government of Estonia on the draft version of the present report dated 28 August 2015, it is explained at page 4 that “Unresolved trauma may also be a contributing factor in the lack of motivation to obtain a citizenship.”

In 1991, Estonia re-established its independence and, invoking the concept of “restored sovereignty” and the principle of legal continuity, adopted a somewhat modified version of the *Citizenship Law* that had been in force prior to 1940.<sup>31</sup> Under this law, which ultimately entered into force in February 1992, Estonian citizenship was granted automatically only to citizens of the first Estonian Republic of 1918–1940 and their descendants. Roughly two-thirds of the 1.5 million Estonian inhabitants (including 80,000 non-ethnic Estonians) regained Estonian citizenship in 1992. All other Estonian residents were encouraged to obtain Estonian citizenship through a naturalization process, to register themselves as citizens of the Russian Federation (the USSR’s successor state), or to choose any other citizenship. Estonia’s position has been that citizenship cannot be forced on anyone and that everyone has the right to choose his or her citizenship.<sup>32</sup>

Nevertheless, almost one-third (32 per cent) of the Estonian population (mostly ethnic Russians and other Russian-speaking minorities) did not determine their citizenship in 1992<sup>33</sup> and eventually became stateless. In Estonian, they became “persons with undetermined citizenship” (*määratlemata kodakondsusega isikud*).<sup>34</sup>

On 8 July 1993, the Parliament of Estonia adopted the *Aliens Act*, which guaranteed the right to receive a temporary residence permit to those individuals who had resided in the Estonian SSR on the basis of a permanent registration before 1 July 1990, “if the alien’s legal status meets the requirement set forth in this law”.<sup>35</sup>

Within two years of this adoption, these individuals had to obtain temporary residence permits if they wanted to remain in Estonia; within the same time they also had to decide if they wished to acquire Estonian citizenship, another citizenship,<sup>36</sup> or become “persons with undetermined citizenship” and receive an alien’s passport, which was intended for international travel.<sup>37</sup> Section 12 (3) of the *Aliens Act* further stipulated that all such individuals, including “persons with undetermined citizenship”, could apply for a permanent residence permit<sup>38</sup> if, during the past five years, they had lived in Estonia for at least three years on the basis of a temporary residence permit and if they had a place of residence and work, or another legal source of income.<sup>39</sup>

Consequently, the majority of “persons with undetermined citizenship” managed to acquire a temporary residence permit and, eventually, a permanent residence permit.<sup>40</sup> Nevertheless, some of the individuals who had resided in the Estonian SSR on the basis of a permanent registration before 1 July 1990 did not obtain any legal status in Estonia, since they failed to submit an application for a temporary residence permit within the period specified by the *Aliens Act* (i.e. by 12 July 1995), or for other reasons.<sup>41</sup> According

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<sup>31</sup> On 26 February 1992, the Supreme Soviet of the Republic of Estonia re-implemented the 16 June 1940 version of the Citizenship Act of 1938. The main features of this citizenship law were the *jus sanguinis* principle and the avoidance of dual citizenship. Priit Järve and Vadim Poleshchuk, *Country Report: Estonia*, EUDO Citizenship Observatory Report (2013), pp. 4–5. For a discussion of the “restoration concept,” see Richard Visek, *Creating the Ethnic Electorate Through Legal Restorationism: Citizenship Rights in Estonia*, 38 *Harvard Int’l Law Journal* 315 (1997), at 325–327.

<sup>32</sup> MFA, *Fact Sheet: Citizenship*, June 2015, available at: <http://estonia.eu/about-estonia/society/citizenship.html>.

<sup>33</sup> *Ibid.*

<sup>34</sup> Priit Järve and Vadim Poleshchuk, *Country Report: Estonia*, EUDO Citizenship Observatory Report (2013), p. 1.

<sup>35</sup> See Section 20 (2) of the *Aliens Act* in redaction from 8 July 1993. Available at: <https://www.riigiteataja.ee/akt/28574>. This right was later abolished in 1997 and replaced with a right to apply for (NB! but not necessarily to receive) a permanent residence permit.

<sup>36</sup> Those wishing to acquire Russian citizenship had to do so before February 1995.

<sup>37</sup> Human Rights Watch, *Integrating Estonia’s Non-citizen Minority*, Vol. 5, Issue 20, October 1993.

<sup>38</sup> After transposition of the EU Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, all Estonian permanent residence permits were replaced by long-term residence permits.

<sup>39</sup> Translated from Estonian. The original text: *Alalise elamisloa võib anda välismaalasele, kes on Eestis elanud tähtajalise elamisloa alusel viimase viie aasta jooksul vähemalt kolm aastat ning kellel on elukoht ja töösuhe või muu legaalne sissetulek äraelamiseks.*

<sup>40</sup> Vadim Poleshchuk, *Non-citizens in Estonia*, Tallinn, 2004, p. 8. Available at: <http://www.lichr.ee/home/wp-content/uploads/2014/05/non-citizens.pdf>.

<sup>41</sup> *Ibid.*

to different sources, the number of such individuals was between 3,000 and 30,000 in 2004.<sup>42</sup> Furthermore, certain categories of aliens, including “persons with undetermined citizenship” who were former military personnel of the USSR and their spouses, as well as persons convicted of crimes, were banned from acquiring a permanent residence permit according to the Aliens Act. This ban has been retained in all subsequent versions of the Aliens Act, including the current one.<sup>43</sup>

A new Citizenship Act was adopted in 1995.<sup>44</sup> It retained the prior rules on acquisition of citizenship and established additional<sup>45</sup> requirements for naturalization.<sup>46</sup> Further, the 1995 Citizenship Act, as originally implemented, contained no safeguards against statelessness for children born in Estonia. Recognizing that the absence of such a provision was not in line with international treaties Estonia had acceded to, including the CRC and ICCPR, Estonia commendably amended the 1995 Citizenship Act in 1998. As a result of this amendment, children born in Estonia to “persons with undetermined citizenship” after 26 February 1992, and who were below 15 years of age at the time of application, could acquire Estonian citizenship through a simplified naturalization procedure, provided their parents had continuously resided in Estonia on a legal basis for at least five years. Protection against childhood statelessness was further strengthened in 2015, when a new provision was adopted to automatically grant nationality at birth by naturalization to children born in Estonia to parents or a single parent who are not citizens of any State, as discussed in Section 4 below.

From 1992 to the end of 2015, a total of 158,918 persons acquired Estonian citizenship through the various facets of the naturalization process, and as a result of the commendable efforts made by the Government of Estonia to promote naturalization.<sup>47</sup> During the same period of time, the number of “persons with undetermined citizenship” was reduced from approximately 500,000 in 1992 (corresponding to, then, 32 per cent of the population of Estonia) to 82,561 (corresponding to 6.1 per cent of the population<sup>48</sup>) by 31 December 2015, according to statistics from the Ministry of the Interior.<sup>49</sup> Available statistics covering the period between 2000 and 2015 indicate that naturalizations accounted for around 49 per cent of the reduction in the number of “persons with undetermined citizenship” during these years,<sup>50</sup> with the remaining reduction due to other factors including deaths, emigration and acquisition of citizenship of the Russian Federation or other countries.

As will be outlined further in Section 4 below, the Government continues its efforts to increase the motivation to apply for citizenship by offering free language courses, and providing information and individual, targeted support to applicants.

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<sup>42</sup> *Ibid.*, at p.12.

<sup>43</sup> See Section 237 of the Aliens Act (version from 1 May 2016).

<sup>44</sup> *Kodakondsuse seadus*, RT I 1995, 12, 122, available at: <https://www.riigiteataja.ee/akt/28732>.

<sup>45</sup> In addition to passing an Estonian language test, the applicants now also had to pass an exam on the Constitution and Citizenship Act.

<sup>46</sup> Priit Järve and Vadim Poleshchuk, *Country Report: Estonia*, EUDO Citizenship Observatory Report (2013), p. 1.

<sup>47</sup> MFA, Fact Sheet: *Estonia Today: Citizenship*, June 2016. Available at: <http://estonia.eu/about-estonia/society/citizenship.html>.

<sup>48</sup> Note, however, that the exact number of “persons with undetermined citizenship” reported by the various government bodies differs somewhat, as illustrated in Section 2.2 of this report.

<sup>49</sup> Ministry of the Interior, Fact Sheet: *Citizenship and Migration*, 2016, available at: <https://goo.gl/anFylH>. Please note, however, that the PBGB reports a slightly different number of “persons with undetermined citizenship” at the end of 2015, namely 85,301, see Table 34.

<sup>50</sup> See Table 34 below for further details regarding this calculation.

## 2.1.2 Applicable legal standards

Article 3 (1) of the *Estonian Constitution*<sup>51</sup> provides that “Generally recognized principles and rules of international law are an inseparable part of the Estonian legal system.” Furthermore, Article 123 stipulates that the Republic of Estonia may not enter into international treaties that are in conflict with the Constitution. When Estonian laws or other legislation are in conflict with an international treaty ratified by the Parliament (*Riigikogu*), provisions of the international treaty apply.

Estonia is party neither to the 1954 Convention nor to the 1961 Convention. However, Estonia is a party to a number of international conventions that include provisions relevant to statelessness, such as provisions relating to nationality and non-discrimination, notably the ICERD, ICCPR, CEDAW and the CRC. In 2014, the *UN Committee on the Elimination of Racial Discrimination* (CERD) recommended Estonia to accede to both statelessness Conventions.<sup>52</sup> The *Committee on the Rights of the Child* has recommended the same,<sup>53</sup> as has the *Committee against Torture* (CAT) which has welcomed the significant reduction of statelessness, but nonetheless recommended Estonia to reconsider ratifying the statelessness Conventions as a matter of priority.<sup>54</sup> Similar recommendations were made to Estonia during both the first<sup>55</sup> and the second cycle<sup>56</sup> of the *Universal Periodic Review*.

Importantly, on 19 September 2012, at the *High Level Meeting on the Rule of Law*, the delegation of the European Union to the United Nations presented a pledge on behalf of all EU Member States “to address the issue of statelessness by ratifying the 1954 Convention Relating to the Status of Stateless Persons and by considering the ratification of the 1961 Convention on the Reduction of Statelessness.”<sup>57</sup>

However, the Estonian Ministry of the Interior (Moi) has advised that the Government does not consider it necessary to accede to the statelessness Conventions, for the following reason:

[T]he accession to the 1954 Convention will not provide any significant benefits to persons with undetermined citizenship. With regard to the 1961 Convention on the Reduction of Statelessness Estonia believes that every person has the right to freely choose their citizenship, and that the state cannot influence this choice. The Estonian government has encouraged persons with undetermined citizenship to choose the Estonian citizenship or citizenship of another country, but making of a particular choice is not mandatory.<sup>58</sup>

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<sup>51</sup> *Eesti Vabariigi Põhiseadus*, RT 1992, 26, 349.

<sup>52</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: 10th and 11th periodic reports of States parties due in 2012: Estonia*, 23 May 2014, CERD/C/EST/10-11, para. 11(e), available at: <http://www.refworld.org/docid/53c8eff74.html>.

<sup>53</sup> UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations: Estonia*, 17 March 2003, CRC/C/15/Add.196, Item 29(f), available at: <http://www.refworld.org/docid/3f25943d4.html>.

<sup>54</sup> UN Committee Against Torture, *Concluding observations on the 5th periodic report of Estonia, adopted by the Committee at its 50th session, 6-31 May 2013: Committee Against Torture*, 17 June 2013, CAT/C/EST/CO/5, para. 22(e), available at: <http://www.refworld.org/docid/51dfe0564.html>.

<sup>55</sup> See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Estonia*, 28 March 2011, A/HRC/17/17, para. 80.4 (recommending that Estonia “[a]ccede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness” (recommended by Bosnia and Herzegovina), available at: <http://www.refworld.org/docid/50f3e30a2.html>).

<sup>56</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Estonia*, 14 April 2016, A/HRC/32/7, see Recommendations No 123.13 (Ecuador), 123.15 (Uruguay), 123.16 (Ireland), 123.17 (Panama) and (Australia), 123.18 (Spain), and 123.19 (Croatia), available at: <http://www.refworld.org/docid/576178df4.html>.

<sup>57</sup> The High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International Levels; See the full text of the EU Delegation pledge at: <http://goo.gl/jnnAzh>.

<sup>58</sup> Excerpt from Estonian Ministry of the Interior’s (Siseministeerium) letter to UNHCR RRNE of 10 June 2014, written in response to UNHCR RRNE’s letter of 28 May 2014, in which UNHCR encouraged the Government of Estonia to accede to the 1954 and 1961 Conventions.

Estonia’s domestic legal framework regulating issues related to the citizenship status of persons subject to its jurisdiction is summarized below in Table 1, and elaborated in the text following.

**Table 1:** National legal framework regulating access to Estonian citizenship, identity documents and the right of residence

Legal Source	Scope of Provisions
<b>Constitution</b>	Basic rights and freedoms of all individuals, equal treatment and protection of law.
<b>Citizenship Act</b>	Definitions and procedures for acquisition and loss of Estonian citizenship.
<b>Aliens Act<sup>59</sup></b>	Provides the bases for entry of aliens into Estonia, temporary stay, long-term residence, and employment in Estonia.
<b>Identity Documents Act<sup>60</sup></b>	Provides for issuance of identity documents to Estonian citizens and aliens, including persons with undetermined citizenship.
<b>Obligation to Leave and Prohibition on Entry Act<sup>61</sup></b>	Provides for grounds relating to the prohibition of entry of an alien into Estonia and for an alien’s obligation to leave Estonia.

Estonia’s domestic terminology relevant to stateless persons is quite complex, and is not entirely consistent, as illustrated below in Table 2.

**Table 2:** Overview of definitions used in national laws and in the institutional practice in Estonia

	National Law	National authorities/institutions <sup>62</sup>	International/ EU Law
<b>Stateless person</b>	No legal definition (i.e., no statutory definition)	MISA: a person who does not have a citizenship of any state and who does not have a possibility to receive it by his/her free will. Stateless persons are mostly under protection of the State where they live. Estonia does not consider former USSR citizens, who reside in Estonia and who did not acquire citizenship of any State, as stateless persons, because they have an opportunity to acquire citizenship of the Russian Federation through registration. Also apatrides. <sup>63</sup>	A person who is not considered as a national by any State under the operation of its law.

<sup>59</sup> *Välismaalaste seadus*, RT I 2010, 3, 4.

<sup>60</sup> *Isikut tõendavate dokumentide seadus*, RT I 1999, 25, 365.

<sup>61</sup> *Väljasõidukohustuse ja sissesõidukeelu seadus*, RT I 1998, 98, 1575.

<sup>62</sup> Definitions provided under “National authorities/institutions” are based on replies from different state institutions as well as unofficial definitions which are available on the website of the Integration and Migration Foundation “Our People” (MISA), a state agency which is responsible for the implementation of the Estonian Integration Program and supervised by the MoC. As explicitly stated on MISA’s website, these definitions “are not always official definitions, but they describe the concept in simple words, adding clarifications following from the Estonian or European Union context.” Although this MISA dictionary of migration terms refers to the EU context, it does not explicitly provide references to concepts recognized under international law. Thus, for example, there is no reference to the definition of a “stateless person” as provided in Article 1 (1) of the 1954 Convention. For more information about MISA, see: <http://www.meis.ee/about-the-foundation> and <http://www.meis.ee/randealased-moisted>. The original definitions are in Estonian, and the translations made by the consultant.

<sup>63</sup> Consultant’s own translation, original in Estonian: “Kodakondsuseta isik – isik, kellel ei ole ühegi riigi kodakondsust ning kellel ei ole ka võimalust seda vabal tahtel saada. Kodakondsuseta isikud on enamasti selle riigi, kus nad elavad, kaitse all. Eesti ei loe kunagise NSV Liidu kodanikke, kes viibivad Eestis ja kes ei ole omandanud hiljem ühegi riigi kodakondsust, kodakondsuseta isikuteks, kuna neil on võimalus registreerimise läbi omandada Vene Föderatsiooni kodakondsus. Ka apatriid.” Note that the meaning of the sentence fragment “Also apatrides” (“Ka apatriid.”) is unclear: “apatride” is simply French for “stateless person”.

	National Law	National authorities/institutions	International/ EU Law
<b>Person with undetermined citizenship</b>	No legal definition (i.e., no statutory definition)	<p>MISA: a person who has been left without previous citizenship due to the disintegration of his/her State of citizenship (for example former citizens of the USSR and Yugoslavia) and who has not realized his/her opportunity to obtain citizenship of one of the successor states.<sup>64</sup></p> <p>MoC<sup>65</sup>: Target group who have lost their citizenship due to the collapse of the Soviet Union and who do not have the citizenship of any other State.</p> <p>PBGB<sup>66</sup>: Individuals who have been left without citizenship as a result of the expiration of their previous state citizenship (former USSR citizens) and who have not realized the opportunity to obtain the citizenship of the successor State or the citizenship of another State.</p>	
<b>Alien</b>	A person who is not an Estonian citizen (Art. 3 of the Aliens Act)	MISA: A person who is a citizen of another State, stateless, or whose citizenship is undetermined and who is staying in the country on the basis of a visa, residence permit or international agreement.	In the EU context, a person who is not a national of a Member State of the European Union. <sup>67</sup>
<b>Third country national</b>	A person who is not a citizen of Estonia or of the EU (Art. 11 of the Identity Documents Act)	MISA: A foreigner who is a citizen of a country other than a Member State of the EU or the European Economic Area, or the Swiss Confederation.	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the EU right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.

<sup>64</sup> Consultant's own translation, original in Estonian: "Määratlemata kodakondsusega isik – isik, kes on jäänud varasemast kodakondsusest ilma seoses tema kodakondsusjärgse riigi lakkamisega (nt kunagiste NSV Liidu ja Jugoslaavia kodanikud), kuid ei ole realiseerinud võimalust saada mõne järglasriigi kodakondsus."

<sup>65</sup> Information provided by the Ministry of Culture (MoC), dated 10 October 2012, letter on file with the consultant.

<sup>66</sup> Information provided by the Police and Border Guard Board, dated 17 September 2012, letter on file with the consultant.

<sup>67</sup> European Migration Network (EMN), Glossary & Thesaurus, available at: <http://goo.gl/igQObC>.

### Definition of a “stateless person” under national law

A review of Estonian legislation indicates that there exists no domestic statutory definition of a “stateless person.”

The Estonian Supreme Court, as well as legal scholars, has interpreted Article 3 (1) of the Estonian Constitution to automatically adopt the rules of customary international law into Estonian law.<sup>68</sup> Given that the 1954 Convention’s Article 1 (1) definition of a “stateless person” has attained the status of customary international law, it can be concluded that the customary law definition of a stateless person should be part of the national legal framework even though it has not been explicitly incorporated into the Citizenship Act or another domestic legal instrument.

National legislation, such as the *Aliens Act*<sup>69</sup> or the *Obligation to Leave and Prohibition on Entry Act (OLPEA)*,<sup>70</sup> refers to all persons who are not Estonian citizens as “aliens.” As such, the term “aliens” within the meaning of the Aliens Act and the OLPEA necessarily encompasses both foreign citizens and stateless persons, including “persons with undetermined citizenship”. Elsewhere, other terminology is used. The Act on Identity Documents refers to persons without Estonian citizenship or citizenship of any other EU country as “third country nationals” rather than “aliens.” It bears noting that the term “stateless person” is mentioned but not defined in the *Income Tax Act*<sup>71</sup> and in the *Act on Granting International Protection to Aliens (AGIPA)*.<sup>72</sup> Reading Sections 2 (1) and 2 (2) of the AGIPA together, it may be concluded that, within the meaning of this law, a stateless person is a person who does not hold the citizenship of any State. However, this definition applies only to the *ratione materiae* of the AGIPA.<sup>73</sup>

The Citizenship Act also refers to stateless persons, but without giving a definition. Namely, Section 12 (2) states

When submitting the application for the acquisition of Estonian citizenship, the applicant must prove that he or she has been or will be released from his or her previous citizenship in relation to his or her acquisition of Estonian citizenship or that he or she has been declared a *stateless person*.

Similarly, Section 17 (2) reads

When submitting the application for the restoration of Estonian citizenship, the applicant must prove that he or she has been or will be released from his or her previous citizenship in relation to his or her acquisition of Estonian citizenship or that he or she has been declared a *stateless person*.

Furthermore, the newly adopted Section 13 (4) refers to a “*person whom no state recognizes under valid laws as its citizen*” in its provision on the right of children born to such parents to acquire citizenship at birth by naturalization.

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<sup>68</sup> For a detailed discussion of the relationship between customary international law and the Estonian legal system, see Hannes Vallikivi, *Domestic Applicability of Customary International Law*, *Juridica International* VII/2002.

<sup>69</sup> Section 3 of the Aliens Act provides: “*For the purposes of this Act, an alien is a person who is not an Estonian citizen.*”

<sup>70</sup> Section 11 of the OLPEA.

<sup>71</sup> *Tulumaksuseadus*, RT I 1999, 101, 903. See Section 57 (Provision related to the register).

<sup>72</sup> *Välismaalasele rahvusvahelise kaitse andmise seadus*, RT I 2006, 2, 3. See Section 2 (1) of the law, which stipulates that “an alien is either a third-country national or a stateless person.” Section 2 (2) of the AGIPA further provides that “a third-country national is an alien who is a national of a country other than a Member State of the European Union, a Member State of the European Economic Area or the Swiss Confederation.”

<sup>73</sup> Section 1 of the AGIPA provides that the scope of this law is granting international protection, the legal status of an alien who is applying for international protection and of an alien who has been granted international protection and the legal bases for his or her temporary stay, residence and employment in Estonia.

As indicated in Table 1 above, MISA defines a “stateless person” as follows:

A person who does not have a citizenship of any state and who *does not have a possibility to receive it by his/her free will*. Stateless persons are mostly under protection of the state where they live. Estonia does not consider former USSR citizens who reside in Estonia and who did not acquire citizenship of any state, as stateless persons, *because they have an opportunity to acquire citizenship of the Russian Federation* through registration. Also apatrides. [emphasis added]

In comparison to the 1954 Convention and customary law definition of a stateless person, MISA adds an additional element, namely that the person “does not have the possibility of receiving it [citizenship] by his/her free will.”

As noted in Section 1.1.1 above, a person’s nationality must be assessed at the time of determination of eligibility under the 1954 Convention, which is neither a historic nor a predictive exercise; hence, the definition used by MISA is not fully in compliance with the customary law and 1954 Convention definition of a stateless person.

### *Definition of a “person with undetermined citizenship” under national law*

Several Estonian legal acts refer to “persons with undetermined citizenship” even though the term has not been defined in national legislation. The *Population Register Act*,<sup>74</sup> the *Consular Act*,<sup>75</sup> and the *Basic Schools and Upper Secondary Schools Act* all refer to “persons with undetermined citizenship”.<sup>76</sup> Further, many government policy documents include the term.<sup>77</sup>

As shown above in Table 2, the term “persons with undetermined citizenship” is used by different Estonian institutions to refer to the population composed of individuals who have lost their previous citizenship because the State of their citizenship ceased to exist and who have not obtained the citizenship of any other State.

As indicated in Table 2, MISA clearly distinguishes between the terms “stateless person” and “person with undetermined citizenship”, and uses the following definition to describe a “person with undetermined citizenship”:

a person who has been left without previous citizenship due to the disintegration of his/her State of citizenship (for example, former citizens of the USSR and Yugoslavia) and who has not realized his/her opportunity to receive citizenship of one of the successor States.

The Estonian Ministry of Culture (MoC), noting the absence of definitions of these terms in national legislation, has indicated that it does not consider “persons with undetermined citizenship” to be “stateless persons”:

Estonian legislation does not provide definitions for the terms “stateless person” or “person with undetermined citizenship.” In any case, these persons cannot be defined as stateless, as they enjoy the same social rights as citizens. Estonian integration policy uses the term “persons with undetermined citizenship” for the target group who have lost their citizenship due to the collapse

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<sup>74</sup> *Rahvastikuregistri seadus*, RT I 2000, 50, 317. See Section 21 (2).

<sup>75</sup> *Konsulaarseadus*, RT I 2009, 29, 175. See Section 52 (3) (excluding from the scope of consular services, *inter alia*, “persons with undetermined citizenship” who are residents of the state in which the consulate is located).

<sup>76</sup> *Põhikooli- ja gümnaasiumiseadus*, RT I 2010, 41, 240. See Section 9 (school attendance obligation extends to persons having foreign or undetermined citizenship).

<sup>77</sup> See for example, the State Strategy of Integration and Social Cohesion in Estonia 2020 (Lõimuv Eesti 2020), available at: [http://www.kul.ee/sites/default/files/arengukava\\_loimuv\\_eesti.pdf](http://www.kul.ee/sites/default/files/arengukava_loimuv_eesti.pdf).

of the Soviet Union and who do not have the citizenship of any other State. As the citizens of the former Soviet Union permanently residing in Estonia can apply for Estonian citizenship or that of the Soviet Union's legal successor, the Russian Federation, it is not appropriate to consider them stateless persons, but instead persons who are yet to determine their citizenship.<sup>78</sup>

The Estonian Police and Border Guard Board (PBGB) also uses the term “persons with undetermined citizenship”, interpreting it as follows:

There are people with undetermined citizenship (*määratlemata kodakondsusega*) in Estonia. They are individuals who have been left without citizenship as a result of the expiration of their previous State citizenship (former USSR citizens) and who have not realized the opportunity to receive the citizenship of the successor State or the citizenship of another State.<sup>79</sup>

Importantly, the interpretations of both the MoC and the PBGB acknowledge that “persons with undetermined citizenship” do not presently possess any citizenship, with the MoC noting they “have lost their citizenship” and “do not have the citizenship of any other State,” and the PBGB noting they “have been left without citizenship” due to the “expiration of their previous state citizenship.” Thus, there does not appear to be any doubt that “persons with undetermined citizenship” are not considered as a national by any State under the operation of its law.

## 2.2 A statistical overview of the stateless population in Estonia

### 2.2.1 Specifics of the data used

There were three principal challenges with mapping the stateless population in Estonia. The first was the aforementioned absence of a statutory definition of a “stateless person” in national law and the related inconsistency in the definitions used by the respective authorities reporting on “persons with undetermined citizenship”.

The second was the lack of data about the causes and extent of statelessness for reasons other than the dissolution of the USSR. Notably, information was lacking on stateless persons who had entered or settled in Estonia in the context of migration after the re-establishment of independence in 1991, due to the lack of a procedure for identifying and determining such persons as stateless. Nonetheless, it was decided to include within the scope of the study persons who were, for the purposes of the research, termed “unreturnable”; this encompasses persons who have not been granted leave to remain in Estonia, yet could not return or be returned to any country including, if known, their country of former habitual residence. This working definition was chosen to reflect the common characteristics that the group shares, in that they do not have the right to remain in Estonia while being unable to gain admittance to their country of citizenship or former habitual residence.<sup>80</sup> The reasons for these persons’ precarious situation are often not known. It could be that they lack citizenship or a right to reside in the State to which they are to be deported, or that their State of citizenship refuses to readmit some of its citizens. This group falls within UNHCR’s mandate relating to

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<sup>78</sup> Information provided by the MoC, dated 10 October 2012, letter on file with the consultant.

<sup>79</sup> Information provided by the Police and Border Guard Board (PBGB), dated 17 September 2012. Consultant’s own translation, original in Estonian: “*Eestis on määratlemata kodakondsusega isikud. Need on isikud, kes on jäänud oma varasemast kodakondsusest ilma seoses kodakondsusjärgse riigi lakkamisega (endise NSV Liidu kodanikud), kuid ei ole realiseerinud võimalust saada kas järglasriigi või mõne muu riigi kodakondsus. Eestis kasutatakse mõistet ‘määratlemata kodakondsusega isik.’*”

<sup>80</sup> This term was suggested by the authors of the UNHCR and Asylum Aid study *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: <http://www.refworld.org/docid/4ecb6a192.html>.

stateless persons because prolonged situations of “unreturnability” may be an indication that the person concerned is stateless, or may eventually lead to statelessness.<sup>81</sup>

The third challenge was that the statistics available from the national authorities on the number of “persons with undetermined citizenship” or persons with “unknown citizenship” in Estonia seemed only to encompass persons holding a residence permit in Estonia. Thus, persons having the same profile as the legally residing “persons with undetermined citizenship”, but lacking a residence permit, either because they never registered their status in 1993-1995, or because they have failed to renew their residence permit or lost it, did not appear in the administrative statistics.

These challenges hampered a comprehensive collection and consistent analysis of statistical data on different categories of stateless residents in Estonia. For example, it was difficult to obtain a precise number of the legally residing “persons with undetermined citizenship” at a certain point, and to map the numbers and profile of those persons who resembled the registered “persons with undetermined citizenship” but who had never obtained a legal basis for residence in Estonia, or who had lost this at some point.

In general, Statistics Estonia<sup>82</sup> and other national authorities provide statistics on “persons with undetermined citizenship” and persons with “citizenship unknown”. The most comprehensive data on the composition of the Estonian population was available through the 2011 Population Census.<sup>83</sup> The census compiled information on citizenship status, including categories of foreign citizenship, “undetermined citizenship,” and “citizenship unknown.” The census also included information on social, educational, and labour market indicators. The methodology used by Statistics Estonia to distinguish groups of residents was not elaborated on, for example no detailed information was available about who constitutes the group of persons classified as “citizenship unknown.”

Under Estonian law, only legally residing inhabitants are obliged to register a place of residence with the Population Register (PR).<sup>84</sup> The registration takes place on the basis of a person’s application to be registered.<sup>85</sup> A foreigner is obliged to register a place of residence within one month after arrival or presence in Estonia on the basis of their residence permit or right to reside.<sup>86</sup> The PR, managed by the MoI, is a unified database that includes information on Estonian citizens, as well as citizens of the European Union, the European Economic Area, and Switzerland who have registered a place of residence in Estonia. Other foreign nationals living in Estonia on the basis of a residence permit or right to residence must also register.<sup>87</sup> Thus, the database includes all residents with a right to reside.

Section 21 of the Population Register Act specifies which data is included in the PR. According to Section 21 (1) (7) of this Act, data on “citizenship” is registered. Precisely what data this constitutes is further specified in Section 21 (2): Estonian citizenship or citizenship of a foreign State,<sup>88</sup> lack of citizenship,<sup>89</sup> and undetermined citizenship.<sup>90</sup> In cases of Estonian citizenship, the following data must be included: date

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<sup>81</sup> UNHCR, *Prato Conclusions*, p. 8, available at: <http://www.refworld.org/docid/4ca1ae002.html>.

<sup>82</sup> Statistics Estonia (SE) is a government agency that provides official information on the economic, demographic, social and environmental situation and trends in Estonia. More information on the agency is available at: <http://www.stat.ee/about>.

<sup>83</sup> The latest data was released by Statistics Estonia on 29 April 2013 and pertains to the situation as of 31 December 2011, available at: <http://pub.stat.ee/px-web.2001/dialog/statfile1.asp>.

<sup>84</sup> See Sections 4 and Section 39<sup>1</sup> of the Population Register Act (*Rahvastikuregistri seadus*, RT I, 2000, 50, 317).

<sup>85</sup> Section 40 of the Population Register Act.

<sup>86</sup> Section 42 (7) of the Population Register Act; Section 121 of the Aliens Act.

<sup>87</sup> Section 4 and Section 32 of the Population Register Act.

<sup>88</sup> *Eesti või välisriigi kodakondsus*.

<sup>89</sup> *Kodakondsuse puudumine*.

<sup>90</sup> *Rahvastikuregistri seadus*, RT I 2000, 50, 317. See Section 21 (2). Please note that the English translation of this law applies a term “persons with unspecified citizenship” instead of “persons with undetermined citizenship”. In the report however, the term “undetermined citizenship” is used for the sake of consistency.

of acquisition, restoration, or loss of citizenship;<sup>91</sup> previous citizenships of a person;<sup>92</sup> and the secondary citizenship of a person.<sup>93</sup> The data entered into the database is based on the information provided by the applicants, the PBGB, local authorities, courts, and foreign representations.

In addition to Statistics Estonia and the PR, information relating to migration and citizenship is available through the Ministry of Foreign Affairs (MFA) and the PBGB. The Estonian Integration Monitoring Report, which is produced every three to four years by the MoC, also provides statistical data and information about the most significant socio-economic indicators<sup>94</sup> relating to the integration of different ethnic groups in Estonian society. While the Integration Monitoring Report primarily analyses specific indicators based on the respondents' ethnic origin, in some places it refers to findings in respect of the group "persons with undetermined citizenship". The latest Integration Monitoring Report was published in 2015.<sup>95</sup>

Data from Eurostat on "recognized non-citizens", who, according to the Eurostat definition, have the same profile as the "persons with undetermined citizenship", and data on unlawfully residing "persons with unknown citizenship" (see further subsection 2.2.2.2 below), some of whom may be stateless, have also been used for this study.

Collectively, these sources of data provided a basis for the analysis of the situation of persons in Estonia who fall under the customary law and 1954 Convention definition of a stateless person. However, as mentioned in the Introduction in Section 1 of this report, some of the data used dates back to 2011, while other data is more recent. Furthermore, a general challenge was the fact that the various sources used for this research did not have data available for the same time period, which made the comparison and analysis somewhat difficult. Every effort has nonetheless been made to obtain the most recently available data for the aspect under consideration, and to use data from the same, or nearly the same time period, in the analysis.

## 2.2.2 The target population

Statelessness arises in a variety of contexts. It occurs in migratory situations, for example, among persons outside the country of their nationality who lose or are deprived of their nationality without having acquired the nationality of their country of habitual residence. Most stateless persons, however, have never crossed international borders and find themselves in their "own country."<sup>96</sup> Their predicament exists *in situ*, that is, in the country of their long-term residence, which is in many cases the country of their birth. For these individuals, statelessness is often the result of problems in the framing and implementation of nationality laws.<sup>97</sup>

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<sup>91</sup> *Eesti kodakondsuse korral kodakondsuse omandamise, taastamise ja kaotamise aeg.*

<sup>92</sup> *Isiku eelmised kodakondsused.*

<sup>93</sup> *Isiku teised kodakondsused.* Under the Estonian Constitution, no Estonian citizen who acquired citizenship at birth (*jus sanguinis*) shall be deprived of Estonian citizenship. There is no analogous provision relating to naturalized Estonian citizens. Thus, in practice, Estonian citizens by birth can in fact be dual nationals, whereas a naturalized Estonian citizen cannot.

<sup>94</sup> Statistics on socio-economic indicators include gender and age distribution, educational attainment, labour market participation, and income distribution.

<sup>95</sup> *Estonian Integration Monitoring Report 2015*, summary in English, available at: <http://goo.gl/X3OeWb>.

<sup>96</sup> For a discussion of the term "own country" and the relevance of Article 12 (4) of the ICCPR to the 1954 Convention, see UNHCR, *Handbook on Protection of Stateless Persons*, paras 164-165, *supra* fn. 6.

<sup>97</sup> *Ibid.*, para. 1.

In Estonia, statelessness has primarily arisen against the backdrop of the dissolution of the Soviet Union:

Persons with undetermined citizenship and their descendants have been left without their prior citizenship due to the collapse of their original states (e.g. the Soviet Union or Yugoslavia) and they have not acquired citizenship from the legal successors of the collapsed states or from the Estonian state.<sup>98</sup>

The majority of “persons with undetermined citizenship” were already living in the territory of Estonia prior to 20 August 1991, the Day of Restoration of Independence. The majority (55 per cent) of “persons with undetermined citizenship” who are living in Estonia today were born in the territory of Estonia, while most of the others were born in countries that were part of the USSR at the time of their birth, see Table 3 below.

Available statistical data also indicates that Estonia hosts a small group of residents whose citizenship, as well as their country of birth, are frequently unknown. It is likely that some individuals in this group came to Estonia after it re-established its independence, and they may be either stateless or at risk of statelessness. However, it was not possible to obtain more specific statistical information on such individuals, or establish contact with any such persons, within the scope of this research. Further research would thus be needed in order to collect information on the profiles of these individuals.

**Table 3.** Number of “persons with undetermined citizenship” and “unknown citizenship”, by country of birth

Country of birth	Number of persons with undetermined citizenship	Number of persons with unknown citizenship
<b>Estonia</b>	<b>47,098</b>	<b>62</b>
<b>Foreign country, total:</b>	<b>38,861</b>	<b>10</b>
- Russian Federation	25,660	5
- Ukraine	5,381	0
- Belarus	3,879	1
- Latvia	599	1
- Kazakhstan	960	0
- Finland	52	1
- Lithuania	262	0
- Azerbaijan	503	0
- Georgia	248	1
- Germany	142	0
- Uzbekistan	246	0
- Another foreign country	928	1
- Born abroad, country of birth is unknown	1	0
<b>Country of birth is unknown</b>	<b>2</b>	<b>199</b>

Source: Statistics Estonia, Table RLO423, 31 December 2011

As seen in Table 3 above, the “persons with undetermined citizenship” and persons of “unknown citizenship” in Estonia have mixed origins. While the majority of “persons with undetermined citizenship” are stateless *in situ*, there are also indications that some stateless persons have arrived in Estonia in a migratory context.

<sup>98</sup> Information provided by the MoC, dated 10 October 2012, letter on file with the consultant.

## 2.2.2.1 GROUPS COVERED BY ADMINISTRATIVE DATA

There are a number of government authorities which publish statistics on persons residing in Estonia, based on their citizenship status, namely Statistics Estonia, the MFA, the MoC, the MoI and the PBGB. As indicated in Table 4 and elaborated in the narrative below, the statistics reported do not appear to be fully consistent, even when considering that the time period from which the data emanates is not always the same. One of the reasons for the discrepancy seems to be that some of the government authorities use and publish data from the PR, which provides figures of all persons whose place of residence is registered as Estonia. Other government authorities draw data from the statistics published by the PBGB, which provides figures of all persons who were granted a residence permit or a right of residence, including those persons who currently do not live in Estonia. However, even when the government authorities seems to have drawn the data from the same source, there seems to be some differences in the figures reported.

**Table 4:** Persons with undetermined citizenship, by source of data and date

Source	Date	Number of residents with undetermined citizenship
<b>Population Census 2011/ Statistics Estonia</b>	31 December 2011 <sup>99</sup>	85,961
<b>Ministry of Culture (data drawn from PR)</b>	1 January 2015	88,365
<b>Ministry of Foreign Affairs</b>	1 March 2015	84,855
<b>Ministry of the Interior</b>	1 January 2015	88,052
<b>Police and Border Guards Board</b>	1 January 2015	88,076

The terminology used to describe the various categories of persons covered by the administrative data is also not fully consistent, as described below.

### *Statistics Estonia – Population Census*

According to the results of the 2011 Population Census,<sup>100</sup> as of 31 December 2011, the composition of the population of Estonia was as follows:

**Table 5:** Population by Citizenship (2011 Census)

PC0421: Population by citizenship, sex, and place of residence, 31 December 2011	
Population total	1,294,455
Estonian citizenship	1,102,618
Foreign citizenship	105,605
<b>Citizenship undetermined/undetermined citizenship<sup>101</sup></b>	<b>85,961</b>
<b>Citizenship unknown</b>	<b>271</b>

Source: Statistics Estonia, Population Census 2011

The group “citizenship undetermined”/“undetermined citizenship” includes persons who have an alien’s passport, as well as children who do not have documents and who have acquired neither Estonian citizenship nor citizenship of another State at birth.<sup>102</sup>

<sup>99</sup> See *supra* fn. 84.

<sup>100</sup> The 2011 Population Census collected data on all persons, whose place of usual residence was Estonia, including the persons who were not permanent residents of Estonia, but who (at the time of the census) had been living or intended to live in Estonia for three months or more. More details can be found here: <http://www.stat.ee/56921>.

<sup>101</sup> In the results from the Census, persons falling within the category referred to in this report as “persons with undetermined citizenship” are listed as persons with “citizenship undetermined or unspecified”.

<sup>102</sup> Statistics Estonia, Table PC0421: Population by citizenship, sex and place of residence.

According to the information provided by Statistics Estonia, the group “citizenship unknown” is comprised primarily of two groups of individuals: persons who have not fully completed the Population Census survey, or persons whose survey reply could not be coded with any other predetermined category (i.e. Estonian citizen, citizen of other country or “citizenship undetermined”).<sup>103</sup> The composition of the group “citizenship unknown” cannot be described further. It is thus impossible to estimate how many individuals in the group “citizenship unknown” might be stateless or at risk of statelessness.

Interestingly, UNHCR notes that the CERD expressed concern “...that, according to the 2011 census, the national origin of 19,344 persons in the State party is unknown (art. 5)” in its Concluding Observations and Recommendations from 2013.<sup>104</sup>

### *Ministry of Foreign Affairs*

Statistics published by the MFA indicate that the population, as of 1 March 2015, comprised:

- 1,244,419 Estonian citizens;
- 84,855 “persons with undetermined citizenship”;
- 92,113 citizens of the Russian Federation, 6,408 Ukrainian citizens, 6,355 Finnish citizens, 3,615 Latvian citizens, 2,308 German citizens, 2,098 Lithuanian citizens, 1,607 Belarusian citizens.

Hence, the population at this time comprised 92.6 per cent Estonian citizens; 8.5 per cent citizens of other countries and 6.3 per cent “persons with undetermined citizenship”.<sup>105</sup>

### *Ministry of Culture*

According to the MoC *Strategy on Integration and Social Cohesion in Estonia (Lõimuv Eesti 2020)*, there were 88,365 “persons with undetermined citizenship” in Estonia as of 1 January 2015.<sup>106</sup> This figure is based on data in the PR, which is used for conducting studies and surveys and for designing integration measures.<sup>107</sup>

### *Police and Border Guard Board*

According to the PBGB, as of 1 January 2015, there were 88,076 individuals in Estonia with undetermined citizenship, all of whom had a valid residence permit or a right of residence.<sup>108</sup> A similar figure was reported by the MoI.<sup>109</sup>

Statistics available on the website of the PBGB further show that during the course of 2015, the number of legally residing “persons with undetermined citizenship” decreased to 85,285 persons,<sup>110</sup> of whom the overwhelming majority resided in Estonia on the basis of a long-term (permanent) residence permit (76,471), while the rest (8,814) held a temporary residence permit.

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<sup>103</sup> Statistics Estonia, letter nr. 1.1-3/12/1047, dated 25 September 2012.

<sup>104</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth and eleventh periodic reports of Estonia*, CERD/C/EST/CO/10-11, 22 September 2014, para. 11, available at: <http://goo.gl/lhjzCB>

<sup>105</sup> MFA, Fact Sheet: *Estonia Today: Citizenship*, March 2015, available at: <http://estonia.eu/about-estonia/society/citizenship.html>.

<sup>106</sup> The Strategy of Integration and National Cohesion in Estonia 2020, p. 6, under fn.10 (in Estonian), available at: [http://www.kul.ee/sites/kulminn/files/loimuv\\_eeesti\\_2020.pdf](http://www.kul.ee/sites/kulminn/files/loimuv_eeesti_2020.pdf).

<sup>107</sup> Information provided by the MoC, dated 10 October 2012, letter on file with the consultant.

<sup>108</sup> The PBGB reply to UNHCR, dated 8 January 2015.

<sup>109</sup> According to the Ministry of the Interior, there were 88,052 “persons with undetermined citizenship” in Estonia in 2015. See Ministry of the Interior Fact Sheet: *Citizenship and Migration*, 2016, available at: <https://www.siseministeerium.ee/en/activities/citizenship-and-migration>.

<sup>110</sup> Figure as of 1 January 2016. See at: <https://www.politsei.ee/dotAsset/61215.pdf>.

The differences in the statistics reported by the various government authorities may be due to inconsistencies in the recording and methods of measuring different groups, which in turn may be due to the lack of legal definitions of the groups in question, and consistent guidance on their identification, registration and/or recording. Namely, the Population Census relies on information provided by the individuals themselves, while the PBGB bases its data on the number of issued residence permits. At the same time, while the Population Census generally allows for five per cent of undercounting, national registers usually over count the group, due to unreported cases of persons who have died or emigrated.

It must be borne in mind that except for Statistics Estonia/Population Census figures the rest of the statistical data summarized in the tables above provides information only on those Estonian residents, including “persons with undetermined citizenship”, who reside in Estonia on a legal basis. According to the PBGB, official statistical data include only “individuals with undetermined citizenship, who are documented by the PBGB and who have a valid right of residence or a residence permit in Estonia.”<sup>111</sup> At the same time, even Statistics Estonia states that “citizenship information in the Population Register is determined on the basis of the *de jure* documents.”<sup>112</sup> This means that persons who lack a residence permit and/or legal basis to reside, but who may otherwise resemble the profile of “persons with undetermined citizenship” seem not to be always included in the official statistics and obviously are not reflected in the Population Register or PBGB data (see further below in subsection 2.2.2.2).

More detailed information on the composition and profile of the “persons with undetermined citizenship” and persons with “citizenship unknown” is provided below.

**Table 6:** Persons with undetermined and unknown citizenship, disaggregated by sex

	Citizenship undetermined	Citizenship unknown
<b>Females</b>	40,768	114
<b>Males</b>	45,193	157

Source: Statistics Estonia, Population Census 2011<sup>113</sup>

The distribution by sex of “persons with undetermined citizenship” and “citizenship unknown” reflects the distribution of the Estonian population in general, with 52 per cent males and 48 per cent females.

**Table 7:** Persons with undetermined and unknown citizenship, disaggregated by country of birth

Country of birth	Citizenship undetermined	Citizenship unknown
<b>Estonia</b>	47,098	62
<b>Foreign country</b>	38,861	10
<b>Country of birth is unknown</b>	2	199

Source: Statistics Estonia, Population Census 2011

According to Statistics Estonia, more than half of “persons with undetermined citizenship” were born in Estonia, while the country of birth of the overwhelming majority of persons with unknown citizenship is not known.

<sup>111</sup> The PBGB, letter no. 15/2-14/156810-2, dated 17 September 2012.

<sup>112</sup> Statistics Estonia, letter no. 1.1-3/12/1047, dated 25 September 2012.

<sup>113</sup> Population Census 2011, available at: <http://goo.gl/Cl3Spy>.

**Table 8:** Persons with undetermined and unknown citizenship, disaggregated by age

Age group	Citizenship undetermined	Citizenship unknown
<b>0-14</b>	1,362	75
<b>15-29</b>	12,771	31
<b>30-49</b>	33,162	70
<b>50-64</b>	25,391	62
<b>65 and older</b>	13,275	33

Source: Statistics Estonia, Population Census 2011

**Table 9:** Distribution of the Estonian population, by age and citizenship

Age group/ Citizenship	Estonia	Russian Federation	Other	Undetermined	Unknown
<b>0-14</b>	17%	6%	9%	2%	28%
<b>15-29</b>	21%	9%	17%	15%	11%
<b>30-49</b>	27%	21%	33%	39%	26%
<b>50-64</b>	18%	32%	24%	30%	23%
<b>65 and older</b>	17%	33%	17%	15%	12%

Source: Statistics Estonia, Population Census 2011, table RL0422

In terms of the age distribution of “persons with undetermined citizenship”, 45 per cent are 50 years of age or older. This is slightly higher than among the citizens of Estonia (35 per cent), but notably less than the comparable figure for citizens of the Russian Federation (64 per cent). The age distribution also indicates that 39 per cent of “persons with undetermined citizenship” are in their active employment years (from 30 to 49 years old).

**Table 10:** Persons with undetermined or unknown citizenship, by ethnic origin

Ethnic origin	Citizenship undetermined	Citizenship unknown
<b>Estonians</b>	2,011	5
<b>Russians</b>	68,805	48
<b>Other ethnic origin</b>	15,084	5
<b>Ethnic origin is unknown</b>	61	213

Source: Statistics Estonia, Population Census 2011, table RL0424

2011 Census data on the ethnic origin of the “persons with undetermined citizenship” and those of “citizenship unknown” indicate that the vast majority of this population are of Russian ethnic origin.

**Table 11:** Population aged 15-74 by knowledge of Estonian (2008-2011), by percentage

		2008	2009	2010	2011
<b>Estonian citizenship</b>	Total	100%	100%	100%	100%
	Estonian is mother tongue / domestic language	12.8%	19.5%	16.9%	16.0%
	Speaks and writes	38.2%	41.6%	40.4%	40.5%
	Speaks on the level of everyday communication	19.5%	14.3%	14.7%	16.1%
	Understands on the level of everyday communication	10.9%	11.1%	14.2%	14.9%
	No knowledge of Estonian	18.6%	13.6%	13.8%	12.6%
<b>Other citizenship</b>	Total	100%	100%	100%	100%
	Estonian is mother tongue / domestic language	1.5%	1.7%	1.3%	1.2%
	Speaks and writes	7%	12.3%	11.9%	12.3%
	Speaks on the level of everyday communication	19.3%	16.4%	18.5%	17.2%
	Understands on the level of everyday communication	21.5%	25.1%	24.5%	22.7%
	No knowledge of Estonian	50.6%	44.5%	43.9%	46.6%
<b>Russian citizenship</b>	Total	100%	100%	100%	100%
	Estonian is mother tongue / domestic language	0%	0%	0%	0%
	Speaks and writes	4.8%	11.7%	9.2%	10.6%
	Speaks on the level of everyday communication	14.2%	11.4%	15.1%	14%
	Understands on the level of everyday communication	20%	24.8%	22.5%	20.1%
	No knowledge of Estonian	60.5%	51.2%	53%	54.8%
<b>Persons with undetermined citizenship<sup>114</sup></b>	Total	100%	100%	100%	100%
	Estonian is mother tongue / domestic language	2.2%	2.1%	0%	0%
	Speaks and writes	9%	12.8%	13.9%	13%
	Speaks on the level of everyday communication	22.6%	19.5%	22.6%	21.7%
	Understands on the level of everyday communication	23.1%	26.3%	26%	24.4%
	No knowledge of Estonian	43.1%	39.3%	35.8%	39.4%

Source: Statistics Estonia, Table IP45: 'Immigrant Population aged 15-74 by generation, citizenship and knowledge of Estonian

Table 11, containing data on Estonian language proficiency during the years 2008-2011, indicates that only 13 per cent of "persons with undetermined citizenship" spoke and wrote in Estonian proficiently, while 39.4 per cent had no knowledge of Estonian.

The more recent Estonian Integration Monitoring Report 2015 indicates that 29 per cent of "persons with undetermined citizenship" have no knowledge of Estonian at all (self-assessment), while 27 per cent understand the language but do not speak and another 30 per cent understand but speak only a little Estonian.<sup>115</sup> The report further indicates that only 14 per cent of "persons with undetermined citizenship" are fluent in Estonian and thus, in principle, able to pass the language test in order to acquire Estonian citizenship by naturalization.

Considering the fact that the *Estonian Language Act* requires proficiency in, and use of, the Estonian language by public officials, employees and sole proprietors, it would appear that a large portion of the "persons with undetermined citizenship" are unable to access an important part of the labour market, in addition to not being able to pass the exam for naturalization. As mentioned below, the *Committee on Economic, Social and*

<sup>114</sup> In the English translation of this table a term "citizenship unspecified" is used, though the data pertains to the group generally referred to as "persons with undetermined citizenship" in this report.

<sup>115</sup> *Estonian Integration Monitoring Report 2015*, Chapter VI (*Keelteoskus ja keelte praktiline kasutamine*), figure 6.7 (*Eesti teisest rahvusest elanike enesehinnanguline eesti keele oskus kodakondsuse lõikes, %*), p. 75.

*Cultural Rights* (CESCR) has adopted recommendations in regard to how the language requirements may affect access to employment.

**Table 12:** Educational attainment by citizenship, by percentage

Citizenship/ Educational level	Elementary education	Basic education	Secondary education	Tertiary education	Higher education
<b>Citizenship of Estonia, Estonians</b>	4%	13%	18%	40%	26%
<b>Citizenship of Estonia, other ethnic origin</b>	1%	11%	18%	40%	30%
<b>Citizenship of the Russian Federation</b>	1%	8%	18%	55%	17%
<b>Citizenship of other countries</b>	10%	0%	30%	40%	20%
<b>Undetermined citizenship</b>	1%	13%	26%	49%	11%

*Table adapted from the Estonian Integration Monitoring Report 2015, figure 1.7<sup>116</sup>*

Estonia continues to have parallel secondary education systems, separated on the basis of the language of instruction (Estonian and Russian), with 19 per cent of pupils in Estonia attending Russian-language secondary schools.<sup>117</sup> Since Russian is the mother tongue of the majority of “persons with undetermined citizenship”, children in this group mostly attend Russian language schools.

There are substantial differences in educational attainment based on citizenship status. Only 11 per cent of “persons with undetermined citizenship”, compared to 26 or 30 per cent of Estonian citizens, have completed higher education. A significantly larger proportion of “persons with undetermined citizenship” have tertiary education (post-secondary education, for example at technical colleges).<sup>118</sup>

**Table 13:** Distribution of population, by employment, socio-economic status and citizenship

	Citizenship total	Estonian citizenship	Citizenship of another country	Citizenship undetermined	Citizenship unknown
<b>Active persons</b>	<b>630,101</b>	<b>532,268</b>	<b>46,280</b>	<b>51,548</b>	<b>5</b>
Employed persons	561,138	481,552	38,562	41,021	3
Unemployed persons	68,963	50,716	7,718	10,527	2
<b>Inactive persons</b>	<b>647,665</b>	<b>556,828</b>	<b>57,906</b>	<b>32,788</b>	<b>143</b>
Persons below the minimum working age	199,891	191,745	6,709	1,362	75
Students	81 639	76 797	3 169	1 671	2
Retired persons	287,450	224,226	41,650	21,550	24
Homemakers	43,350	37,453	2,877	3,016	4
Other inactive persons	34,840	26,184	3,471	5,148	37
Inactive persons, status unknown	495	423	30	41	1
<b>Activity unknown</b>	<b>16,689</b>	<b>13,522</b>	<b>1,419</b>	<b>1,625</b>	<b>123</b>

*Source: Statistics Estonia, Table PC010, as of 31 December 2011*

Data from 31 December 2011 generated by Statistics Estonia contains interesting information regarding the employment and socio-economic status of the different groups in the population, disaggregated by citizenship (or lack thereof). Table 13 shows that 48 per cent of the population with Estonian citizenship are “active” in the sense of being employable, while 60 per cent of the “persons with undetermined citizenship”

<sup>116</sup> *Estonian Integration Monitoring Report 2015*, Chapter I (*Kodakondsus, poliitiline enesemäärang ja osalemine*, joonis 1.7), p. 8.

<sup>117</sup> According to information provided by the MFA, the percentage is 19, as some Russian students attend Estonian schools.

<sup>118</sup> Tertiary education refers to levels 5–6 of 8 in the ISCED 2011 standard classifications of education. A review of the classifications is available at: <http://goo.gl/jONExY>.

fall within the same category. Of the “active” persons, 90 per cent of the Estonian citizens are employed, compared to 80 per cent of the “persons with undetermined citizenship”.

Out of the total number of Estonian citizens, 20 per cent are retired, compared to 25 per cent of the “persons with undetermined citizenship”. On the other hand, 40 per cent of the “inactive” persons with Estonian citizenship are retired, compared to 66 per cent of the “persons with undetermined citizenship”. At the same time, 34 per cent of the “inactive” Estonian citizens were below the minimum working age, compared to only 4 per cent of the “persons with undetermined citizenship”. Also, while 14 per cent of the “inactive” Estonian citizens were students, only 5 per cent of the “persons with undetermined citizenship” were students. Hence, the data in Table 13 seems to indicate that the group of “persons with undetermined citizenship” mainly comprises people of working age, and pensioners.

The data in Table 13 above can be analysed further in order to obtain a fuller picture of the profile of the “persons with undetermined citizenship” compared to the profile of the Estonian citizens, which can inform targeted naturalization campaigns. However, as the data pertains to 2011, it would be useful to conduct a comprehensive profiling of the “persons with undetermined citizenship” in order to analyse, *inter alia*, their socio-economic and employment status, as well as intentions to naturalize.

**Table 14:** Unemployment rate of population aged 15–74 by citizenship and year (2004–2014), by percentage

Year/ Citizenship	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Estonian</b>	7.7%	6.4%	4.8%	3.9%	4.5%	11.6%	14%	10.6%	8.5%	7.6%	6.5%
<b>Other</b>	20.1%	15.5%	11%	8.1%	9.9%	22.1%	29%	21.3%	18%	14.3%	12.4%
<b>Undetermined</b>	20.5%	15.5%	10%	7.9%	10.6%	23%	30.7%	21.9%	19.9%	16.7%	14.5%

Source: Statistics Estonia, Table 335, as of 13 February 2015

Labour market data also points to differences among segments of the population. Data from 2014 suggests that the unemployment rate among “persons with undetermined citizenship” is 14.5 per cent, while among Estonian citizens it is 6.5 per cent. Although the unemployment rate has decreased since 2010 (30.7 per cent among “persons with undetermined citizenship” and 14.0 per cent among Estonian citizens), it remains high. The dynamics of the last three years also indicates that the unemployment rate among Estonian citizens is decreasing slightly faster (14.0 per cent in 2010 compared to 8.5 per cent in 2012) than among the “persons with undetermined citizenship” (30.7 per cent in 2010 compared to 19.9 per cent in 2012). The data suggests that the economic crisis of 2007 has exacerbated differences between citizens’ and non-citizens’ labour market participation.<sup>119</sup>

Labour market inequalities in Estonia have been noted by the CESCR. In its *Concluding Observations and Recommendations from 2011*, the CESCR

expresses concern about the discrimination against the Russian-speaking population which continues to be disproportionately affected by unemployment and poverty. The Committee calls on the State Party to intensify its efforts to address the persistent disadvantages faced by the Russian-speaking population in the enjoyment of economic, social and cultural rights, and to ensure that strategies and policies adopted in this regard address both formal and substantive discrimination, and include the implementation of special measures in the field of employment. Furthermore, the Committee calls on the State Party to ensure that language requirements in

<sup>119</sup> The draft Strategy for Integration and Social Cohesion in Estonia “*Lõimuv Eesti 2020*” (unofficial translation into English), MoC, 2012, p. 4.

relation to employment are based on reasonable and objective criteria, linked to the needs for the performance of each individual job, so as to avoid discrimination on the basis of language.<sup>120</sup>

Considering the ethnic composition and Estonian language skills of legally residing “persons with undetermined citizenship”, the findings of the Committee are highly relevant to this group of residents.

Socio-economic disparities among citizens and other groups in Estonia also appear to lead to low expectations of the future among certain populations. Although data specifically on “persons with undetermined citizenship” is not available, data on ethnic minority youth living in Estonia suggests that many members of this group suffer from low self-confidence.<sup>121</sup> More than 30 per cent consider themselves to be on the lowest rung in society (in contrast to 12 per cent among ethnic Estonian youth).<sup>122</sup> A prominent Estonian politician and social scientist, Marju Lauristin, when commenting on this data, observed: “The fact that there is such a large group of people with low self-esteem is actually the result of very many factors – teachers, parents and local environment, as well as of the media and the Estonian view.”<sup>123</sup>

**Table 15:** Equalized Yearly Disposable Income 2004–2013 (euros), by year and citizenship

Year/ Citizenship	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Estonian</b>	3,761	4,484	5,509	6,529	7,442	7,018	6,800	7,358	8,113	9,102
<b>Other</b>	2,993	3,684	4,155	5,211	5,827	5,332	5,341	5,916	6,227	6,653
<b>Undetermined</b>	2,948	3,658	4,194	5,159	5,693	5,310	4,985	5,313	6,124	6,644

Source: Statistics Estonia, Table IM21, as of 29 January 2015

Differences in income between citizens of Estonia and “persons with undetermined citizenship” are documented. Data for 2013 suggest that the annual income of “persons with undetermined citizenship” was 73 per cent of that of Estonian citizens. Such a difference could probably be attributed to the fact that only 11 per cent of “persons with undetermined citizenship” have higher education compared to 26–30 per cent of Estonian citizens (see Table 12 above).

**Table 16:** Poverty Rate<sup>124</sup> by citizenship and year 2004–2013, by percentage

Year/ Citizenship	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Estonian</b>	9.3%	6.3%	4.8%	4.4%	6%	14.7%	26.9%	29%	19.2%	14.5%
<b>Other</b>	8.4%	5.8%	5.2%	2.8%	3.1%	19.4%	40%	42.7%	27.3%	21.3%
<b>Undetermined</b>	14%	11%	8.2%	5.4%	9.7%	23%	43%	44.3%	27.4%	24.1%

Source: Statistics Estonia, Table LES30, as of 29 January 2015

Data on poverty rates also indicates that “persons with undetermined citizenship” are at considerably higher risk of living in poverty. Data from 2013 indicates that 24.1 per cent of “persons with undetermined citizenship” are at risk of poverty (compared to 14.5 per cent of Estonian citizens).

<sup>120</sup> UN Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Estonia*, 16 December 2011, E/C.12/EST/CO/2, para. 10, available at: <http://www.refworld.org/docid/52d6588c4.html>.

<sup>121</sup> Estonian Public Broadcasting News, *Low Self-Confidence Among Young Russians a 'Complex Problem'* (English language version), 4 November 2010, available at: <http://goo.gl/38qaki>.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> The percentage indicates the share of persons with equalized disposable income lower than the at-risk-of-poverty threshold. The year shows the income year.

Finally, “persons with undetermined citizenship” have high rates of incarceration. The CAT has noted the disproportionately high rate of incarceration among “persons with undetermined citizenship” in its consideration of Estonia’s implementation of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.<sup>125</sup> According to the Estonian Ministry of Justice, “persons with undetermined citizenship” comprised 30 per cent of the total prison population in 2014.<sup>126</sup> To date, no studies examining the causes of such a high rate of “persons with undetermined citizenship” being incarcerated have been carried out in Estonia. More research on this topic would thus be useful, in order to better understand this phenomenon.

In conclusion, data on educational attainment and labour market and social integration suggests that “persons with undetermined citizenship” tend to have a weaker position in Estonian society than Estonian citizens. In spite of the fact that the majority of “persons with undetermined citizenship” were born in Estonia, there are substantial differences in unemployment rates and annual incomes. Likewise, a substantial proportion of “persons with undetermined citizenship” are at risk of poverty, and are disproportionately represented among the prison population.

### 2.2.2.2 GROUPS NOT COVERED BY ADMINISTRATIVE DATA

Official sources of statistical data in Estonia provide limited or no information about the number of individuals who lack valid identification documents and/or legal residence in Estonia, but who could potentially fall under the customary law and 1954 Convention definition of a stateless person.

As of January 2014, the PBGB has been able to report on some 50 individuals whose involuntary return to their countries of origin has repeatedly failed, apparently because of their statelessness.<sup>127</sup> However, more precise data on unlawfully present stateless persons is not presently available in Estonia.

**Table 17:** Persons with unknown citizenship or recognized non-citizens found to be unlawfully present – annual data 2008–2014 (rounded)

	2008	2009	2010	2011	2012	2013	2014
<b>Persons with unknown citizenship</b>	625 <sup>128</sup>	0	0	0	0	0	220
<b>Recognized non-citizens</b>	n/a	565	555	430	295	270	0

Source: Eurostat,<sup>129</sup> as of April 2015

<sup>125</sup> Committee against Torture, *Fifth periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/EST/Q/5) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras 23 and 24)*, Replies of the Republic of Estonia to the list of issues prior to the submission of the fifth periodic report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 April 2012, see items 111–112.

<sup>126</sup> Ministry of Justice of Estonia, Annual Report “*Kuritegevus Eestis 2014*”, available (in Estonian) at: <http://www.kriminaalpoliitika.ee/et/kuritegevus-eestis-2014>. See also Committee against Torture, Fifth periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/EST/Q/5) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras 23 and 24), 05 April 2012, items 111–112.

<sup>127</sup> Radio 4 News, *Нарвский нелегал одержал маленькую победу над бюрократической системой* (An illegal from Narva has gained a small victory over the bureaucratic system), 30 January 2014, available at: <http://rus.err.ee/v/virumaa/0806b759-4bcb-480d-bd6c-42e6701a8f99>.

<sup>128</sup> This figure includes 35 children between 14 and 17 years old.

<sup>129</sup> Databases available at: <http://goo.gl/SiSvI9>.

Nevertheless, some understanding of the potential number of unlawfully present stateless persons can be discerned from Eurostat, which provides information on the number of “persons with unknown citizenship” and “recognized non-citizens”<sup>130</sup> who were found to be unlawfully present in the country.

In the case of the first group (“persons with unknown citizenship”), Eurostat provides estimates only for 2008 and 2014. According to their statistics, 845 individuals with an unknown citizenship have been registered in Estonia since 2008 (see Table 17). While it has not been determined how many of them actually fall within the definition of a stateless person, it is possible that at least some do.

**Table 18:** Persons with unknown citizenship and recognized non-citizens ordered to leave – annual data 2008-2014 (rounded)

	2008	2009	2010	2011	2012	2013	2014
<b>Persons with unknown citizenship</b>	15	0	0	0	0	0	20
<b>Recognized non-citizens</b>	n/a	10	10	25	30	20	0

Source: Eurostat, as of April 2015

**Table 19:** Third country nationals returned following an order to leave – annual data 2008-2014 (rounded)

	2008	2009	2010	2011	2012	2013	2014
<b>Persons with unknown citizenship</b>	5	0	0	0	0	0	15
<b>Recognized non-citizens</b>	n/a	5	5	10	5	10	0

Source: Eurostat, as of April 2015

As indicated in Tables 18 and 19, the vast majority of the “persons with unknown citizenship” have remained in Estonia, as relatively few were ordered to leave (35 individuals) and even fewer were removed from the territory (20 individuals).

Eurostat also reports on “recognized non-citizens”, who appear to be, or at least include, individuals with the same profile as the “persons with undetermined citizenship”, but who for various reasons have not obtained a residence permit in Estonia; the “recognized non-citizens” might also include “persons with undetermined citizenship” who have not renewed their temporary residence permits, or lost the right to reside in Estonia. As indicated in Table 17, a total of 2,115 “recognized non-citizens” were found to be unlawfully present in Estonia during the years 2008-2014. Out of them, 95 were issued orders to leave (Table 18) and 35 were actually deported from Estonia to other countries (Table 19).

Hence, to summarize the statistical data provided in Tables 17 and 19, at the beginning of 2015 there appears to have been some 2,080 “recognized non-citizens” and 825 “persons with unknown citizenship” residing in Estonia without a legal residence permit (and who therefore do not appear in the national authorities’ statistics). The first group (“recognized non-citizens”) seems to include persons who have the same profile as the legally residing “persons with undetermined citizenship” but who failed to regularize their stay in the 1990s or who lost their legal right of residence. The second group (“persons with unknown citizenship”) includes rejected “unreturnable” asylum-seekers as well as other potentially stateless persons (e.g. of Roma ethnic origin) who have entered Estonia in a migratory context but been unable to regularize their residence status in Estonia.

<sup>130</sup> According to Eurostat, a “recognized non-citizen” is a person who is not a citizen of the reporting country nor of any other country, but who has established links to that country which include some but not all rights and obligations of full citizenship. Recognized non-citizens are not included in the number of European Union (EU) citizens. See Eurostat Glossary, available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Citizenship>. Considering the Eurostat definition of “recognized non-citizens,” it is likely that this group includes persons with the same profile as the “persons with undetermined citizenship” but who, for various reasons, did not manage to obtain a residence permit in Estonia during 1993–1995 (see Section 2.1.1 above) or who have lost their legal ground (temporary or long-term residence permit) for residence in Estonia.

Finally, between 2007 and 2014, nine stateless persons and one person with unknown citizenship sought asylum in Estonia. During the same period, two stateless persons were granted international protection in Estonia, while the asylum applications of eight persons were either rejected on their merits or otherwise closed; also, the applications of two stateless individuals were pending at the end of 2014.

## 2.3 Qualitative analysis of “persons with undetermined citizenship”

### 2.3.1 Background and methodology

When conducting research, UNHCR strives to include the voices and perspectives of the individuals of concern, i.e. stateless persons, asylum-seekers, refugees or internally displaced persons, depending on the topic and scope of the research. This is in line with UNHCR’s *global Age, Gender and Diversity (AGD) Policy*<sup>131</sup> and *Participatory Assessment* approach,<sup>132</sup> based on which UNHCR’s operations around the world regularly conduct discussions with its persons of concern, in order to hear directly from them how they experience their situation from a protection and durable solutions perspective. The feedback received during the discussions consequently informs UNHCR’s overall protection assessment, and country operations plan and priorities.

For this mapping, the consultant approached more than 150 “persons with undetermined citizenship”, who were identified and contacted with the help of NGOs, universities and churches. Out of these, only 15 agreed to take part in the research. As a result, it was decided to hold individual interviews with the 15 persons identified, rather than focus group discussions, in which normally 7-15 persons participate in a session.

The main reason given by persons contacted for not agreeing to take part in the research, was a fear that their participation might negatively affect their situation. While there appeared to be great interest in the topic and research among those contacted, all but 15 declined to participate when they were asked to sign a consent form and provide basic personal information. In further specifying their reasons for declining, they mentioned fear of lost opportunities in the labour market and fear that participation in an interview could negatively affect the participant’s chances of obtaining Estonian citizenship in the future. Assurances by the consultant that the information to be collected would be treated confidentially, and solely used for the purpose of UNHCR’s mapping, was not seen as a sufficient guarantee. Another frequently cited reason for declining participation in the research was a feeling of apathy, where several of the individuals contacted expressed their feeling that they have no means of influencing processes in society, and that giving an interview would not change anything. Although these people expressed an interest in discussing the issue of statelessness, they also expressed a belief that a “formal” interview would be meaningless. This attitude was especially common among older persons.

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<sup>131</sup> UNHCR, *Age, Gender and Diversity Policy: Working with people and communities for equality and protection*, 01 June 2011, available at: <http://www.unhcr.org/4e7757449.html>.

<sup>132</sup> UNHCR, *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: <http://www.refworld.org/docid/462df4232.html>.

Nonetheless, individual interviews were conducted with 15 “persons with undetermined citizenship” in the period from August to October 2012. All interviews were carried out in accordance with UNHCR guidance on participatory assessments.<sup>133</sup> The interviews lasted for one to one and a half hours, and the individuals were asked questions relating to:

- a) their personal background (education, age, family history);
- b) administrative procedures relating to the application for identity documents and residence permits (application history, length of administrative proceedings, relationship with administrative authorities, difficulties encountered);
- c) their current situation (labour market, access to education, legal aid, access to other public services).

The individuals interviewed were also given a questionnaire. The questionnaire and interviews were semi-structured, providing an opportunity for individuals to answer specific questions and to reflect on their situation. The data in the quantitative tables presented below is drawn from the structured questions, in multiple choice answer format, while quotations from interviews and questionnaires are drawn from the open-ended replies.

UNHCR would like to stress that the findings drawn from the consultant’s analysis of the questionnaires and responses received during the interviews cannot be interpreted as representative of the views and situation of the entire population of “persons with undetermined citizenship”, as the sample was obviously too small and not randomly selected. Rather, the views and sentiments expressed should be seen as a window into the daily lives of 15 individuals, who voluntarily chose to take part in the interviews, and how the fact of being a “person with undetermined citizenship” in Estonia affects different aspects of their lives.

**Table 20:** Overview of the profiles of interviewees, by sex, age, country of birth and education

Gender	Age	Country of Birth	Education
9 Female	4: 18-35 years old	13: Estonia	3: Primary/ Secondary school
6 Male	7: 36-55 years old	2: Other country	11: Professional education
	4: 56 and older		1: Higher education (university)

The country of origin of the interviewees was the former USSR. Russian was the mother tongue of all but one interviewee, whose mother tongue was Estonian. Most respondents were born in or had lived in Estonia for more than 40 years, and their current situation of statelessness resulted from the dissolution of the USSR, rather than being a result of more recent migration. This was of emotional significance for many, if not all, interviewees. The two interviewees who were not born in Estonia cited employment and family reunification as their reasons for moving there. All but one of the interviewees resided in Estonia on the basis of the long term residence status, and held alien’s passport. One person’s residence permit had expired (extension refused by authorities), making his residence at the time of the interview illegal. All interviewees had at least one family member (child, spouse, parent) who is an Estonian citizen or citizen of another country. Thus, the statuses of the interviewees’ family members appear to be mixed, even if all members of a family were born in Estonia.

<sup>133</sup> *Ibid.*

## 2.3.2 Perceptions of application process for obtaining a residence permit and alien's passport

For many interviewees, their first contact with Estonian administrative institutions was in 1991–1993, when they applied for residence permits. At this point all residents (approximately 500,000) who did not have a right to automatic acquisition of Estonian citizenship were required to submit an application for a residence permit in order to stay legally in the country. All interviewees described their most vivid memories of that time as being of extremely long waiting times and queuing outside, often in bad weather. People reported having to come very early in the morning to queue in order to submit or receive documents. Interviewees said that a list of names in the queue was collected, to facilitate the organization. One interviewee noted that places on the list were bought and sold. Considering the number of individuals applying to receive a residence permit at the time, the State agencies were understandably overburdened.

Since then, the interviewed individuals have mainly been in contact with the administrative authorities in the context of their periodic acquisition and extension of residence permits, work permits, and/or alien's passports.

When asked to evaluate the procedure for the application of a temporary residence permit, all respondents described it in rather negative terms. Many emphasized that the procedure was expensive, complicated and lengthy. When respondents were asked to evaluate the procedure for the application for identity documents and permanent residence permits, they again described the administrative procedures as expensive, complicated, and time-consuming.

However, these views need to be seen in light of recent client satisfaction surveys conducted by the PBGB. According to the survey from 2014,<sup>134</sup> 75 per cent of applicants for a residence permit or extension of a residence permit were satisfied with the work/ services of the PBGB, while 11 per cent indicated that they were not satisfied and 14 per cent were neutral. The survey also found that 67 per cent of applicants for identification documents were satisfied with the services provided by the PBGB, while 13 per cent indicated that they were not satisfied and 20 per cent were neutral.<sup>135</sup>

**Table 21:** Attitude of public officials during the application process for obtaining a residence permit and alien's passport

Very negative	Somewhat Negative	Neutral	Somewhat Positive	Very Positive
12.5%	37.5%	50%	0	0

In response to a question about the interviewees' perceptions of PBGB officials' attitudes towards them, opinions diverged. The interviewees' replies ranged from rather negative to neutral.

All interviewees indicated that their applications for residence permits (initially temporary, then extension of temporary, and finally permanent residence permits) were granted on the first application. Only one of the 15 interviewees mentioned a denial or procedural problems (apart from the queuing issue). The only person who reported problems in this area, and whose application for a residence permit and an alien's passport was refused, was a person who had a previous criminal conviction. At the time of the interview, he was residing in Estonia without a residence permit. Apart from suggestions to lower fees and decrease the complexity of administrative formalities, respondents did not point to any other difficulties or problems related to the procedure for applying for a residence permit or alien's passport. However, one case suggests that a criminal conviction could be an obstacle for obtaining a residence permit.

<sup>134</sup> Estonian Police and Border Guard Board, Survey on Net Promoter Score of the Service Centres at the PBGB Prefectures, (*Prefektuuride Teeninduste Soovitusindeksi uuring*), 2014, pp. 8–9, available at: <https://www.politsei.ee/dotAsset/380189.pdf>.

<sup>135</sup> *Ibid.*, p. 10.

## 2.3.3 The human face of statelessness

The statistical data relating to, *inter alia*, the socio-economic status, labour market integration and education of “persons with undetermined citizenship” in Estonia, presented in Section 2.2 above, is mirrored in many of the responses by the interviewees. For example, many of the interviewees expressed dissatisfaction with disadvantageous labour market opportunities, obstacles (including financial) related to learning Estonian, and negative attitudes of Estonian citizens toward “persons with undetermined citizenship”. They also expressed feelings of inferiority and pessimism about the future.

**Table 22:** Opportunities for “persons with undetermined citizenship” in Estonia

*Question: Whether persons with undetermined citizenship face higher obstacles (political, administrative, social, economic, and linguistic) compared to citizens of Estonia?*

Politics			Labour market			Access to documents			Education		
No	0	0%	No	0	0%	No	2	15%	No	2	17%
Rather No	1	7%	Rather No	0	0%	Rather No	1	8%	Rather No	2	17%
Yes and No	1	7%	Yes and No	1	7%	Yes and No	3	23%	Yes and No	0	0%
Rather Yes	0	0%	Rather Yes	2	13%	Rather Yes	1	8%	Rather Yes	1	8%
Yes	13	87%	Yes	12	80%	Yes	6	46%	Yes	7	58%
	15	100%		15	100%		13	100%		12	100%
Access to public benefits			Access to public administration			Access to judicial system			Access to private property		
No	1	14%	No	2	20%	No	1	8%	No	4	36%
Rather No	2	29%	Rather No	2	20%	Rather No	2	17%	Rather No	3	27%
Yes and No	3	43%	Yes and No	0	0%	Yes and No	1	8%	Yes and No	1	9%
Rather Yes	1	14%	Rather Yes	2	20%	Rather Yes	2	17%	Rather Yes	1	9%
Yes	0	0%	Yes	4	40%	Yes	6	50%	Yes	2	18%
	7	100%		10	100%		12	100%		11	100%
Access to health care			Free movement and diplomatic protection			Freedom of religion			Freedom of association		
No	3	25%	No	0	0%	No	5	36%	No	4	44%
Rather No	3	25%	Rather No	1	8%	Rather No	2	14%	Rather No	3	33%
Yes and No	0	0%	Yes and No	1	8%	Yes and No	5	36%	Yes and No	1	11%
Rather Yes	3	25%	Rather Yes	0	0%	Rather Yes	2	14%	Rather Yes	1	11%
Yes	3	25%	Yes	10	83%	Yes	0	0%	Yes	0	0%
	12	100%		12	100%		14	100%		9	100%

In general, the interviewees became emotional when discussing opportunities for “persons with undetermined citizenship” in Estonia. Respondents were in near unanimity in stating that “persons with undetermined citizenship” have fewer opportunities to participate in political life, to exercise their rights of free movement and diplomatic protection (83 per cent), to access the labour market (93 per cent), to access the courts and legal aid (67 per cent), as well as educational opportunities (66 per cent).

While no comprehensive profiling or intention survey has been conducted of the reasons why “persons with undetermined citizenship”, specifically, have not naturalized, there are some thoughts in this regard. Professor Lauri Mällksoo at the University of Tartu observes, “On a purely practical level, they have arguably even more opportunities than Estonian citizens – namely, they can travel visa-free both in the EU and in the Russian Federation. Some believe that this has in fact contributed to the situation where some of the stateless individuals seem not to be actively interested in naturalization.”<sup>136</sup>

<sup>136</sup> Lauri Mällksoo, *Stateless But Not Right-less: The Debate Over Citizenship in Estonia*, Open Society Institute, 2010, available at: <http://goo.gl/WxNEKC>.

In regard to the reasons for not having acquired Estonian citizenship through naturalization, the responses given by the 15 interviewees did not indicate that the right of visa-free travel to Russia was a reason for them remaining a “person with undetermined citizenship”. Although most respondents underlined the symbolic importance of having the right to travel to Russia without a visa, most had either not been to Russia at all during the past 10 years, or had been there only a few times. Considering the relatively high poverty and unemployment rate among “persons with undetermined citizenship”, many may in fact not be able to afford travel to Russia. Countering the perception that “persons with undetermined citizenship” do not become Estonian citizens so that they can preserve the possibility of visa-free travel to Russia, all 15 respondents noted that Estonian citizenship is desirable.<sup>137</sup> Importantly, all but one respondent said that they would like to acquire Estonian citizenship. Apparently, many had tried to do so, but had failed to pass the language test.

The replies of 15 interviewees as well as the views expressed by Professor Mälksoo reflect findings in the Estonian Integration Monitoring Report 2015.<sup>138</sup> According to this report, inability to learn Estonian was indicated as the main reason for not having Estonian citizenship (46 per cent), see Table 23 below. The second most commonly indicated reason was the ability to travel to Russia as well as other countries in the Commonwealth of Independent States (40 per cent). Almost the same number (39 per cent) indicated that the “lack of citizenship does not create obstacles for living in Estonia”. Finally, nearly the same share of respondents (37 per cent) consider that difficulty in passing the naturalization exams is the main obstacle for not acquiring Estonian citizenship.

**Table 23:** Reasons for lacking Estonian citizenship by persons of non-Estonian ethnicity who hold a foreign citizenship or no citizenship (figure indicates percentage of respondents who selected one out of several choices available)

	2008	2011	2015
<b>Estonian citizenship is not considered to be important/ reputable</b>	7	12	18
<b>Inability to learn Estonian</b>	54	45	46
<b>It is easier to travel to Russia/ other CIS countries</b>	23	27	40
<b>Citizenship exam is too difficult</b>	56	48	37
<b>Lack of citizenship does not create obstacles for living in Estonia</b>	19	33	39
<b>Possession of citizenship of another country</b>	24	26	25
<b>Not interested in taking part in elections/ political life</b>	10	18	13

Source: Estonian Integration Monitoring Report 2015

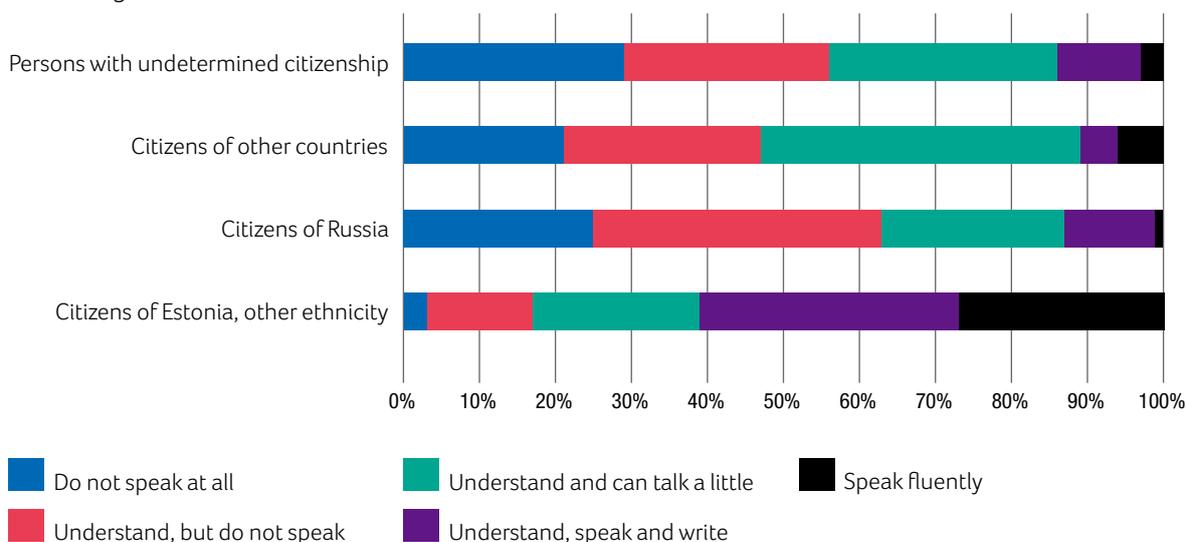
Looking at the results from 2008, it is interesting to note that the percentage of persons indicating “inability to learn Estonian” or “difficulty in passing the naturalization exams” is decreasing, while the percentage of persons indicating that “it is easier to travel to Russia/ other CIS countries” or “lack of citizenship does not create obstacles for living in Estonia” as reasons for not acquiring Estonian citizenship has increased since 2008.

However, it should be recalled that the results presented in Table 23 above are drawn from replies by individuals of non-Estonian ethnicity who hold a foreign citizenship or no citizenship; thus, the results include the opinions both of “persons with undetermined citizenship” and of citizens of different countries (Russia, Ukraine etc.) living in Estonia.

<sup>137</sup> This view is also supported by the findings of the *Estonian Integration Monitoring Report 2015*, which concludes that the majority of “persons with undetermined citizenship” (57 per cent) want to acquire Estonian citizenship. See p. 136.

<sup>138</sup> See Table 1.2 on p. 9 (*Eesti kodakondsuse mitteomamise selgitavad põhjused, % (vastusevariant “See kindlasti”) (Integratsiooni monitoring 2008, 2011, 2015)*).

**Table 24:** Self-assessment of proficiency in Estonian by citizens of different countries with non-Estonian ethnic origin



Source: Integration Monitoring Report 2015<sup>139</sup>

Comparing with the results presented in Table 24 above, which reflect the self-assessed knowledge of Estonian of “persons with undetermined citizenship”, it is clear that their knowledge of Estonian is considerably poorer than that of Estonian citizens of non-Estonian ethnicity, but similar to the language proficiency of citizens of Russia and other countries.

**Table 25:** Perception of life satisfaction linked to the acquisition of Estonian citizenship in the 1990s

Question: If you had had the right to acquire Estonian citizenship in the 1990s, your life in Estonia would have been better		
Disagree	0	0%
Rather disagree	2	13%
Agree/Disagree	3	20%
Rather agree	3	20%
Agree	7	47%
<b>Total:</b>	<b>15</b>	<b>100%</b>

As indicated in Table 25, most interviewees felt that their lives in Estonia would have been better if they had had the right to acquire citizenship in 1990s.

**Table 26:** Perception of opportunities in society linked to the acquisition of Estonian citizenship today

If I acquired Estonian citizenship now, my life would improve		
Disagree	0	0%
Rather disagree	1	7%
Agree/Disagree	3	21%
Rather agree	3	21%
Agree	7	50%
<b>Total:</b>	<b>14</b>	<b>100%</b>

<sup>139</sup> This table is based on information provided in Figure 6.7 (*Eesti teisest rahvusest elanike enesehinnanguline eesti keele oskus kodakondsuse lõikes, %*), *Estonian Integration Monitoring Report 2015*, Chapter VI (*Keelteoskus ja keelte praktiline kasutamine*), p. 75.

Notably, only one respondent expressed the view that acquiring Estonian citizenship now would not improve life opportunities in Estonia. Interestingly, the respondent who felt this would not be the case was a young man. His response can be considered in light of findings in the Estonian Integration Monitoring Report 2015, which identified that a significant share (one third) of young people who were born in Estonia and who have a good or very good command of Estonian, are not citizens of Estonia. The report concludes that it is a serious challenge for Estonian integration policy that these people do not have Estonian citizenship and full political rights.<sup>140</sup>

Below are a few excerpts from responses given by interviewees, which illustrate some of their sentiments regarding their situation as a “person with undetermined citizenship”.

In reply to the question, “What difficulties do you have as a stateless person living in Estonia?” one interviewee answered:

In the political life of the country, I do not have any voice; on the labour market – only low-paid jobs. In order to fill out documents and communicate with public administration, I need to turn to a translator and pay fees.... As a stateless person, I do not feel like a full-fledged member of society. As a stateless person, I have difficulties related to travel. I cannot go to England, Ireland, and many other countries, even less so to find work there.... I consider Estonia my home and want to live in this country, I also want to speak Estonian fluently.... [Stateless] people living in this country for more than 20 years have a close link and permanent connection with this country and society.... I really wanted to become an Estonian citizen and applied twice, but language courses are very expensive and the chance of passing the language exam is zero. I think that with the legislation and requirements today, I will never be able to receive Estonian citizenship. If I had had a right to receive Estonian citizenship in the 1990s and escape my current status of stateless, I would have been able to achieve more in my life. I think, even now, if I could acquire Estonian citizenship, my life in Estonia would improve.... Considering things as they are now, I think my life situation in one year's time will most likely deteriorate even further.

*(EL, female, born in Russia, living in Estonia since 1985, higher technical education, currently employed)*

One respondent, LS, born in Estonia some 50 years ago, answered:

We [stateless individuals born in Estonia] have proved with our lives [working, paying taxes, contributing to the development of society] that we are part of this society. I have intensively tried to pass the Estonian citizenship exam. I try every two years or so to make a new application and try to pass the language exam.... I have passed the citizenship exam, but I repeatedly fail to pass the language test, always by only a few points. This is very disappointing. I try my best and I study, but I fail. The test is very difficult for me....

TG is a 37-year-old woman born in Estonia with a husband and children who are Estonian citizens. She said:

The requirements for the Estonian language are very high and the language courses very expensive (on average 400 euros). I have not received any support or free language courses.

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<sup>140</sup> *Estonian Integration Monitoring Report 2015*, Chapter X. Conclusions and Recommendations (Järeldused ja Soovitused), Section 10.2, p. 136.

**Table 27:** Participation

Participation in Estonian society		
<b>Disagree</b>	1	8%
<b>Rather disagree</b>	1	8%
<b>Agree/Disagree</b>	3	23%
<b>Rather agree</b>	2	15%
<b>Agree</b>	6	46%
<b>Total:</b>	<b>13</b>	<b>100%</b>

Most of the respondents expressed a strong interest in participating more fully in Estonian society. Only two of the 15 interviewees said that they were not interested in participating more fully in society, explaining their disinterest as due to a lack of trust and disappointment in political institutions, as well as feelings of apathy.

It can be noted that many of the individuals who were contacted by the consultant, but who declined to participate in the interview and questionnaire, mentioned that they tend to feel weak or “powerless” in front of State authorities (including due to insufficient understanding of administrative procedures or the language), and that they were afraid that the mere fact of providing information for this research could have a negative impact on their chances in society.

The Estonian Political Parties Act guarantees the right to participate in political parties (i.e., to be a member of a political party) only to Estonian citizens and EU citizens resident in Estonia. The exclusion of “persons with undetermined citizenship” from membership in political parties, even those with long-term resident status, is justified on national security grounds:

In order to guarantee national security, the persons with undetermined citizenship who are long-term residents or third country nationals are not granted the right to belong to political parties or the right to work in public services. The granting of such rights to European Union citizens is based on the principle of free movement of EU citizens.<sup>141</sup>

“Persons with undetermined citizenship” can participate in the political process only at the municipal level in Estonia. Since 2004, “persons with undetermined citizenship” who hold long-term residence permits have the right to vote in municipal elections but not to stand as candidates.<sup>142</sup> They are not allowed to vote in Estonian national referenda,<sup>143</sup> nor to vote or stand in national or European Parliamentary elections. Consequently, the current national law provides “persons with undetermined citizenship” only limited opportunity for political participation, and only for those who have valid long-term residence permits.

<sup>141</sup> The Human Rights Committee, 99th session, Replies of the Government of Estonia to the list of issues to be taken up in connection with the consideration of the third periodic report of Estonia, CCPR/C/Est/Q3/Add.1, 03 May 2010, para. 135, available at: <http://goo.gl/0QcMa5>.

<sup>142</sup> Local Government Council Election Act (*Kohaliku omavalitsuse volikogu valimise seadus*), RT I 2002, 36, 220.

<sup>143</sup> Referendum Act (*Rahvahääletuse seadus*), RT I 2002, 30, 176.

**Table 28:** Attitudes towards “persons with undetermined citizenship”

Perceptions of others' attitudes towards “persons with undetermined citizenship”		
<b>Negative</b>	2	15%
<b>Rather negative</b>	6	46%
<b>Neutral</b>	5	38%
<b>Rather positive</b>	0	0%
<b>Positive</b>	0	0%
<b>Total:</b>	<b>13</b>	<b>100%</b>

**Table 29:** Persons with undetermined citizenship as a part of Estonian society

“Persons with undetermined citizenship” are a part of Estonian society		
<b>Disagree</b>	0	0%
<b>Rather disagree</b>	1	7%
<b>Agree/Disagree</b>	1	7%
<b>Rather agree</b>	0	0%
<b>Agree</b>	12	86%
<b>Total:</b>	<b>14</b>	<b>100%</b>

When asked about their perception of the general public’s or “others” attitude toward “persons with undetermined citizenship”, most interviewees felt that the general attitude in Estonia toward this population was negative, as indicated in Table 28 above. On the other hand, the interviewees expressed that they themselves feel part of the Estonian society, as many were born and educated in Estonia or have lived in the country for many years and contributed to the society.

**Table 30:** Roots of statelessness

The problem of statelessness in Estonia is ...	No	Rather No	Yes and No	Rather Yes	Yes
<b>... my individual problem, and not the problem of the Estonian society</b>	86%	7%	7%	0	0
<b>... a problem of the whole Estonian society and the Estonian State must take more active measures to solve the current situation</b>	0%	0%	7%	13%	80%
<b>... a situation that cannot be resolved without more active involvement of the civil society/ non-governmental organizations</b>	0%	0%	8%	31%	62%
<b>... a situation that cannot be solved without more active involvement of the international organizations (i.e. EU, UN, CoE)</b>	0%	0%	8%	31%	62%

When asked to select one of four possible responses to complete the statement “The problem of statelessness in Estonia is ...,” most respondents expressed the view that it is a problem that concerns the whole society, and that more active measures should be taken by the State to solve the situation, see Table 30 above.

The interviewees also indicated that promotional campaigns directed at “persons with undetermined citizenship” should be informed by a better understanding of the obstacles related to the acquisition of citizenship, as well as of the socio-economic difficulties that “persons with undetermined citizenship” face in Estonia.

## 2.3.4 Prison inmate questionnaires: methodology

In addition to the interviews with 15 “persons with undetermined citizenship” living among the general population, prison inmates who are “persons with undetermined citizenship” were offered the chance to complete questionnaires. With the assistance of the Ministry of Justice, in September 2012 a questionnaire was distributed to inmates with “undetermined citizenship” in all Estonian prisons. This initiative was carried out in cooperation with social workers at each prison. A total of 126 completed questionnaires were returned by inmates.

Participation in the survey was completely voluntary. For that reason, this cannot be considered a random sample and the findings cannot be viewed as representing the views and situation of incarcerated “persons with undetermined citizenship” in general. However, the sentiments expressed can be appreciated for their qualitative value and provide a snapshot of individual feelings and experiences of “persons with undetermined citizenship” incarcerated in Estonia.

As of February 2012, there were 3,397 persons incarcerated in Estonian prisons,<sup>144</sup> of whom 871 (26 per cent) were without citizenship of any country: 327 in Viru, 269 in Tallinn, 185 in Tartu and 90 in Harku-Murru prison.<sup>145</sup>

As mentioned in Section 2.2.2.1 above, “persons with undetermined citizenship” comprised 30 per cent of the total prison population in 2014 and were thus overrepresented among prison inmates. To the best of UNHCR’s knowledge, no studies have been undertaken to examine the possible relationship between the lack of citizenship and incarceration.

**Table 31:** Overview of the profiles of inmates who completed the questionnaire: education, age, family history

Gender	Age	Country of Birth	Education
9: Female	74: 18-35 years old	112: Estonia	18: Primary
115: Male	47: 36-55 years old	12: Other country	41: Basic
	3: 56 and older		29: Secondary
			34: Tertiary
			2: Higher

Of the 126 inmates who completed the questionnaire, the typical profile was a young to middle-aged (only three persons over 56 years of age) male born in Estonia with basic, or sometimes secondary, education.

## 2.3.4 Prison inmate responses: an overview

Based on their experiences, the prison inmates who answered questionnaires identified political participation (94 per cent), labour market (86 per cent) and free movement and diplomatic protection (76 per cent) as the areas in which they felt “persons with undetermined citizenship” have fewer rights compared to Estonian citizens. Areas indicated as less problematic were the ability to exercise one’s religion (74 per cent), freedom of association (55 per cent) and healthcare (50 per cent).

<sup>144</sup> For latest statistics on persons incarcerated in Estonian prisons, please see the Ministry of Justice’s Annual Report “*Kuritegevus Eestis 2014*”, see fn. 126. Information on the situation in Estonian prisons was also provided by the Minister of Justice Kristen Michal during hearings in the Estonian Parliament. The minutes of the hearings are available at: <http://goo.gl/eTUYfy>.

<sup>145</sup> According to the Ministry of Justice, letter dated 19 September 2012.

Similarly to the 15 interviewed “persons with undetermined citizenship” living among the general population, the inmates who responded tended to refute the perception that visa-free travel to Russia is a reason for not acquiring Estonian citizenship. Rather, they noted the more restricted rights to free movement within the EU, as compared to Estonian citizens, as a negative aspect of not having Estonian citizenship. A total of 75 per cent of the respondents stated that they have fewer rights compared to Estonian citizens in terms of free movement and diplomatic protection abroad, while only 16 per cent said they think they have equal rights with Estonian citizens. It should be noted that these responses may also reflect the lack of awareness among inmates about their rights to travel within the EU and do not necessarily fully correspond with the actual rights of legally residing “persons with undetermined citizenship” to enter other EU countries.

One of the respondents expressed the following:

Most “persons with undetermined citizenship” have been born in Estonia, but they still cannot find their place in the Estonian society. They are not really taking for jobs, they are offered lowest job, for very low money. But in other EU countries all are equal and all statuses are equal. But what we have is, if you are citizen then, please, you can have a high ranked position and well paid salary. But if you are stateless then sorry, feel lucky if you will be offered a job as a street cleaner for 273 euro per month, how people can live? This is very unjust. At this moment our country is very far from Europe.<sup>146</sup>

When asked about their perceptions of the general public’s attitude towards “persons with undetermined citizenship”, as well as their own sense of belonging, the responding inmates replied with statements like the following:

I feel it is my own responsibility to take all possible measures for learning Estonian language and the Estonian Constitution. However, it is also necessary to consider position of the Estonian state towards Russian speaking persons, which includes insults and political infringements, following from the historically complicated relationship between Estonia and Russia. This is a very big obstacle to integration. This is the fact. And it would be senseless to deny it. It has its imprint on the formation and relationship in the society.

I am 25 years old and I was born on the territory of Estonian SSR. This is not my fault that at that moment Estonian Republic did not have independence. But now I must pay for that. And there are many people like me. The situation with citizenship, for us “greys” is a very serious problem, but for the government it is a good opportunity to give promises before elections. Many of us “greys” have family members and friends who have citizenship of Estonia, and who give their voices in hope that the situation will improve, but after elections nothing changes, and the situation is forgotten until the next elections. But worst is that we “greys” have no chance to have any influence on the issue, as we are nobody here, regardless of the fact, that we were born and grew up here. In our passport it is stated just “alien.” The question is whose?

The realities of Estonian society have changed and at this moment there is no more real threat to Estonians as a people or to Estonia as a state. Twenty years have passed from the date that Estonia gained its independence and all real patriots of Russia, whom Estonian nationalists fear so much, have left the country a long time ago. Moreover, against the negative natural growth of the population, in most European countries liberalization/softening of migration policies is necessary in order to attract a labour force for economic growth. The qualified labour force is also not sufficient in our country. The psychological feeling of belonging to some country makes us feel patriotic. Patriots are not born but become one.

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<sup>146</sup> Quotations in this section of the report are drawn from the written responses to the questionnaires (originally in Russian). Translations from Russian into English have been made by the consultant. The grammatical structure as well as incomplete sentences in the original responses in Russian have been preserved, as far as possible, in the translation.

I simply do not understand what citizenship I could have, if I have been born on this soil and have lived here all my life, and all my relatives live here, why am I a **foreigner**? There are countries where there are two state languages and nobody is bothered about that. But the main point is not even that, but in the fact that in the majority of European countries, people who have lived on their territory for 20 years have an opportunity to receive a citizenship. In our country even people born here in Estonia – are **foreigners**. I personally feel very hurt and ashamed for the politics of the country where I live. (emphasis in the original)

I believe that the fact that one is born, educated, has lived in Estonia, has an official language proficiency certificate, are not the only important components for acquiring Estonian citizenship. **It is necessary: to know the Estonian culture, to live it; to have permanent place of employment.** (emphasis in the original)

It hurts, that those who, for reasons beyond their control, have been born on the territory of the Estonian Soviet Republic, have studied here, have worked already in the independent Estonia ... those, who know Estonia culture, because it long ago became their native [culture]... those, who permanently live in Estonia, but without permanent residence permit ... those, who have proficiency in the Estonian language – they need to fulfil lots of formalities to acquire citizenship. (emphasis is in the original)

### 2.3.5 Hopes and expectations for the future

Members of both the interviewee group and the questionnaire group (inmates) indicated that they see granting of the right to acquire citizenship by birth as a preferred solution to statelessness. They indicated they would like such a provision to apply retroactively to persons who were born in Estonia during the years it was incorporated into the USSR. In their opinion, it would be just and reasonable if all persons who were born in Estonia were provided with an automatic right, without further requirements, to acquire Estonia citizenship.

I believe that all people born in Estonia and who are living in Estonia should receive citizenship of Estonia. Alternatively, people who do not have citizenship, but who have permanent residence permit, must not have any difference in rights than citizens of Estonia, except participation in political life of the country.

Please give the possibility for stateless people to live, please give to those people born here citizenship!!! Citizenship is really necessary to live here as a human being (inmate questionnaire response).

Many of the interviewed “persons with undetermined citizenship” acknowledged their responsibility to learn Estonian and indeed interest in doing so. However, they also pointed to the need to improve the accessibility of quality language courses to all groups of society, including, for example, elderly and low-income persons. Specifically, they cited financial difficulties<sup>147</sup> (high costs, the limitations of the current system of reimbursement of language learning costs); inaccessibility of free language learning (courses are

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<sup>147</sup> According to the *Study of the Impact of Language Training Development Programmes 2013* (short version in English), “Since 95% of the language training compensation recipients feel the need for additional Estonian language training, then the need for compensation of training expenses is likely to remain high. Compensation recipients are of the opinion that the monetary aspect is very important, if not the most important factor that influences the desire of people whose native language is not Estonian to learn Estonian (e.g. it is necessary to provide free or more affordable language training, compensation of training expenses, financial support to language training, etc.).” The report is available at: <http://www.meis.ee/uuringud>.

available mainly in Tallinn, Tartu and Harju County);<sup>148</sup> institutional or structural difficulties (low paid jobs, long hours of work, income only sufficient to survive). Those among the interviewed who had attended language courses, but nonetheless failed the exam, talked about the quality of the courses as poor, including teachers not being sufficiently trained and poor quality teaching materials. Some of those interviewed also referred to a lack of courses for groups with specific needs, especially older people.

Section 4.3.3.1 below outlines the efforts made over the years by various government institutions to facilitate language learning through offering courses free of charge, and by reimbursing expenses for language training. In sum, the Government has implemented numerous measures to provide “persons with undetermined citizenship” with Estonian language lessons free of charge. For example, the Estonian Integration and Migration Foundation “Our People” has provided free language courses for unemployed and vulnerable third-country nationals and “persons with undetermined citizenship” since December 2012, and more than 1,500 individuals have taken part in free language courses through the MoC and the European Fund for the Integration of Third-Country Nationals as a part of the *Estonian Integration Programme 2008-2013*. Language courses have also been provided through the programmes *Language Studies Development 2007-2010* and *Language Studies Development 2010-2013*, and have been supported by the local government offices.

Considering the various avenues provided by the Government for obtaining language learning support, it nonetheless seems necessary to improve the target audience’s awareness about the existence of these language learning opportunities, in light of the responses by the interviewed “persons with undetermined citizenship”, summarized above.

Interviewees repeatedly expressed their feeling that Estonian society is divided along ethnic/linguistic lines, and that a concerted effort is necessary to bridge existing differences. Respondents expressed a belief that the current situation can be effectively addressed only by more active involvement of civil society organizations and international organizations, including the European Union, the Council of Europe, and the United Nations.

I consider it is unjust that people born in Estonia before 1991 do not have a right to automatic citizenship. Why? Am I guilty of the fact that I was born in that time? No, I am not guilty of that. It is why I consider that people like me should receive citizenship without any exams. But! The proficiency in the [Estonian] language and knowledge of the Constitution is very important. If a person considers Estonia as his/her home he/she must have knowledge of Estonia and Estonian laws. That is why this issue must be considered more broadly. It is necessary to open more Estonian language courses and courses on the Constitution. And the attitude of the Republic to the stateless persons should change for the better direction. (Inmate questionnaire response).

Current efforts and achievements of State institutions, as well as civil society actors, were evaluated in rather negative terms. Most of the consulted “persons with undetermined citizenship” had not turned to any organization for assistance, or were even aware of any civil society organization in Estonia dealing with the rights of “persons with undetermined citizenship”. This is noteworthy, as there are NGOs<sup>149</sup> in Estonia working on behalf of “persons with undetermined citizenship”.

In general, the consulted individuals expressed that they have faith in Europe. They expressed the belief that Europe could help improve the situation, and that the situation of statelessness is better elsewhere in Europe. In general, “persons with undetermined citizenship” indicated that they feel insecure and have a negative outlook for their future in Estonia. Many said they were disturbed by a general ignorance, if not denial, among the majority population in Estonia that “persons with undetermined citizenship” are part of

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<sup>148</sup> See information on the MISA website, available at: <http://www.meis.ee/tasuta-keeleope>.

<sup>149</sup> For example, the Legal Information Centre for Human Rights (LICHR), see more information at: [www.lichr.ee](http://www.lichr.ee).

Estonian society, and a lack of awareness of the fact that many of them were born in Estonia and have lived all their life in the country.

Everything worries me. The very existence in Estonia. I do not live here, I survive trying to get any kind of job possible (EL, 50 years old).

Persons with undetermined citizenship in Estonia have no future! (TG, 37 years old).

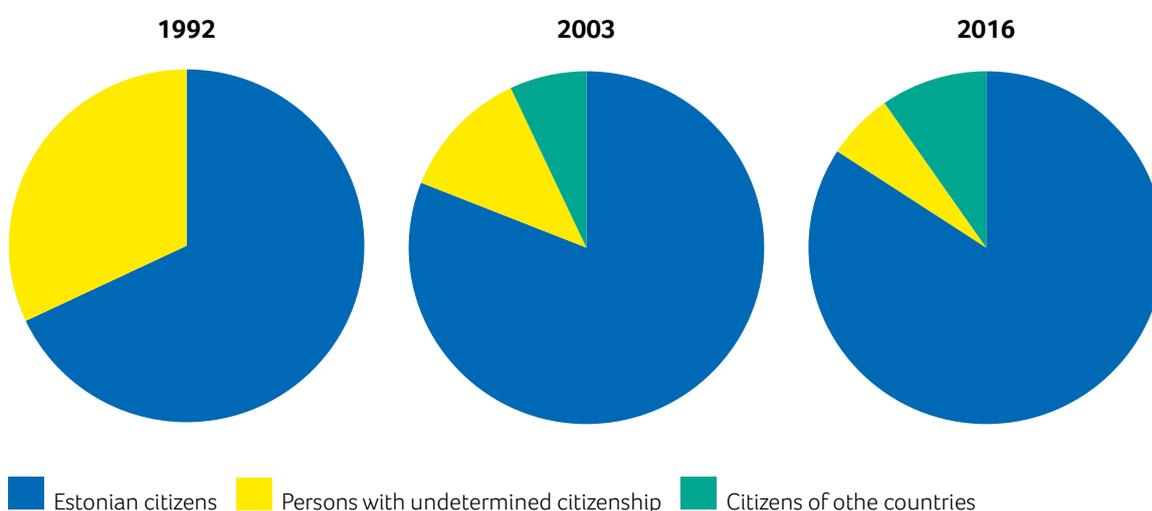
Persons with undetermined citizenship ... What is it? ... People of second sort? This way we are perceived by many! (SS, 56 years old).

## 2.4 Conclusions and recommendations

Statelessness in Estonia has arisen primarily against the backdrop of its re-establishment of independence from the USSR in 1991, and the dissolution of the latter. Almost one-third of the Estonian population did not acquire citizenship in 1992 and eventually became “persons with undetermined citizenship”. Currently, most of the legally residing “persons with undetermined citizenship” hold long-term residence permits in Estonia.

From 1992 to the end of 2015, a total of 158,918 persons had acquired Estonian citizenship through the various facets of the naturalization process. Overall, the number of “persons with undetermined citizenship” has been reduced from approximately 500,000 in 1992 to 82,561 by 31 December 2015 according to the Estonian Ministry of the Interior.<sup>150</sup>

**Table 32:** Population of Estonia in 1992, 2003, and 2015, by citizenship status



*Adopted from the Ministry of Foreign Affairs: Fact Sheet: Citizenship, January 2016*

Table 32 above illustrates well the significant reduction in the number of “persons with undetermined citizenship”, from 1992 when this group comprised nearly one-third of the total population, to 2003, when it comprised 12 per cent of the population, until the beginning of 2016 when “persons with undetermined citizenship” made up 6.1 percent of the total population of Estonia. Naturalizations make up around 49

<sup>150</sup> See *supra* fn. 49.

per cent of this reduction,<sup>151</sup> thanks to the commendable efforts made by the Government of Estonia to facilitate the naturalization of “persons with undetermined citizenship”, while other factors including deaths, emigration and acquisition of Russian citizenship account for the remaining decrease in the population with “undetermined citizenship”.

At the same time, the Government of Estonia has acknowledged that more efforts are needed to further reduce the number of “persons with undetermined citizenship”, and thus continues to encourage this population to apply for Estonian citizenship through disseminating information about the criteria and procedures, individual targeting of applicants for naturalization, and through offering free language courses. More information about these measures is contained in Section 4 below.

“Persons with undetermined citizenship” fall within the terms of the definition of a stateless person set out in Article 1 (1) of the 1954 Convention and in customary international law, as they are “not considered as a national by any State under the operation of its law”.

In addition to the category of legally residing “persons with undetermined citizenship”, UNHCR has been able to identify the following smaller categories of stateless persons, or potentially stateless persons, within the scope of this research:

- “recognized non-citizens” (some 2,080 individuals), who appear to have the same profile as the “persons with undetermined citizenship”, but are not legally residing in Estonia;<sup>152</sup>
- legally residing persons with “citizenship unknown” (some 271 individuals);<sup>153</sup>
- unlawfully residing “persons with unknown citizenship”, including “unreturnable” (some 825 individuals);<sup>154</sup>
- stateless beneficiaries of international protection (two individuals);
- stateless asylum-seekers (two individuals).

The only difference between the legally residing “persons with undetermined citizenship” and the unlawfully residing “recognized non-citizens”, who seem to encompass “persons with undetermined citizenship”, appears to be that the latter lack a legal permit for residing in Estonia; they therefore remain outside the scope of the administrative system, which captures only individuals with valid documents and a valid legal basis for residence. From an analysis of the available statistical data and past and present legal frameworks, it seems that these individuals lack legal residence permits because they never managed to regularize their stay during the window of opportunity in 1993–1995, or because they have failed to extend their temporary residence permit, or because they have lost their residence permit, for example through revocation.

While the majority of “persons with undetermined citizenship” are stateless *in situ*, the other categories of persons listed above arrived in Estonia after 1991, in a migratory context. In the case of “unreturnable” persons, the national legal framework provides very limited opportunities for their identification as stateless, and for the granting of corresponding rights. Due to the absence of a mechanism or procedure for determining if a person is stateless, it is not possible to say with certainty how many of the legally and the unlawfully residing “persons with unknown citizenship” meet the international law definition of a stateless person. It is also not clear how it has been concluded that the asylum-seekers and beneficiaries of international protection registered as stateless have been determined as such.

In general, the lack of clear definitions in the national legislation of a “stateless person”, a “person with undetermined citizenship”, and a “person with unknown citizenship” seems to lead to discrepancies between

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<sup>151</sup> See *supra* fn. 50, and Table 34.

<sup>152</sup> Data from Eurostat, see *supra* Tables 17 and 19, which define the “recognized non-citizen” as a person who is not a citizen of the reporting country nor of any other country, but who has established links to that country which include some but not all rights and obligations of full citizenship. See also fn. 130.

<sup>153</sup> Data from 2011 Census, see *supra* Table 5.

<sup>154</sup> Data from Eurostat, see *supra* Tables 17 and 19.

the various institutions' registration and recording of persons falling within these categories. Consequently, the statistics reported by the various institutions differ, which makes it difficult to get a precise overview of the stateless population and the background and profile of the persons concerned.

Available data indicates that the majority of the "persons with undetermined citizenship" as well as those with "citizenship unknown" were born in Estonia, while most of the others were born in territories that were part of the USSR. The average age of "persons with undetermined citizenship" is slightly higher than among Estonian citizens, while the distribution by sex reflects the distribution of the Estonian population in general, with 52 per cent males and 48 per cent females. Russian is the mother tongue of most "persons with undetermined citizenship", and the Estonian Integration Monitoring Report 2015 indicates that 29 per cent of "persons with undetermined citizenship" have no knowledge of Estonian at all, while 27 per cent understand the language but do not speak and another 30 per cent understand but speak only a little Estonian.

"Persons with undetermined citizenship" appear to be socio-economically disadvantaged compared to Estonian citizens, and at greater risk of poverty. The fact that a relatively low percentage of "persons with undetermined citizenship" have obtained higher education is probably one reason for the differences in income between Estonian citizens and "persons with undetermined citizenship"; data for 2013 suggests that the annual income of "persons with undetermined citizenship" was 73 per cent of that of Estonian citizens. Furthermore, data from 2014 suggests that the unemployment rate among "persons with undetermined citizenship" is 14.5 per cent, compared to 6.5 per cent among Estonian citizens. Finally, "persons with undetermined citizenship" have a considerably higher rate of incarceration compared to Estonian citizens.

The responses received from the questionnaires and interviews completed by the 15 "persons with undetermined citizenship", and from the responses by 126 incarcerated "persons with undetermined citizenship" largely reflect the same findings. Even though it should be stressed that the number of "persons with undetermined citizenship" consulted was not large enough, or scientifically representative, to draw broad-based conclusions, their responses do provide some insights into the thoughts and sentiments of individuals within this population. Many of those consulted expressed feelings of not "belonging" to the State and not being fully included in the social and political life of the country. In addition to actual socio-economic difficulties, the feeling of being regarded as an "alien", and not as a full-fledged member of the society despite having lived all their lives in Estonia, was notable. The absolute majority of those consulted expressed a wish to acquire Estonian citizenship; this corresponds with the findings of the Estonian Integration Monitoring Report 2015, which found that the majority (57 per cent) of "persons with undetermined citizenship" wanted to obtain Estonian citizenship.<sup>155</sup> At the same time, the Estonian Integration Monitoring Report 2015 noted that the majority of "persons with undetermined citizenship" see the inability to pass naturalization exams (58 per cent) and inability to learn Estonian at the level required by law (54 per cent) as the main obstacles for acquiring Estonian citizenship.<sup>156</sup> The ability to travel without a visa to Russia and other CIS countries was mentioned by the respondents as a secondary reason for remaining without Estonian citizenship.

This finding was confirmed by the 15 persons interviewed, who indicated difficulties in learning Estonian well enough to pass the exam, as the main reason for remaining stateless. Considering the generally low command of Estonian among the "persons with undetermined citizenship", and the high proportion of elderly people in this group, the inability to meet the requirements can indeed be regarded as an obstacle to obtaining citizenship.<sup>157</sup>

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<sup>155</sup> *Estonian Integration Monitoring Report 2015*, Chapter I (*Kodakondsus, poliitiline enesemäärang ja osalemine*), p. 8.

<sup>156</sup> *Ibid.*, p. 9.

<sup>157</sup> Summary of conclusions of the *Estonian Integration Monitoring Report 2015*, see section "Citizenship" (in English), available at: [http://www.kul.ee/sites/default/files/news-related-files/kokkuvote\\_eng.pdf](http://www.kul.ee/sites/default/files/news-related-files/kokkuvote_eng.pdf).

In response to the identified needs for support with learning Estonian, the Government has implemented numerous measures to provide “persons with undetermined citizenship” with Estonian language lessons free of charge, and reimburse costs for language lessons. However, there appears to be a need for a wider dissemination of information about the availability of free Estonian language courses through, *inter alia*, national and commercial TV channels, radio stations broadcasting in the Russian language, and newspapers. There may also be a need for additional programmes in this area, to ensure that all stateless persons who would like to naturalize, but currently are not able to pass the language exam, are offered the support they need in order to learn the Estonian language.

UNHCR would also recommend conducting a comprehensive profiling survey of the “persons with undetermined citizenship” in Estonia in order to thoroughly assess and analyse their individual reasons for remaining stateless to date, and what further support may be needed in order to facilitate their acquisition of citizenship. Such a survey could help increase the various stakeholders’ understanding of the different reasons why individuals and groups within this population have remained stateless, including due to difficulties learning the language or due to reasons of personal convenience, and consequently inform the design of a targeted citizenship campaign.

# 3. Determination of statelessness and rights attached to the status

## 3.1 Introduction

As noted in Section 1.1.2 above, statelessness can arise both in *in situ* and in migratory contexts. The profile of a stateless population in a particular country might fit neatly into one of these contexts or might be mixed. In the case of Estonia, it appears that the majority of stateless persons in the country, namely the “persons with undetermined citizenship”,<sup>158</sup> constitute an *in situ* stateless population. This is to say that “persons with undetermined citizenship” are stateless persons in their “own country.”<sup>159</sup> As the Handbook observes, “For these groups, determination procedures for purposes of obtaining status as stateless persons are not appropriate because of their long-established ties to these countries.”<sup>160</sup> Targeted nationality campaigns or nationality verification efforts are preferable in these circumstances.<sup>161</sup> The objective of such efforts is to resolve the statelessness situation through the grant of nationality. A number of States have undertaken such nationality campaigns with regard to longstanding stateless populations in their territory, in some cases with the assistance of UNHCR.<sup>162</sup>

In addition, there also appears to be a smaller number of persons recorded as having “unknown citizenship”, who might be stateless; a few of them may fall within the category of “unreturnable persons”, who have entered Estonia in a migratory context.

While ultimately, only the acquisition of a nationality will end a person’s statelessness, in situations where this is not yet possible, it is necessary to protect stateless persons. Statelessness determination procedures make it possible to efficiently identify those persons in a migratory context who are entitled to the protection regime of the 1954 Convention. The standards in the Convention and the practice of States Parties may prove helpful in devising and implementing procedures and legal frameworks to address statelessness, also in countries which are not yet party to the Convention. Indeed, many persons who meet the Article 1 (1)

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<sup>158</sup> This would include a group of unlawfully residing persons with a similar profile to those registered as legally residing “persons with undetermined citizenship”, recorded as “recognized non-citizens” by Eurostat.

<sup>159</sup> For a discussion of the term “own country” and the relevance of Article 12 (4) of the ICCPR to the 1954 Convention, see UNHCR, *Handbook on Protection of Stateless Persons*, paras 164-165 (noting that stateless persons in their “own country” include “individuals who are long-term, habitual residents of a State which is often their country of birth” and stating that their “profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society.” Noting also that “[t]he appropriate status for such individuals in their ‘own country’ is nationality of the State in question”), available at: <http://www.refworld.org/docid/53b676aa4.html>.

<sup>160</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 58, *supra* fn. 6.

<sup>161</sup> *Ibid.* See also UNHCR, *Action to Address Statelessness: A Strategy Note*, March 2010, para. 50, available at: <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html> (“[R]esources should not be dedicated to a formal determination of statelessness where a realistic, immediate goal is the acquisition, reacquisition or confirmation of nationality by such a population. This will usually be the case for those protracted situations in which an entire population has significant ties only with the State in which they are resident.”).

<sup>162</sup> *Ibid.*, para. 59.

definition of a stateless person reside in States not party to the 1954 Convention. Importantly, a number of non-contracting States have introduced determination procedures to address the situation of these individuals, given their commitments under international human rights law.<sup>163</sup>

For a statelessness determination procedure to be fair and efficient, a number of procedural safeguards must be taken into consideration. The procedure must be accessible for stateless persons,<sup>164</sup> including “unreturnable” persons in detention, which also entails an obligation to provide information about the availability of the procedure. During the procedure, applicants should be entitled to certain rights.<sup>165</sup> For example, they may not, in principle, be detained for reasons relating to their statelessness, and in situations where they are nevertheless detained, it must be a measure of last resort and the person may not be held with convicted criminals or individuals awaiting trial.<sup>166</sup> Moreover, pending the outcome of the procedure, the applicant may not be expelled from the State where the procedure is ongoing.<sup>167</sup>

The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, based on their degree of attachment to the State.<sup>168</sup> The 1954 Convention foresees that stateless persons who are “lawfully in” a State Party (in French “*se trouvant régulièrement*”), are entitled to, *inter alia*, protection from expulsion (Article 31).<sup>169</sup> For stateless persons to be “lawfully in” a State Party, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual. The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention, applicants for statelessness status who enter a determination procedure are therefore “lawfully in” the territory of a State Party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.<sup>170</sup>

A person whose status as a stateless person has been determined is entitled to a right of residence; even though this not explicitly set forth in the 1954 Convention, it follows from its object and purpose.<sup>171</sup>

Apart from the protections provided by the 1954 Convention, stateless persons are entitled to enjoy most of the rights contained in the international human rights instruments, as persons on the territory or subject to the jurisdiction of States Parties. In addition, numerous human rights instruments contain provisions specifically relating to nationality and statelessness.<sup>172</sup> For example, the CEDAW provides that States Parties shall grant women equal rights with men to acquire, change or retain their nationality, while the CRC and the ICCPR both provide for the right of every child to acquire a nationality.

The following sections discuss the existing administrative procedures in which statelessness may be identified in Estonia and the rights granted to stateless persons, comparing them to the standards set forth by the 1954 Convention, primarily.

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<sup>163</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 122.

<sup>164</sup> UNHCR *Handbook on Protection of Stateless Persons*, paras 68-70.

<sup>165</sup> *Ibid.*, paras 144-146.

<sup>166</sup> *Ibid.*, paras 112-115.

<sup>167</sup> *Ibid.*, paras 72 and 145.

<sup>168</sup> For a detailed discussion, see *Ibid.*, paras 132-139. See also *Ibid.*, paras 14 and 16 (on the status of a stateless person and attendant rights even prior to a formal determination of his or her statelessness).

<sup>169</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 134.

<sup>170</sup> *Ibid.*, para. 135.

<sup>171</sup> *Ibid.*, para. 147.

<sup>172</sup> For an overview, see UN High Commissioner for Refugees (UNHCR), *Extracts relating to nationality and statelessness from selected universal and regional human rights instruments*, November 2009, available at: <http://www.refworld.org/docid/4c29aec02.html>.

## 3.2 National legal framework

As highlighted in Section 2.1.2 above, there exists no legal definition of a stateless person, or of, for example, a “person with undetermined citizenship”, in any of the Estonian legal acts, though the administrative authorities use slightly different definitions in their work. The absence of a statutory definition of a stateless person and of a dedicated statelessness determination procedure under Estonian law, coupled with the fact that the administrative authorities use slightly different definitions of e.g. “persons with undetermined citizenship”, constrains the ability to effectively identify and protect stateless persons.

Nevertheless, identification of stateless persons in Estonia may still occur, for example during the application processes for identity documents, residence permits, citizenship, or asylum. Some of these procedures are immigration related, such as asylum, while others are directly related to the continued residence of “persons with undetermined citizenship” who find themselves in the country *in situ*.

The MoC has in this context expressed its view that the currently available procedures for determining citizenship (or lack of citizenship) are sufficient:

The majority of persons with undetermined citizenship residing in Estonia live in Estonia under a long-term residence permit, and all children born in Estonia automatically go through the citizenship identification procedure. Thus, the state has introduced all necessary measures for identifying persons with undetermined citizenship. Currently, there are no obstacles for determining the legal status of persons, including persons with undetermined citizenship, in Estonia.<sup>173</sup>

However, as will be elaborated below, the procedure referred to by the MoC only appears to target the legally residing “persons with undetermined citizenship” who approach the authorities for assistance with e.g. extension of residence permits. It is less clear how persons who find themselves in Estonia *in situ*, and who fit the profile of the “persons with undetermined citizenship”, but who never managed to regularize their stay in 1993-1995, or who have failed to have their residence extended, would be able to have their status determined and right of residence confirmed if they approached the authorities today. According to Eurostat, there seems to be around 2,000 unlawfully staying, “recognized non-citizens”, falling within this category in Estonia today.<sup>174</sup>

Statistics also show that there are both legally residing, and unlawfully staying persons with “unknown citizenship” in Estonia, of whom at least some are likely to be stateless. There is currently no legal framework for the determination of their status as stateless.<sup>175</sup>

Nonetheless, the legal basis for the procedures that do exist, in the context of which a person can be identified as stateless, is found in several different acts. The Aliens Act provides the bases for entry of aliens into Estonia, temporary stay, residence, and employment permits. The *Identity Documents Act* establishes the requirements and procedures for the issuance of identity and travel documents to Estonian citizens and aliens, including legally residing “persons with undetermined citizenship”. The AGIPA<sup>176</sup> establishes the procedures for applying for asylum. The *Administrative Procedure Act* governs administrative proceedings under the aforementioned acts, unless otherwise expressly provided for by those acts.<sup>177</sup> Applications for a right of residence are processed in accordance with the *Citizens of the European Union Act*. The removal or involuntary return of aliens, including stateless persons, from Estonia is regulated by the OLPEA.

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<sup>173</sup> Reply from the MoC, dated 10 October 2012, letter on file with the consultant.

<sup>174</sup> As indicated in Tables 17-19 of this report, Estonia was unable to effect the involuntary return of the majority of unlawfully residing “persons with undetermined citizenship”.

<sup>175</sup> As indicated in Tables 17-19 of this report, Estonia was able to return some, but not all of the unlawfully staying “persons with unknown citizenship”, possibly due to statelessness and no country’s readiness to accept these persons back.

<sup>176</sup> Välismaalasele rahvusvahelise kaitse andmise seadus, RT I, 2006, 2, 3, available at: <https://www.riigiteataja.ee/akt/VRKS>.

<sup>177</sup> Section 1 (2) of the Identity Documents Act and Section 12 (1) of the Aliens Act.

## 3.3. Statelessness determination procedure or other procedures in which statelessness is determined

While there exists no dedicated administrative procedure in which a person can be determined to be stateless, individuals can nonetheless be identified as stateless when their identity is being determined in the context of the asylum procedure, or in procedures for the application and extension of residence permits and identity and travel documents. These procedures will be described in the sub-sections below.

### 3.3.1 Competent authority

The PBGB is the national authority responsible for the determination of the legal status of all aliens, including “persons with undetermined citizenship” and stateless persons, who apply for a residence permit, alien’s passport, temporary travel document, identity card, residence permit card or asylum in Estonia.<sup>178</sup> The PBGB is also responsible for carrying out involuntary returns of persons found not to be in need of international protection, or who have no other legal grounds for staying or residing in Estonia.

The decision-making competence is divided between different structural units of the PBGB – the Migration Bureau of the Intelligence Management and Investigation Department and the four Regional Prefectures.

The Migration Bureau supervises the activities of the deportation centre, the Citizenship and Documentation Division and the Aliens Division. The Citizenship and Documentation Division processes applications for naturalization and is responsible for granting, extending and revoking different types of identification or travel documents. The Aliens Division has taken over functions from the previous International Protection Division and is responsible, *inter alia*, for the examination of asylum applications lodged inside the territory, and for the issuance of residence and work permits for all aliens, including “persons with undetermined citizenship”, asylum-seekers and beneficiaries of international protection.

The Regional Prefectures are responsible for registering applications for residence permits or identification or travel documents, as well as asylum applications lodged in the border areas or at border-crossing points, including of applicants transferred to Estonia under the *Dublin III Regulation*.<sup>179</sup> The border guard officials of the Regional Prefectures are also authorized to reject asylum applications lodged at the border.

### 3.3.2 Procedural aspects

#### 3.3.2.1 INITIATION OF THE PROCEEDINGS

##### *a) Procedure for the acquisition or renewal of residence permits, identity documents and alien’s passports*

In the case of “persons with undetermined citizenship”, as was mentioned in Section 2.1.1 of this report, their initial identification took place in the mid-1990s. At that time, Estonia, faced with the necessity of providing identity and travel documents to former USSR citizens who did not have a right to automatically acquire

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<sup>178</sup> Section 1 (2) of the Police and Border Guard Board Act provides: “The police is an institution of executive power within the area of government of the Ministry of the Interior and the main functions thereof are protection of public order, organisation of matters of border management, and organisation of matters in the area of citizenship and migration.” (Official English translation of the law, available at: <https://www.riigiteataja.ee/en/eli/515042015002/consolide>).

<sup>179</sup> European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L 180/31-180/59; 29.6.2013, (EU) No 604/2013, available at: <http://www.refworld.org/docid/51d298f04.html>.

Estonian citizenship, began issuing alien's passports to these individuals. Since that initial identification period, no other special mechanisms for identifying "persons with undetermined citizenship" have been implemented. To obtain an alien's passport at that time, a former USSR citizen residing in Estonia had first to apply for a temporary residence permit. After receiving the permit, the person had to submit proof that he or she did not hold a travel document of a foreign State, and that it was not possible to receive such a travel document. Until January 2016<sup>180</sup> children born to lawfully residing "persons with undetermined citizenship" inherited this status when they applied for a residence permit and an identification document.

From 1996 until the present, lawfully residing "persons with undetermined citizenship" have to reapply every five years<sup>181</sup> for a new alien's passport. Documents required for (re-) applying include<sup>182</sup>:

- an application for identity documents;
- an identity document;
- a colour photo sized 40x50 mm; and
- a document certifying the payment of the state fee.

While applying for a new alien's passport, the lawfully residing "person with undetermined citizenship" has to certify in the application form that he or she does not possess a travel document of a foreign state, and that he or she is unable to obtain such a document.<sup>183</sup>

During the course of this research, UNHCR has not been able to establish what procedure would be used today to determine if a person, having the same profile as a legally residing "person with undetermined citizenship", but who lacks a temporary residence permit (e.g. because he or she did not obtain one in the mid-1990s or has failed to extend the permit) would be recognized as a "person with undetermined citizenship", and obtain a residence permit and alien's passport.

### *b) Asylum procedure*

Persons arriving in Estonia to seek asylum will have their application for international protection determined by the Aliens Division of the PBGB. Within this process, the applicant's identity will be established. In this context, asylum applicants who are stateless can be identified. Nine stateless persons and one person with unknown citizenship sought asylum in Estonia during the years 2007 to 2014.

### *c) Removal procedure*

The lack of citizenship can be also established at the stage of involuntary removal of an individual from Estonia. According to Section 2 (1) of the OLPEA, any alien (including a "person with undetermined citizenship") must have a legal basis for stay or residence in Estonia. In case an alien fails to meet this requirement, he or she is subject to the involuntary removal procedure. Identification of statelessness as part of the removal procedure will be undertaken when the individual involved explicitly states that he or she has no citizenship or is stateless.<sup>184</sup> In the case of a "person with undetermined citizenship", involuntary removal may be undertaken when such a person either failed to obtain legal residence in the mid-1990s, or lost his or her residence permit.

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<sup>180</sup> Since 1 January 2016, children born to lawfully residing "persons with undetermined citizenship" become Estonian citizens automatically at birth by naturalization. For details, see Section 4 of the present report.

<sup>181</sup> Section 28 (1) of the Identity Documents Act provides that an alien's passport can be issued with a period of validity of up to five years, and the period of validity shall not exceed the period of validity of the residence permit issued or the right of residence granted to the alien.

<sup>182</sup> The procedure for applying for an alien's passport is stipulated by the Decree of the Minister of the Interior No 77 from 18 December 2015, RT I, 22.12.2015, 44 (*Isikutunnistuse, elamisloakaardi, digitaalse isikutunnistuse, Eesti kodaniku passi, meremehe teenistusraamatu, välismaalase passi, ajutise reisidokumendi, pagulase reisidokumendi või meresõidutunnistuse väljaandmise taotlemisel esitatavate tõendite ja andmete loetelu ning väljaandmise tähtsajad*).

<sup>183</sup> *Ibid.*, para. 30.

<sup>184</sup> The PBGB replies to UNHCR, dated 29 September 2010 and 14 November 2011.

### 3.3.2.2 QUESTIONS OF PROOF

In general, the identification of a person's statelessness is done on the basis of available documents and statements provided by the individual/applicant, who initiates a procedure of applying for a residence permit, passport or asylum.

In Estonian administrative procedures, the responsible administrative authority can require applicants for a particular permit or document to provide information and evidence which is known to them and on the basis of which the administrative authority establishes the facts relevant for adjudication of the matter.<sup>185</sup> Section 38 (3) of the Administrative Procedure Act foresees as a general rule that "a participant in proceedings is required to present evidence to an administrative authority and notify it of facts which are known to him or her and are relevant to the proceedings." Upon failure by an applicant to perform this duty, the administrative authority may refuse to review the application and refuse to register the application (for a residence permit or identification document).

In the cases at hand, applicants shall present a passport or other valid travel document to the PBGB in order to identify themselves and initiate the relevant procedure. If no such document is available, the PBGB will register the applicant's citizenship in accordance with the information given by the applicant.<sup>186</sup> Therefore, the applicant will be considered as a person of unknown or undetermined citizenship by the PBGB unless it is proved otherwise. Currently, such an approach is equally applicable in all Estonian administrative procedures related to the acquisition of a residence permit, identification and travel document or when applying for asylum.

The burden of proof required by proceedings related to the acquisition of residence permits is governed by the Aliens Act. Section 19 (1) of the Aliens Act provides that aliens and other persons concerned are required to prove relevant facts for "the granting, possession, extension and revocation of the legal basis for the temporary stay, residence and employment in Estonia of an alien in the proceedings concerning the organisation of the entry into Estonia, temporary stay, residence and employment in Estonia and the departure from Estonia." An alien has the "obligation to provide written and oral explanations and the obligation to submit evidence."<sup>187</sup>

UNHCR was not able to establish in detail how the requirements relating to the burden and standard of proof are applied in practice, though it seems that the PBGB applies the "preponderance of evidence" (more likely than not) standard of proof. The PBGB determines the individual's status on the basis of information and documents provided by the applicant. If necessary, the PBGB sends requests to other State or municipal agencies.<sup>188</sup> If the PBGB does not have evidence to the contrary, the applicant will be accorded a treatment as if he or she is a stateless person or "person with undetermined citizenship."

In the asylum procedure, the burden of proof for establishing the identity of the individual is shared between the asylum-seeker and the PBGB.<sup>189</sup>

On the basis of the information submitted by the PBGB or municipal agency, the person's status, including his or her citizenship status, is entered into the Population Register,<sup>190</sup> which is the centralized database that includes information on citizenship, place of residence, and personal identity code.<sup>191</sup>

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<sup>185</sup> Section 38 (1) of the Administrative Procedure Act. Available in English at: <https://www.goo.gl/huullO>.

<sup>186</sup> Information provided by the PBGB to UNHCR, see *supra* fn. 184.

<sup>187</sup> Section 19 (2) of the Aliens Act.

<sup>188</sup> *Ibid.*

<sup>189</sup> Section 13<sup>2</sup> of the AGIPA.

<sup>190</sup> Section 22 (2) of the Population Register Act.

<sup>191</sup> Information included in the Population Register is stipulated by Section 21 of the Population Register Act.

### 3.3.2.3 ACCESS TO COURTS

Articles 9 and 15 of the Estonian Constitution guarantee all persons in Estonia whose rights and freedoms may have been violated the right of access to court.

Since Estonia has no formal statelessness determination procedure and no formally recognized status of “stateless person”, with rights attached to that status, there is no mechanism by which an individual who has been wrongly identified as a national of a given State can appeal against such a decision to a court. Therefore, individuals who have not been identified or registered as stateless in the context of the existing administrative procedures (application for residence permits, identification documents, asylum etc) may try to address the issue of their citizenship status in the context of appealing against an outcome of their application process.

The Aliens Act expressly provides for the right of an alien to appeal, to an administrative court, against an administrative decision concerning residence permits, whether relating to an extension, a revocation, or a refusal to review an application or relating to the rejection of an application for an identification document, including an alien’s passport<sup>192</sup>. As a rule, a complaint to the administrative court must be submitted within 10 days of the date of notification of the decision. The procedure for submitting a complaint is regulated by the Administrative Procedure Act.

Hence, an individual can appeal to the administrative court against a decision or action of the PBGB on refusing to register his or her application for a temporary residence permit, and then raise the issue of statelessness. Similarly, a lawfully residing “person with undetermined citizenship” has a right to appeal to the court against a decision denying issuance of an alien’s passport. However, during the scope of this research, UNHCR has not come across any such cases and would therefore recommend that further research into this question be considered.

Nevertheless, the lack of any citizenship has been repeatedly discussed by Estonian courts in the context of the removal procedure.<sup>193</sup>

Access to legal aid and the eligibility criteria are governed by the *State Legal Aid Act*. Citizenship is not a prerequisite for the submission of an application for free legal aid. For an individual to receive legal aid, it must be requested from an Estonian court, and this aid must be necessary for the protection of the rights of the person requesting legal aid.<sup>194</sup>

In the context of appeals against an order to leave the territory, expulsion, or the prohibition of entry, the provisions for legal aid are more detailed, as set out in OLPEA.

Thus, as a general rule, aliens (including “unreturnable” and irregular migrants), “persons with undetermined citizenship”, and any persons who might be considered stateless have the right to free legal aid from the State.

The State Legal Aid Act, importantly, establishes a language requirement that applies to all applications for free legal aid. The Act requires that an application for state free legal aid must be submitted in Estonian. Only if the applicant is a citizen or permanent resident of another EU Member State, may the application be made in English.<sup>195</sup> Given the low levels of Estonian language proficiency among “persons with undetermined citizenship” noted above, the language requirement could hinder their access to such free legal aid. This is likely to be the case also for stateless persons who have arrived in Estonia in a migratory context.

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<sup>192</sup> Section 222 of the Aliens Act.

<sup>193</sup> See for example, judgments of the Estonian Supreme Court nr 3-3-1-53-06 from 09 May 2006 and nr 3-3-1-53-06 from 16 October 2006.

<sup>194</sup> Section 4 (2) of the State Legal Aid Act (*Riigi õigusabi seadus*), RT I 2004, 56, 403, available in English at: <https://goo.gl/pPP0pZ>.

<sup>195</sup> *Ibid.*, Section 12 (5) states that “An application for state legal aid shall be submitted in Estonian. An application may also be submitted in English if legal aid is applied for by a natural person who has residence in another Member State of the European Union, is a citizen of another EU Member State, or is a legal person whose seat is in another Member State of the European Union. An application submitted to the court in any other language shall be returned to the applicant.”

## 3.4 Rights of applicants and recognized stateless persons

### 3.4.1 Rights of applicants during the legal status determination procedure

Parties to the 1954 Convention have agreed to grant stateless persons the core set of rights therein; these are complemented by applicable standards of international human rights law. These rights are extended to an individual based on the degree of attachment to the State. The 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons and others dependent on the precise legal status of the individual.<sup>196</sup> Some provisions depend on whether the person is “lawfully in,”<sup>197</sup> “lawfully staying in,”<sup>198</sup> or “habitually resident” in a territory.<sup>199</sup> Other provisions, however, are applicable to any individual concerned who is either subject to the jurisdiction of a State Party or present in its territory.

Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State Party include personal status (Article 12), property (Article 13), access to courts (Article 16 (1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a State Party’s territory are freedom of religion (Article 4) and the right to identity papers (Article 27).<sup>200</sup>

Applicants for statelessness status who enter into a determination procedure are considered to be “lawfully in” the territory of a State Party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.<sup>201</sup>

The 1954 Convention foresees that stateless persons who are “lawfully in” a State Party are entitled to an additional set of rights, including the right to engage in self-employment (Article 18), freedom of movement within a State (Article 26) and protection from expulsion (Article 31).<sup>202</sup>

As noted above, Estonia is not Party to the 1954 Convention, and has not established a statelessness determination procedure under Estonian law or practice. Consequently, there are no rights specific to persons who might be stateless or who are actively seeking a determination of statelessness. However, stateless asylum-seekers and stateless persons (including “persons with undetermined citizenship”) seeking a residence permit and/or identity or travel document are entitled to the rights granted to

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<sup>196</sup> For a detailed discussion, see UNHCR *Handbook on Protection of Stateless Persons*, paras 132–139. See also *ibid.*, paras 14 and 16 (on the status of a stateless person even prior to a formal determination of his or her statelessness).

<sup>197</sup> For a discussion of the “lawfully in” rights, see UNHCR *Handbook on Protection of Stateless Persons*, para. 134.

<sup>198</sup> See UNHCR *Handbook on Protection of Stateless Persons*, para. 137, noting, “The ‘lawfully staying’ requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorized by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category. It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be ‘lawfully staying.’ Individuals recognized as stateless following a determination procedure but to whom no residence permit has been issued will generally be ‘lawfully staying’ in a State party by virtue of the length of time already spent in the country awaiting a determination.” See also Laura van Waas, *Nationality Matters: Statelessness under International Law*, Intersentia, 2008, pp. 325–327.

<sup>199</sup> For a comprehensive discussion on the proper interpretation of these terms, see UNHCR *Handbook on Protection of Stateless Persons*, paras 147–152, (*inter alia*, making specific recommendations as to the granting of a residence permit; noting that the recognition of an individual as stateless “triggers the ‘lawfully staying’ rights”; discussing “habitual residence”), paras 136–139 (discussing the “lawfully staying” rights as well as “habitually resident” provisions).

<sup>200</sup> *Ibid.*, para. 133.

<sup>201</sup> *Ibid.*, para. 135.

<sup>202</sup> *Ibid.*, para. 134.

applicants generally within these respective administrative procedures. In other words, stateless asylum-seekers are entitled to the same rights as asylum-seekers with a known nationality. A legally staying “person with undetermined citizenship” who holds a temporary residence permit is permitted to continue residing in Estonia during the examination of his or her application for an extension of the permit and enjoys the rights it provides.<sup>203</sup>

If a person has a legal basis to stay in Estonia, that individual enjoys the rights provided by that status. For example, a stateless person who has been recognized as a refugee enjoys refugee status and the rights associated with that status.

More problematic are situations in which a stateless person’s residence permit (which will always have been granted on another ground than the person’s statelessness) has expired, or been cancelled or revoked, or when the individual has never had any lawful residence in Estonia. There is no provision under Estonian law that affords a person a right to reside on the ground of his or her statelessness. This also includes “persons with undetermined citizenship”. Instead, the same bases for lawful residence that apply to third-country nationals apply to persons who are or might be stateless.<sup>204</sup> Staying in Estonia without a legal basis is prohibited by law.<sup>205</sup> For persons who are out of legal residence status, the mere submission of an application for lawful residence does not constitute a legal basis for residence,<sup>206</sup> nor does it relieve the applicant of his or her duty to leave Estonia.<sup>207</sup> A failure to leave voluntarily may lead to immigration detention as well as other penalties.<sup>208</sup>

### 3.4.1.1 DETENTION

Under international law, there is a prohibition on the detention of stateless persons on the ground of their statelessness. Article 9 of the ICCPR guarantees the right to liberty and security of person, and prohibits unlawful as well as arbitrary detention. For detention to be lawful, it must be regulated by domestic law, preferably with maximum limits set on such detention, and subject to periodic and judicial review. For detention not to be arbitrary, it must be necessary in each individual case, reasonable in all the circumstances, proportionate and non-discriminatory. Indefinite as well as mandatory forms of detention are arbitrary *per se*.<sup>209</sup>

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<sup>203</sup> Section 130 of the Aliens Act.

<sup>204</sup> The legal grounds for stay or residence in Estonia are provided in Sections 43 and 230 of the Aliens Act, see in English at: <https://www.riigiteataja.ee/en/eli/525062015011/consolide>.

<sup>205</sup> Section 2 of the OLPEA.

<sup>206</sup> Except if a person applies for international protection in Estonia or, as mentioned above, if the individual is a “person with undetermined citizenship” who applies for an extension of his or her residence permit, pursuant to Section 130 of the Aliens Act.

<sup>207</sup> Section 47 of the Aliens Act.

<sup>208</sup> Section 298 of the Aliens Act provides: The stay in Estonia of an alien without a legal basis is punishable by a fine of up to 300 fine units or detention.

<sup>209</sup> See the UN Human Rights Committee’s decisions in *van Alpen v. Netherlands*, Communication No. 305/1988, 23 July 1990, <http://www.refworld.org/docid/525414304.html> para. 5.8; *A v Australia*, CCPR/C/59/D/560/1993, 30 April 1997, <http://www.refworld.org/docid/3ae6b71a0.html>, para. 9.4; and *Danyal Shafiq v Australia*, CCPR/C/88/D/1324/2004, 13 November 2006, <http://www.refworld.org/docid/47975af921.html> para. 7.3. In the context of refugees, UNHCR Executive Committee Conclusion 44 (VII) of 1986 on detention of refugees and asylum-seekers, available at: <http://www.refworld.org/docid/3ae68c43c0.html>, states that detention of asylum-seekers should normally be avoided but if necessary should only occur on grounds prescribed by law in order to determine the identity of the individual; in order to obtain the basic facts of the case; where an individual has purposely destroyed documentation or presented fraudulent documentation in order to mislead the authorities; and/or where there are national security or public order concerns. See also UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.unhcr.org/505b10ee9.html>.

Hence, routine detention of persons seeking protection on the ground of their statelessness is considered arbitrary detention.<sup>210</sup> Where such persons are detained, it must be a measure of last resort, and such persons shall not be held with convicted criminals or individuals awaiting trial.<sup>211</sup>

Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for the detention of such persons.

Article 20 of the Estonian Constitution guarantees freedom from arbitrary deprivation of liberty. The Constitution states: “No one shall be deprived of his or her liberty except and pursuant to a procedure provided by law.” However, the Constitution provides an exception to the deprivation of liberty where it is necessary “to prevent illegal settlement in Estonia and to expel a person from Estonia or to extradite a person to a foreign state.”<sup>212</sup> The Aliens Act further provides that the stay of an alien in Estonia without a legal basis is punishable, *inter alia*, by immigration detention.<sup>213</sup> The provisions of the Penal Code and the Code of Misdemeanour Procedure also apply in cases of unlawful stay.<sup>214</sup>

An alien is required to leave Estonia if the basis for his or her stay has expired and is not extended, and if he or she has no other basis for stay.<sup>215</sup> Failure to comply with the obligation to leave is a ground for the detention and expulsion of an alien from Estonia.<sup>216</sup> If it is not possible to forcibly return such an alien, he or she is to be placed in a detention centre until the expulsion can be executed. Detention of an alien must be authorized by an administrative court and is to be for an initial term of no longer than two months.<sup>217</sup> However, the period of detention in the deportation centre may be extended by an administrative court every two months, with the total period not to exceed 18 months.<sup>218</sup> A person subject to an order to leave may be detained in police custody, rather than at the detention centre, for up to 30 days. The conditions for the execution of detention specified in the Imprisonment Act apply to detention in police detention houses.<sup>219</sup> If an expulsion order has not been executed within 18 months, the detained person must be released.<sup>220</sup> However, release from the detention centre does not grant a legal basis for stay in Estonia. Such an alien’s stay in Estonia remains unlawful until he or she obtains a legal basis for the stay in Estonia, pursuant to the Aliens Act, the AGIPA or the Citizen of the European Union Act.<sup>221</sup>

In view of the fact that aliens who lack a legal basis for stay in Estonia are required to leave the country, and can be subject to involuntary return, at the same time as there exists no procedure for determining if e.g. an “unreturnable” person is in fact stateless and entitled to a status and residence, there is a risk that persons who are stateless are exposed to prolonged detention; this risk is particularly high given the fact that stateless persons often lack identity documents and/or legal residence in a former country of habitual residence, which consequently refuses to take them back. Although there are some procedural safeguards

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<sup>210</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 112 (citing, *inter alia*, the UN Working Group on Arbitrary Detention, *Report to the Human Rights Council, A/HRC/13/30*, 18 January 2010).

<sup>211</sup> *Ibid.*, paras 112-115.

<sup>212</sup> Article 20 (6) of the Constitution of the Republic of Estonia.

<sup>213</sup> Section 298 of the Aliens Act.

<sup>214</sup> *Ibid.*, Section 307.

<sup>215</sup> Section 3 (2) of the OLPEA.

<sup>216</sup> *Ibid.*, Section 7<sup>3</sup> (2).

<sup>217</sup> Section 23 of the OLPEA.

<sup>218</sup> *Ibid.*, Section 25.

<sup>219</sup> *Ibid.*, Section 23.

<sup>220</sup> *Ibid.*, Section 24 (1’).

<sup>221</sup> *Ibid.*, Section 24 (5).

under Estonian law, the practical effect of an individual's inability to have his or her situation as stateless determined is that such individuals are at risk of arbitrary detention.

Similarly, there is a risk that unlawfully residing "persons with undetermined citizenship" may be subjected to arbitrary detention. Estonian courts have addressed the issue of detention of "persons with undetermined citizenship" (in the context of immigration removal proceedings) on a number of occasions. In its judgment from 9 May 2006, the Estonian Supreme Court concluded that:

The lawfulness of the detention of a person with undetermined citizenship who has been residing in Estonia for a long time as well as its conformity with (the principle of) human dignity is problematic because it may lead to a situation when the detention centre will accommodate a person with regard to whom it is clear that s/he cannot be deported at all because there is no State which has a duty to receive him or her.<sup>222</sup>

### 3.4.1.2 EXPULSION

Article 31 of the 1954 Convention provides certain guarantees against the expulsion of a stateless person from a territory. Article 31(1) provides, "The Contracting States shall not expel a stateless person lawfully in their territories save on grounds of national security or public order."<sup>223</sup> Moreover, other international human rights instruments are relevant to the expulsion of stateless persons from a territory.<sup>224</sup> Like other provisions of the 1954 Convention, Article 31 must be read in light of UNHCR's interpretations of the "lawfully staying" and related provisions, discussed above.

The expulsion of a stateless person or a third country national is regulated by the OLPEA. As a general rule, expulsion is to be completed within 48 hours after an alien is detained.<sup>225</sup> Under certain circumstances provided by law, expulsion is prohibited,<sup>226</sup> not applied<sup>227</sup> or may be suspended.<sup>228</sup> A person has a right to appeal against an expulsion order according to the *Code of Administrative Court Procedure*, but the appeal does not postpone the enforcement of expulsion.<sup>229</sup>

The PBGB and the Security Police have concurrent jurisdiction to issue an "order to leave Estonia" to an alien who, according to the determination of the PBGB, is staying in Estonia without a legal basis.<sup>230</sup> The order imposes on the alien an obligation to leave Estonia and sets the period for voluntary compliance with the obligation to leave. The order to leave informs the alien about potential penalties in case of non-compliance. It also informs the alien that non-compliance will lead to enforcement measures by the State. To ensure compliance with the obligation to leave, the State sometimes imposes surveillance measures, which will be noted in the order if applicable.<sup>231</sup>

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<sup>222</sup> Administrative case no. 3-3-1-6-06, p. 28.

<sup>223</sup> See also Article 31 (2) (providing, *inter alia*, that expulsion "shall be only in pursuance of a decision reached in accordance with due process of law") and Article 31 (3) requiring that a "stateless person [be allowed] a reasonable period within which to seek legal admission into another country."

<sup>224</sup> See, e.g., UNHCR, *Handbook on Protection of Stateless Persons*, noting that "protection against expulsion for persons 'lawfully in' the territory is confined under Article 13 of the ICCPR to procedural safeguards, whereas Article 31 of the 1954 Convention also limits the substantive grounds on which expulsion can be justified."

<sup>225</sup> Section 18 of the OLPEA.

<sup>226</sup> *Ibid.*, Section 17<sup>1</sup>.

<sup>227</sup> *Ibid.*, Section 14 (4).

<sup>228</sup> *Ibid.*, Section 14 (5).

<sup>229</sup> *Ibid.*, Section 16.

<sup>230</sup> *Ibid.*, Section 7 (1); the procedure for issuing an order to leave is provided in Sections 11 and 12.

<sup>231</sup> *Ibid.*, Section 10.

An appeal against a refusal to extend the period of voluntary leave, or an order prohibiting re-entry, does not carry suspensive effect. Such an individual remains under an obligation to leave Estonia.<sup>232</sup>

The voluntary period for compliance with the order to leave is between seven and 30 days<sup>233</sup> and may be extended for another 30 days<sup>234</sup> or shortened.<sup>235</sup> An order to leave will be immediately enforced in the following situations:

- if necessary to ensure public order and national security;
- if necessary for the prevention, investigation and detection of crimes and bringing suspects to justice;
- if the order to leave was imposed on an alien on the basis of unlawful *entry* into Estonia;
- if a ban on entry has been applied to the alien;
- if a decision to refuse admission into the country pursuant to subsection 28 (1) 2 of the OLPEA has been issued to this alien;
- if a ban on entry is imposed at the border check point on an alien leaving Estonia whose permitted period of stay in the territory of another member state of the Schengen Convention has expired;
- if the alien has been conditionally released or released on parole and has no residence permit or the right of residence;
- if there is doubt that the alien may escape or in any other manner evade compliance with the order to leave;
- if an alien has been refused a residence permit or international protection because the application for a residence permit or international protection is obviously unjustified; or
- if, during the proceedings, the alien has submitted false information or falsified documents about the circumstances relevant in the proceedings.<sup>236</sup>

Upon the expiration of the period of voluntary departure, the PBGB has the authority to enforce the order to leave. This can be achieved by means of detention or expulsion of the person from Estonia.<sup>237</sup> To ensure compliance with the order to leave, the PBGB may require an alien to comply with the surveillance measures or pay a penalty.<sup>238</sup> An alien has a right to appeal against these decisions to the administrative court.<sup>239</sup> The appeal must be lodged within 10 days as of the date of notification, according to the procedure provided by the Code of Administrative Court Procedure.<sup>240</sup>

If immediate enforcement of the order to leave is manifestly unreasonable or manifestly disproportionate, the alien under an order to leave is given a period for voluntary compliance. This can happen, for example, where an alien is refused a residence permit or international protection.

A special enforcement mechanism called an “order to legalize,” is applied to aliens who are of Estonian origin or who had settled in Estonia before 1 July 1990, have not left Estonia to reside in another country, and whose continued stay in Estonia does not damage the interest of the Estonian State.<sup>241</sup> An “order to legalize” imposes an obligation on a person to apply for a temporary residence permit; however, the “order” does not entitle a person to receive a residence permit. If the person fails to initiate a “legalization procedure” (for

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<sup>232</sup> *Ibid.*, Section 7<sup>2</sup> (7).

<sup>233</sup> *Ibid.*, Section 7<sup>2</sup> (4).

<sup>234</sup> *Ibid.*, Section 7<sup>2</sup> (5).

<sup>235</sup> *Ibid.*, Section 7<sup>2</sup> (6).

<sup>236</sup> *Ibid.*, Section 7<sup>2</sup> (2).

<sup>237</sup> *Ibid.*, Section 7<sup>3</sup> (1) and (2).

<sup>238</sup> *Ibid.*, Section 10 (1) and (2).

<sup>239</sup> *Ibid.*, Section 13 (3).

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*, Items 2 and 3 of Section 9 (1).

example if the person concerned does not appear at the PBGB office and lodge an application for a residence permit, or fails to submit the necessary documentation or pay the fee for examination of a residence permit application), the PBGB may impose a fine of up to 640 euros.<sup>242</sup>

Interestingly, despite the fact that the OLPEA provides for the issuance of an “order to legalize” to aliens of Estonian origin or persons who had settled in Estonia before 1990 (which may thus include *in situ*, unlawfully residing “persons with undetermined citizenship”), the Aliens Act does not contain any specific grounds for issuing a residence permit to these categories of persons. It is therefore unclear on what legal basis such individuals should fulfil their “duty to legalize”, since this implies a duty to submit an application for a residence permit pursuant to the Aliens Act. However, none of the grounds listed in Section 118 of the Aliens Act<sup>243</sup> address this particular situation, of an alien of Estonian origin, or a person who had settled in Estonia prior to 1 July 1990. It should be noted, however, that there was a special provision in the early version (between 1993 – 1997) of the Aliens Act (Section 20), which entitled persons who had settled in Estonia prior to 1 July 1990 to acquire temporary residence and work permits.

Similar considerations as those relating to the risk of arbitrary detention of “persons with undetermined citizenship” have been pronounced by the Estonian Supreme Court in regard to the involuntary removal of unlawfully residing “persons with undetermined citizenship”. For example, in its judgment from 16 October 2006, the Supreme Court concluded that

...from the point of securing the freedom of liberty and human dignity, it is necessary to consider the prospects of deportation of an individual already at the stage of processing an application for a residence permit and in case of rejecting the application – to provide arguments concerning the prospects of deportation of such an individual. If it becomes evident that the deportation is not feasible and the person cannot be deported, then it is necessary to legalize the stay of such a person in Estonia on the basis of a residence permit...<sup>244</sup>

The Tallinn Administrative Court has also concluded that “...if the Citizenship and Migration Board [now PBGB] will be unable to identify a country which would accept a deportee who is a person with undetermined citizenship, then it should consider ... the granting a temporary residence permit for legalization of his stay in Estonia.”<sup>245</sup>

### 3.4.2 Rights of persons recognized as stateless

As mentioned above, the 1954 Convention guarantees rights to stateless persons on a gradual, conditional scale, with some protections applicable to all stateless persons, and others dependent on the legal status or stay of the individual. Individuals recognized as stateless following a determination procedure, but to whom no residence permit has been issued, will generally be “lawfully staying” in a State Party by virtue of the length of time already spent in the country awaiting a determination. However, the “lawfully staying” requirement need not take the form of permanent residence. Stateless persons who have been granted a residence permit, including a temporary permission to stay for more than a few months, would fall within this category.<sup>246</sup>

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<sup>242</sup> *Ibid.*, Section 9 (2).

<sup>243</sup> See further Section 3.4.2.1, which lists the grounds in Section 118 of the Aliens Act.

<sup>244</sup> Administrative case no. 3-3-1-53-06, p. 13.

<sup>245</sup> Administrative case no. 3-06-2303 from 18 July 2007.

<sup>246</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 137.

The “lawfully staying” rights in the 1954 Convention include the right of association (Article 15), right to work (Article 17), practice of liberal professions (Article 19), access to public housing (Article 21), right to public relief (Article 23), labour and social security rights (Article 24), and travel documents (Article 28). In addition, “lawfully staying” stateless persons are of course entitled to the rights afforded to individuals subject to the jurisdiction of a State Party and stateless persons “lawfully in” a State Party (see Section 3.3.1 above).

A final set of rights foreseen by the 1954 Convention are those to be accorded to stateless persons who are “habitually resident” or “residing” in a State Party. The condition that a stateless person be “habitually resident” or “residing” indicates that the person resides in a State Party on an on-going and stable basis. “Habitual residence” is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of continuing residence there. The rights accruing to those who are “habitually resident” are protection of artistic rights and intellectual property (Article 14) and rights pertaining to access to the courts, including legal assistance and assistance in posting bond or paying security for legal costs (Article 16(2)).<sup>247</sup>

Additionally, the vast majority of human rights apply to all persons irrespective of nationality or immigration status, including to stateless persons. Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status. International human rights law thus supplements the protection regime set out in the 1954 Convention. Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.<sup>248</sup>

In Estonia, the status and rights of a stateless person are determined based on whether an individual has an immigration or legal residence status in Estonia, and, if so, by the type of legal status (a visa, residence permit, international agreement, etc.). In general, aliens holding a long-term resident (permanent) residence permit also have rights provided for in Chapter III of the EU Directive 2003/109/EU concerning the status of third-country nationals who are long-term residents.<sup>249</sup> These rights are not, however, available to those “persons with undetermined citizenship” and persons with unknown citizenship “who have settled in Estonia before 1 July 1990 and who have factually resided and reside in Estonia and have not left to reside in another state and whose residence in Estonia does not pose a threat to the interests of the Estonian state”.<sup>250</sup>

The analysis below provides an overview of selected rights of stateless persons against the standards of the 1954 Convention and relevant international human rights instruments.

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<sup>247</sup> *Ibid.*, paras 138–139.

<sup>248</sup> *Ibid.*, paras 140–141.

<sup>249</sup> European Union: *Council of the European Union, Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who are Long-Term Residents*, 23 January 2004, OJ L. 16-44; 23. 1. 2004, 2003/109/EC, pp. 44–53, available at: <http://www.refworld.org/docid/4156e6bd4.html>.

<sup>250</sup> Pursuant to Item 3 of Section 231 (2) of the Aliens Act (in force since 01 January 2016).

### 3.4.2.1 THE RIGHT OF RESIDENCE

As noted elsewhere in this report,

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 treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.<sup>251</sup>

It is therefore recommended that States grant persons recognized as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interest of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.<sup>252</sup>

In certain limited circumstances, a State might have discretion to provide a residence status that is more transitional in nature, where the person in question is able to acquire or reacquire a different nationality through a simple, rapid, and non-discretionary procedure that is a mere formality or where the person enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.<sup>253</sup>

Following from the lack of a statelessness determination procedure in Estonia and of a status as stateless, there exists no right of residence on the basis of being a stateless person.

Stateless individuals who are granted international protection as refugees or beneficiaries of subsidiary protection are entitled to the residence permits attached to the respective status. The UNHCR *Handbook on Protection of Stateless Persons* emphasizes that,

When an applicant raises both a refugee and a statelessness claim, it is important that each claim is assessed and that both types of status are explicitly recognised. This is because protection under the 1951 Refugee Convention generally gives rise to a greater set of rights at the national level than that under the 1954 Convention.<sup>254</sup>

With the exception of stateless asylum-seekers and refugees, all other stateless persons, including “persons with undetermined citizenship”, are subject to the immigration rules provided by the Aliens Act. The Aliens Act provides detailed procedures for the application, extension, and revocation of residence permits, as well as work permits for aliens, except EU citizens and their family members whose legal status is regulated by the Citizen of the European Union Act.<sup>255</sup> Unlike citizens of Estonia, legally residing “persons with undetermined citizenship” have no right of residence *ex lege* in Estonia.<sup>256</sup>

Pursuant to Section 3 of the Aliens Act, an “alien” is a person who is not a citizen of Estonia, and thus the term encompasses both citizens of foreign countries and stateless persons. As indicated in Table 2 in Section 2.1.2 above, MISA’s definition of an alien includes citizens of foreign countries, stateless persons,

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<sup>251</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 147. For a comprehensive discussion of the right to reside and related rights, see also paras 148-157.

<sup>252</sup> *Ibid.*, para. 148.

<sup>253</sup> *Ibid.*, para. 154. For more detail, see *ibid.*, paras 153-157.

<sup>254</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 78.

<sup>255</sup> *Euroopa Liidu kodaniku seadus*, RT I 2006, 26, 191, available in English at: <https://www.riigiteataja.ee/en/eli/529062015003/consolide>.

<sup>256</sup> As mentioned earlier in Section 2.1.1 of this report, persons meeting the definition of “persons with undetermined citizenship” were eligible to receive a temporary residence permit under special circumstances during the years 1993-1997.

and persons whose citizenship is undetermined. All such aliens may lodge an application for a temporary residence permit pursuant to the standard legal grounds for immigration into Estonia, set out in Section 118 of the Aliens Act as follows:

- to settle with a spouse;
- to settle with a close relative;
- for study;
- for employment;
- for enterprise;
- for participation in criminal proceedings;
- in case of substantial national interest;
- on the basis of an international treaty;
- for settling permanently in Estonia.

It should be noted that aliens, including “persons with undetermined citizenship”, who hold a temporary residence permit and who settled in Estonia before 1 July 1990, are entitled to exemptions when applying for a long-term residence permit compared to any other lawfully residing alien who arrived to Estonia after this date.<sup>257</sup>

Under the Aliens Act, any type of residence permit issued to an alien, including a “person with undetermined citizenship,” may be revoked under certain conditions. Such conditions include if an individual represents a threat to national security or public order, or if he or she has committed a serious crime and his or her criminal record has not expired.

In UNHCR’s view, it is problematic that the *in situ* stateless population, comprising the “persons with undetermined citizenship”, do not have an *ex lege* right of residence. As mentioned earlier, the situation of such groups of stateless persons is most appropriately resolved through the granting of nationality, through facilitated naturalization procedures or tailor-made solutions. The UNHCR *Handbook on Protection of Stateless Persons* provides that, if such individuals are, instead, expected to seek protection through a statelessness determination procedure, the status awarded on recognition shall include, at the very least, permanent residence with facilitated access to nationality.<sup>258</sup> In the absence of a specific solution for the “persons with undetermined citizenship”, or pending their naturalization, UNHCR recommends that this *in situ* stateless population be granted an *ex lege* right of residence. Specifically, UNHCR recommends that both the currently legally residing “persons with undetermined citizenship”, as well as those who have the same profile but who failed to regularize their stay in the mid-1990s, or who failed to have their residence permit extended (referred to as “recognized non-citizens” without a legal right to stay in Estonia in Eurostat statistics), be granted an *ex lege* right of residence and not be subject to the same requirements as “aliens” in Estonia.

In regard to stateless persons who have come to Estonia in a migratory context after its re-establishment of independence, including “unreturnable” persons, UNHCR recommends that they be given access to a statelessness determination procedure, which should result in the granting of a residence permit to those recognized.<sup>259</sup>

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<sup>257</sup> See Section 232 (5) of the Aliens Act, which provides that some conditions for issuance of a long-term residence permit are not applicable with regard to aliens “who have settled in Estonia before 1 July 1990 and who have factually resided in Estonia and have not left to reside in another state and whose residence in Estonia does not pose a threat to the interests of the Estonian state”.

<sup>258</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 165.

<sup>259</sup> The situation of “unreturnable aliens” has been recently raised by Tallinn City Council in their letter to the Estonian Ministry of the Interior. According to this municipal authority, the Government of Estonia shall identify a durable solution for resolving the social problems of those individuals who are issued with a removal order but who cannot be returned to their country of origin. See *The detention centre in Harku releases “legal irregulars”*. (Harku kinnipidamiskeskusest jõuavad tänavale «legaalsed illegaalid»). Postimees, 21 April 2016. Available at: <http://goo.gl/rYr8PK>.

### 3.4.2.2 THE RIGHT TO WORK

As noted above, stateless persons who are “lawfully in” a State Party are entitled to engage in self-employment (Article 18), while “lawfully staying” stateless persons should also enjoy the right to work (Article 17), practice of a liberal profession (Article 19), and labour and social security rights (Article 24).

Article 17 provides in its entirety:

#### Wage-earning employment

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances,<sup>260</sup> as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Although the Convention does not define the term “wage-earning employment,” it should be interpreted in the broadest sense of the term.<sup>261</sup>

International human rights law also contains provisions regarding the right to work, in particular Article 6 (1) of the ICESCR which provides for “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” The rights in the ICESCR and ICCPR apply to everyone, including non-nationals such as refugees, asylum-seekers, stateless persons and migrant workers, regardless of legal status and documentation,<sup>262</sup> though some distinctions against non-citizens or discrimination based on nationality would be permissible if the discrimination is based upon objective and reasonable justifications.<sup>263</sup>

Under Estonian law, the grounds for obtaining a work permit are enumerated in the Aliens Act. Pursuant to the Aliens Act, lawfully staying stateless persons, including “persons with undetermined citizenship” and persons with “unknown citizenship” who hold a residence permit, have the same right to work as aliens generally in the same circumstances. While this is in principle in line with Article 17 of the 1954 Convention, UNHCR recommends that *in situ* populations be granted nationality with the rights that follow, and not be treated similarly to “aliens” in a country.

Stateless asylum-seekers may also be granted the right to work in Estonia under certain conditions. Refugees who are stateless will have the same right to work as all other refugees, pursuant to Section 45 of the AGIPA.

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<sup>260</sup> Article 6, the term “in the same circumstances” provides:

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

<sup>261</sup> Nehemiah Robinson, *Convention Relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary*, World Jewish Congress, 1955 (hereafter *Robinson Commentary to the 1954 Convention*), p. 62.

<sup>262</sup> UN Committee on Economic, Social and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, at para. 30, available at: <http://www.refworld.org/docid/4a60961f2.html>.

<sup>263</sup> See UN Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html>, paragraph 13. See also Executive Summary and paragraph 23 of UN Sub-Commission on the Promotion and Protection of Human Rights, *rights of non-citizens; Final report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283, Addendum, Examples of practices in regard to non-citizens*, 26 May 2003, E/CN.4/Sub.2/2003/23/Add.3, available at: <http://www.refworld.org/docid/3f461536c.html>.

Persons who fit the profile of “persons with undetermined citizenship”, but who do not have a residence permit in Estonia, will not enjoy the right to work, as this right is linked to the possession of a residence permit, rather than to their situation as stateless.

In the absence of a statelessness determination procedure resulting in the granting of a residence permit, stateless persons who have arrived to Estonia in a migratory context, including “unreturnable” stateless persons, will not be able to access the right to work.

Conditions of employment are regulated by the *Employment Contract Act*. Section 3 of the Employment Contract Act provides that an employer must ensure the protection of employees against discrimination on, *inter alia*, ethnic grounds. The *Equal Treatment Act* of 2009 also provides protection against discrimination, harassment and incitement to discrimination, based on, *inter alia*, national origin or ethnic origin, in the conditions for access to employment, entry into employment contracts, access to vocational training, or membership or involvement in employers’ or employees’ organizations. Importantly, however, the Equal Treatment Act does not prohibit discrimination based on citizenship.<sup>264</sup>

According to the *Civil Service Act*,<sup>265</sup> legally residing “persons with undetermined citizenship” and legally residing persons with “unknown citizenship” cannot be employed in civil service posts at the governmental institutions in Estonia.<sup>266</sup> This includes, *inter alia*, judges, public prosecutors, members of the Bar Association, prison and rescue officers, police and border guard officials, Foreign Service officials, sworn notaries etc. It still remains unclear how many civil service posts in total are inaccessible for legally residing “persons with undetermined citizenship” and persons with “unknown citizenship”, but this fact indicates that there are important differences in the ability to obtain wage-earning employment between these categories of *in situ* stateless persons and citizens of Estonia.

Additionally, the Language Act requires that public servants and employees of state agencies and local government authorities, as well as employees of legal persons in public law and agencies thereof, members of legal persons in public law, notaries, bailiffs, sworn translators and the employees of their bureaux shall be able to understand and use Estonian at the level which is necessary to perform their service or employment duties.<sup>267</sup> The requirement of Estonian language proficiency also applies to employees of private companies, non-profit associations and foundations, as well as sole proprietors, as well as the members of the board of non-profit associations with compulsory membership.<sup>268</sup> The requirements for proficiency in and use of the Estonian language for officials, employees and sole proprietors are established by the Government of Estonia.<sup>269</sup> This regulation governs the requirements for proficiency in and use of Estonian in accordance with the character of the work and the situation of the use of language at work or in the position.

As illustrated by Table 11 in Section 2.2.2 above, the level of knowledge of Estonian is relatively poor among the “persons with undetermined citizenship”, which is likely to hamper their access to the labour market. It should be noted, however, that the Estonian language requirements are equally applicable to all individuals seeking access to the labour market, including citizens of Estonia and non-stateless aliens. Nonetheless, the CERD has recommended Estonia to ensure that language requirements in relation to employment

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<sup>264</sup> Discrimination on the basis of citizenship or language may be challenged on the ground that such discrimination violates the prohibition of discrimination on the basis of membership in a particular ethnic group.

<sup>265</sup> *Avaliku teenistuse seadus*, RT I, 06.07.2012, 1.

<sup>266</sup> See Section 14 of the Civil Service Act.

<sup>267</sup> Section 23 (1) of the Language Act.

<sup>268</sup> Section 23 (2) of the Language Act provides: The requirement for employees of companies, non-profit associations and foundations and for sole proprietors, as well as the members of the board of non-profit associations with compulsory membership to be proficient in Estonian to the level that is necessary to perform their employment duties shall be applied if it is justified in the public interest.

<sup>269</sup> Regulation of the Government of Estonia No 84 from 20 June 2011 “Requirements for proficiency in and use of Estonian by public officials, employees and sole proprietors” (*Ametniku, töötaja ning füüsilisest isikust ettevõtja eesti keele oskuse ja kasutamise nõuded*), RT I, 27.06.2011, 1.

are based on reasonable and objective criteria, and are linked to the needs for the performance of each individual job.<sup>270</sup>

### 3.4.2.3 THE RIGHT TO PUBLIC RELIEF

Article 23 of the 1954 Convention provides: “The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.” It is thus identical in wording to Article 23 of the 1951 Refugee Convention. When the Ad Hoc Committee for the 1951 Refugee Convention drafted this article, the Committee expressed its understanding that refugees should not be required to meet any conditions of local residence or affiliation which might be required of citizens. Therefore, a similar understanding should apply to stateless persons.<sup>271</sup>

The right to social security set forth in Article 24 is also a “lawfully staying” right. Like Article 23, Article 24 requires that States treat stateless persons “lawfully staying” in the territory in the same manner in which nationals are treated with respect to certain labour and social security provisions, as detailed in Article 24.

In terms of the content of “public relief and assistance”, the commentary on the 1951 Refugee Convention indicates that it “includes hospital treatment, emergency relief, relief for the blind and also the unemployed, where social security benefits are not applicable.”<sup>272</sup>

Under Estonian law, access to public healthcare, welfare and disability benefits as well as the right to social assistance and pensions is provided equally to Estonian citizens and persons residing in Estonia legally (on the basis of a temporary or long-term resident residence permit). Thus, the extension of public relief and assistance, including social assistance, to legally residing “persons with undetermined citizenship” or legally residing persons with “unknown citizenship” is in line with Articles 23 and 24 (1b) of the 1954 Convention.

### 3.4.2.4 IDENTIFICATION AND TRAVEL DOCUMENTS

Article 27 of the 1954 Convention provides in its entirety: “The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.” Therefore, identity papers should be granted to all stateless persons physically present in the territory of the State and irrespective of their right to reside. These “identity papers” can be temporary or final, and the issuance of an identity paper does not result in an obligation on the State to keep the stateless person within its borders.<sup>273</sup> Compared to “travel documents” referred to in Article 28 of the 1954 Convention, “identity papers” act as a “certificate of identity” or “domestic passport” showing the identity of the stateless person, they are not for journeys abroad.<sup>274</sup>

Under Estonian law, only legally and permanently residing stateless persons (at least 183 days during a year) have the right to an identification document (*a residence permit card*).<sup>275</sup> The Identity Documents Act further requires all legally residing aliens, including stateless persons, to possess a residence permit card starting from the time of registration of their birth in Estonia.<sup>276</sup> The Identity Documents Act also regulates identity

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<sup>270</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth and eleventh periodic reports of Estonia*, 29 August 2014, CERD/C/EST/CO/10-11, see para. 10. Available at: <http://goo.gl/BBy1Ov>.

<sup>271</sup> *Robinson Commentary to the 1954 Convention*, paras 43-44.

<sup>272</sup> UNHCR, *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, 1990, para. 125. Available at: <http://www.refworld.org/docid/53e1dd114.html>.

<sup>273</sup> *Robinson Commentary to the 1954 Convention*, para. 50.

<sup>274</sup> *Ibid.*

<sup>275</sup> Identity Documents Act, Sections 6 (2) and 34<sup>1</sup> (1).

<sup>276</sup> *Ibid.*, Section 6 (3).

document requirements for aliens staying temporarily in Estonia.<sup>277</sup> Citizens of Estonia and EU citizens residing permanently in Estonia are required to possess an *identity card* starting from the age of 15 years.<sup>278</sup>

Asylum-seekers, including those who are stateless, have the right to receive an “identity paper” issued to applicants for international protection in Estonia, pursuant to the AGIPA.<sup>279</sup>

Hence, only stateless asylum-seekers and legally residing<sup>280</sup> stateless persons in Estonia are entitled to receive an identification document, within the meaning of Article 27 in the 1954 Convention. Other stateless persons in the territory of Estonia are, under the current legislation, not entitled to an identification document in Estonia. This is not in compliance with the 1954 Convention requirements.

Article 28 provides in its entirety:

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

In Estonia, the PBGB is charged with issuing all identity documents, including passports for Estonian citizens, identity cards, alien’s passports, residence cards, digital IDs, certificates of records of service on Estonian ships and seaman’s discharge books, travel documents for refugees, as well as temporary travel documents.<sup>281</sup>

“Persons with undetermined citizenship” and “persons with unknown citizenship” who hold an Estonian residence permit, may apply for an alien’s passport, which can be used both as an identity and travel document. An applicant for an alien’s passport must, however, prove that he or she does not hold a travel document of a foreign State and that it is not possible to receive such a travel document.<sup>282</sup> The term of validity of an alien’s passport must not exceed the period of validity of the residence permit. The maximum term of validity is five years.<sup>283</sup>

Estonia’s issuance of alien’s passports to legally residing stateless persons is thus in compliance with Article 28 of the 1954 Convention.

An Estonian-issued alien’s passport does not grant the holder a right to protection by a foreign mission of Estonia, unless otherwise provided by law or an international agreement.<sup>284</sup> According to the *Consular Act*, Estonian foreign representations shall provide consular services and consular assistance to aliens legally residing in Estonia who have been issued Estonian alien’s passports.<sup>285</sup> Thus, legally residing “persons with

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<sup>277</sup> *Ibid.*, Section 7 (1).

<sup>278</sup> *Ibid.*, Sections 5 and 6 (1).

<sup>279</sup> Section 51 (1) of the AGIPA provides that the Police and Border Guard Board shall issue to an applicant, within three days as of the submission of an application for international protection, a certificate of an applicant for international protection, which certifies that the alien is applying for international protection in Estonia.

<sup>280</sup> For more details, please see Section 2.2.2.2 of the present report concerning unlawfully residing persons with undetermined or unknown citizenship.

<sup>281</sup> Section 2 of the Identity Documents Act.

<sup>282</sup> Section 27 of the Identity Documents Act.

<sup>283</sup> Section 28 (1) of the Identity Documents Act.

<sup>284</sup> Section 26 (2) of the Identity Documents Act.

<sup>285</sup> See Section 1 (1) in conjunction with Section 1 (2) of the Consular Act.

undetermined citizenship” or “persons with unknown citizenship” who find themselves in a temporary emergency situation as a result of an accident, illness, crime or other circumstances should be entitled to consular assistance.<sup>286</sup>

According to information provided by the MFA, there is no statistical data available on requests for consular assistance by persons holding Estonian alien’s passports, as they are treated equally according to the Consular Act.<sup>287</sup> For persons requesting documents from a consulate relating to re-entry, there are two types of such documents: the “certificate of return” for citizens and the “permit of return” for aliens. In 2011, 549 certificates of return and 64 permits of return were issued.<sup>288</sup> According to the MFA,

denial of consular assistance can occur, but no difference is made between citizens and aliens. It can occur only in cases when a person is not in distress and his/her expectations for help exceed the limits foreseen in the Estonian Consular Act. For example, consular assistance cannot be provided in case of absence of financial means by the family members or relatives.<sup>289</sup>

## 3.5 Conclusions and recommendations

There exists no statelessness determination procedure in Estonia leading to the grant of a status as stateless. Likewise, under Estonian legislation, persons who are stateless pursuant to the customary law and 1954 Convention definition do not enjoy any rights solely on account of being stateless.

Nonetheless, statelessness may be identified in the context of establishing an applicant’s identity within other administrative procedures, including those related to immigration and asylum, or to the application and extension of residence permits and identification and travel documents for “persons with undetermined citizenship”. However, given the absence of a definition of a “stateless person” in national law, and a formal procedure for determining if an individual fulfils this definition, there may be persons in Estonia who are stateless even though they have not been identified and registered as such. This can include persons who have come to Estonia in a migratory context but lack a legal basis for residence, and find themselves in an “unreturnable” situation, possibly in detention. Some of the unlawfully residing persons with “unknown citizenship” reported by Eurostat could be stateless, albeit not (yet) identified as such. In this regard, the research has not identified any specific procedural standards, safeguards or guidelines/instructions pertaining to the identification and registration of persons as stateless within existing immigration or residence-related procedures. Consequently, and judging from a comparison of the statistics published by the MFA, MoC, MoI and the PBGB, there seem to be some discrepancies in these governmental authorities reporting on stateless populations, including legally residing “person with undetermined citizenship” or legally residing “person with unknown citizenship”, unlawfully residing “persons with undetermined citizenship” or “recognized non-citizens” and in regard to unlawfully residing person with “unknown citizenship” (including “unreturnable” persons).

In view of the above, UNHCR recommends the Government of Estonia to accede to the 1954 Convention and incorporate its definition of a “stateless person” into the national legislation. UNHCR further recommends Estonia to establish a statelessness determination procedure, which shall, in case of a positive outcome, result in the granting of a legal status as a stateless person, and in the granting of a residence permit and a specific set of rights in line with the 1954 Convention and related standards in the human rights instruments. All potentially stateless persons within the Estonian territory, including “unreturnable” persons, must have

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<sup>286</sup> *Ibid.*, Section 52 (1) and (2).

<sup>287</sup> Information provided by the MFA, dated 10 October 2012, letter on file with the consultant.

<sup>288</sup> *Ibid.* In addition to assistance in cases of document loss, consular assistance was rendered in 182 cases of detention, 83 cases of death, 74 cases of financial help and 45 health cases. These figures comprise both citizens and aliens.

<sup>289</sup> *Ibid.*

access to the statelessness determination procedures, regardless of whether they have lawful stay in the country or not.

The UNHCR *Handbook on Protection of Stateless Persons* provides guidance to States as to the form and procedural safeguards of statelessness determination procedures, including in regard to the burden and standard of proof. The *Handbook on Protection of Stateless Persons* notes that States may establish such procedures within the framework of already existing asylum or immigration procedures, by building on the competence and experience that already exists in regard to establishing a person's identity and nationality or the lack of it.<sup>290</sup> Thus, in order to build on the competence and experience already existing, UNHCR recommends considering ways of expanding the role of the relevant department within the PBGB, to also assume a responsibility for the determination of statelessness.

In regard to the *in situ* stateless population in Estonia – the “persons with undetermined citizenship” – UNHCR would, however, not recommend that they be determined as stateless in a statelessness determination procedure. As worded in the UNHCR *Handbook on Protection of Stateless Persons*,<sup>291</sup>

Some stateless populations in a non-migratory context remain in their “own country” and may be referred to as *in situ* populations. For these groups, determination procedures for the purpose of obtaining status as stateless persons are not appropriate because of their long-established ties to these countries. Based on existing international standards and State practice in the area of reduction of statelessness, such ties include long-term habitual residence or residence at the time of State succession. Depending on the circumstances of the populations under consideration, States might be advised to undertake targeted nationality campaigns or nationality verification efforts rather than statelessness determination procedures.

Hence, UNHCR's recommendation concerning the establishment of a statelessness determination procedure should be viewed separately from the recommendations relating to durable solutions for the “persons with undetermined citizenship” contained in Section 4 of this report.

In regard to the rights enjoyed, this research finds that stateless persons with applications being processed in immigration or residence-related administrative procedures have access to the same rights as all applicants within these procedures, rather than any specific rights on account of them being, or potentially being, stateless. UNHCR therefore recommends that persons who would be seeking a determination of their status as stateless within an established procedure, be granted the rights in the 1954 Convention that apply to all stateless persons subject to the jurisdiction of a State Party as well as the rights that apply to persons “lawfully in” the territory of a State Party. UNHCR also recommends that a review be undertaken of the relevant legal acts and practice to ensure that persons having the profile of “persons with undetermined citizenship”, but who lack a residence permit, are not put at a risk of detention and/or expulsion due to the absence of a provision in national law which protects persons seeking protection on account of their statelessness.

Today, persons who have been registered as stateless (though in other terms) in Estonia do not enjoy any specific rights on account of their statelessness, but have access to the rights pertaining to their immigration and residency status in Estonia. For example, stateless refugees will enjoy the rights granted to refugees generally.

“Persons with undetermined citizenship” who hold a temporary, or a long-term resident residence permit, are considered “aliens” under national law, and entitled to the rights associated with the residence permit they hold. This research did not encompass an in-depth analysis of the extent to which the legally residing

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<sup>290</sup> UNHCR, *Handbook on Protection of Stateless Persons*, paras 64–66.

<sup>291</sup> *Ibid.*, para. 58.

“persons with undetermined citizenship” enjoy all of the rights set out in the 1954 Convention, and to what extent the rights they enjoy differ from those of citizens.<sup>292</sup>

Nonetheless, in regard to the rights analysed, it can be concluded that the majority of the legally residing “persons with undetermined citizenship” hold long-term resident residence permits, while those holding temporary residence permits need to renew these every five years. Both types of residence permits can be revoked under certain circumstances, for example if the person has committed a serious crime. While the UNHCR *Handbook on Protection of Stateless Persons* recommends that States grant persons recognized as stateless residence permits valid for at least two, but preferably five years, to ensure a degree of stability, UNHCR wishes to note that the *in situ* stateless population should not be considered in the same manner as stateless persons who have more recently arrived in the country in a migratory context. Instead, in view of their strong ties to Estonia, which can be considered their “own country”, UNHCR would recommend granting the “persons with undetermined citizenship” an *ex lege* right of residence, pending their acquisition of citizenship.

In regard to the right to work, the legally residing “persons with undetermined citizenship” enjoy the same rights as aliens generally in the same circumstances, as prescribed by the 1954 Convention. Compared to citizens however, they cannot be employed as civil servants in governmental institutions, including as judges, public prosecutors, members of the Bar Association, prison and rescue officers, police and border guard officials, Foreign Service officials and sworn notaries. In practice, requirements relating to proficiency in the Estonian language also bar some “persons with undetermined citizenship” from seeking certain jobs, given this population’s relatively poor command of Estonian.

Commendably, Estonian law grants citizens and aliens residing on the basis of a temporary or long-term resident residence permit, including as “persons with undetermined citizenship”, the same rights to public healthcare, welfare, disability benefits, social assistance and pensions, as required by the 1954 Convention.

Legally and permanently residing “persons with undetermined citizenship” are entitled to an identity document (residence permit card), while unlawfully residing “persons with undetermined citizenship” or with “unknown citizenship” (some of whom may be stateless) are not entitled to identity documents, even though they are in the territory of Estonia. This practice is thus not fully in compliance with the 1954 Convention.

Legally residing “persons with undetermined citizenship” are entitled to an alien’s passport, provided they do not possess a travel document of another State and are unable to obtain such. Even though the alien’s passport is not issued on the basis of the 1954 Convention, it does provide its holders with a document for travel abroad.

In addition, there are certain differences in regard to political<sup>293</sup> rights enjoyed by Estonian citizens compared to legally residing “persons with undetermined citizenship”.

Hence, while the rights accorded to legally residing “persons with undetermined citizenship” generally meet or exceed the standards of the 1954 Convention, they differ in some areas to those accorded to citizens. At the same time, the rights of unlawfully residing “persons with undetermined citizenship”, as well as of those stateless persons who have arrived in Estonia in a migratory context, fall short of the 1954 Convention standards in several aspects. UNHCR would therefore recommend that Estonia considers undertaking a more thorough review to assess what changes would need to be made to the national legal framework in order to ensure that all stateless persons under the jurisdiction of Estonia enjoy the rights they are entitled to under relevant international law.

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<sup>292</sup> For an overview and analysis of the differences between citizens and stateless persons in Estonia, see, for example, Vadim Poleshchuk (ed.) *Chance to Survive: Minority Rights in Estonia and Latvia*, Foundation for Historical Outlook: Tallinn, 2009.

<sup>293</sup> OSCE/ODIHR, Final Report *Estonia: Parliamentary elections, 1 March 2015*, Warsaw, ODIHR.GAL/31/15, 26 May 2015, p. 12.

# 4. Reduction and prevention of statelessness

## 4.1 Introduction

The 1961 Convention is the leading international instrument that provides rules for the conferral and withdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights, which recognizes that “everyone has the right to a nationality.”

By adopting the 1961 Convention safeguards that prevent statelessness, States contribute to the reduction of statelessness over time. The Convention seeks to balance the rights of individuals with the interests of States by establishing general rules for the prevention of statelessness, while simultaneously allowing some exceptions to those rules.

A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to persons born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. States must also ensure that foundlings and persons born stateless on a ship or aircraft acquire a nationality. The UNHCR Guidelines on Statelessness No. 4<sup>294</sup> provide interpretative legal guidance on the application of these articles in the 1961 Convention.

The Convention further seeks to prevent statelessness later in life by prohibiting the withdrawal of citizenship from a State’s nationals – either through loss, renunciation, or deprivation of nationality – when doing so would result in statelessness. Only under a few limited exceptional circumstances does the Convention allow for the withdrawal of nationality resulting in statelessness. The 1961 Convention further seeks to prevent statelessness upon a change in civil status. This is complemented by Article 9 of CEDAW, which grants women equal rights with men to acquire, change, or retain nationality, in particular in the context of marriage.

The safeguards of the 1961 Convention are triggered only where statelessness would otherwise arise and for individuals who have a link with the Contracting State.

The provisions of the 1961 Convention must be read and interpreted in light of developments in international law, in particular international human rights law. Relevant instruments include the ICCPR, CEDAW, and the CRC, which is of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children. Article 7 of the CRC sets out that every child has the right to acquire a nationality. The drafters of the CRC saw a clear link between this right and the 1961 Convention and therefore specified in Article 7(2) of the CRC that “States Parties shall ensure the implementation of

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<sup>294</sup> See *supra* fn. 22.

these rights 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.”<sup>295</sup>

In addition to the 1961 Convention, the 1954 Convention includes provisions relating to the reduction of statelessness, based on the understanding that the ultimate solution for stateless persons is the acquisition of a nationality. Namely, Article 32 of the 1954 Convention provides, “The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. 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.” Article 34 of the 1951 Refugee Convention<sup>296</sup> similarly obliges States Parties to facilitate the naturalization of refugees, including those who are stateless; “in particular, costs should be reduced and the naturalization procedures expedited.”

Article 34 of the 1951 Refugee Convention and Article 32 of the 1954 Convention together encourage other, non-specified measures to facilitate naturalization. These might include easing the conditions for naturalization, for example by reducing the period of residence required or by not requiring proof of release from a former nationality.<sup>297</sup> The aim of these provisions was expressed by the drafters of the 1951 Refugee Convention as follows: “The position of a *de jure* or *de facto* stateless refugee is abnormal and should not be regarded as permanent.”<sup>298</sup>

Regional instruments, such as the ECN and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, are also relevant for the prevention and reduction of statelessness.<sup>299</sup>

These measures to prevent and reduce statelessness are discussed below in more detail, where provisions in Estonian law are assessed against the relevant international standards.

## 4.2 National legal framework

Estonia’s 1995 Citizenship Act, and its numerous amendments, is the primary instrument legislating acquisition and loss of nationality in Estonia. Acquisition of Estonian citizenship is addressed by Sections 5 to 15. Provisions include acquisition of citizenship by birth (Section 5), by naturalization (Sections 6 and 13), and for achievements of special merit (Section 10). Estonian citizenship can be acquired by birth if at least one of the child’s parents is an Estonian citizen at the time of the birth of the child.

In addition, based on the amendments to Section 13 (4) of the Citizenship Act which entered into force on 1 January 2016, a child born to parents (or a single mother, where the citizenship and/or whereabouts of the father are unknown) who are not citizens of any State will acquire Estonian citizenship at birth by naturalization if one or both of the child’s stateless parents have been legally residing in Estonia for the past five years. These amendments were also applied retroactively to children born before 1 January 2016 and who were below 15 years of age on this date of entry into force.

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<sup>295</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 10.

<sup>296</sup> Unlike the 1954 Convention, Estonia has been a party to the 1951 Convention relating to the Status of Refugees since 1997 and thus is legally bound by its provisions.

<sup>297</sup> Council of Europe, *Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence*, 30 September 1969, 564 (1969), available at: <http://goo.gl/MwklAu>. While not directly affecting stateless refugees, it should be noted that the amendments to the Citizenship Act that entered into force on 1 January 2016 provide that beneficiaries of international protection (granted protection by Estonia or another EU country) will no longer be required to prove the release from their previous citizenship in order to be eligible for Estonian citizenship by naturalization; this is a very positive development.

<sup>298</sup> See Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37*, 1963, republished by UNHCR, Division of International Protection, Geneva, 1997, p. 245.

<sup>299</sup> See Section 1.2 of this report.

Conditions and procedures for the loss of Estonian citizenship are set out in Sections 22-30 of the 1995 Citizenship Act. The law envisages that Estonian citizenship can be lost through renunciation, deprivation, or upon acceptance of the citizenship of another State. Section 26 (1) further provides that renunciation of Estonian citizenship may be refused if the person would become stateless as a result.

Following amendments to the Citizenship Act in 2009, a database on all Estonian citizens who have acquired, restored, or lost their citizenship was established.<sup>300</sup> The detailed rules for the operation and management of the database are provided by a decree of the Ministry of the Interior.<sup>301</sup>

Section 6 of the Estonian Citizenship Act sets out the criteria for naturalization, including of persons who have lived in Estonia prior to 1 July 1990 and have a valid residence permit at the time of applying. The Citizenship Act also provides for a simplified naturalization procedure for children below the age of 15.

The main policy document that aims to reduce and prevent statelessness in Estonia, as well as to facilitate a more cohesive Estonian society, is the Strategy of Integration and National Cohesion in Estonia 2020.<sup>302</sup>

## 4.3 Acquisition and loss of nationality under the national legal framework and compatibility with international standards

Pursuant to Section 2 (1) of the Citizenship Act, Estonian citizenship can be acquired in two ways: by birth if at least one parent has Estonian citizenship, or through naturalization. An important difference between these two modes of acquisition of citizenship is the guarantee which is stipulated by Section 5 (3) of the Citizenship Act. According to this provision, no one can be deprived of Estonian citizenship which was acquired by birth. In comparison, the Citizenship Act foresees a number of situations when Estonian citizenship acquired by naturalization, can be revoked.<sup>303</sup> In this respect, the CESCR has urged Estonia “...to amend its legislation on citizenship so as to ensure that all citizens are treated equally irrespective of the mode of acquisition of the citizenship, in conformity with the obligation of non-discrimination under Article 2 of the Covenant.”<sup>304</sup>

Acquisition of Estonian citizenship by birth is regulated by Section 5 (1), which provides that a child acquires citizenship if at least one of his or her parents was an Estonian citizen at the time of the birth of the child. Additionally, the same section guarantees Estonian citizenship by birth also to children:

- who were born after the death of their fathers who, at the time of their death, held Estonian citizenship; and
- who were found in Estonia and whose parents are unknown.

In the latter case, the acquisition of citizenship shall be certified by an order of the court on the basis of an application to be lodged by the child’s guardian.<sup>305</sup>

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<sup>300</sup> Section 2<sup>1</sup> of the Citizenship Act.

<sup>301</sup> *Eesti kodakondsuse saanud, taastanud või kaotanud isikute andmekogu pidamise põhimäärus*, RTL 2009, 55, 813.

<sup>302</sup> *The Strategy of Integration and National Cohesion in Estonia 2020*, see sub-goal 2 at p. 16.

<sup>303</sup> These situations are further discussed in Section 4.3.2 of the present report.

<sup>304</sup> UN Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Estonia*, 16 December 2011, E/C.12/EST/CO/2, para. 9, available at: <http://www.refworld.org/docid/52d6588c4.html>. The EUDO Observatory also refers to the differences in treatment as discrimination, see: <http://goo.gl/RgQet5>.

<sup>305</sup> Section 5 (2) of the Citizenship Act.

The Citizenship Act prescribes one more situation when Estonian citizenship can be acquired by birth. This refers to adopted children, who shall be recognized as Estonian citizens by birth following the submission of a relevant application by their adoptive parent(s) who have to be Estonian citizens at the time of the birth of the child.<sup>306</sup>

## 4.3.1 Avoidance of statelessness at birth

### 4.3.1.1 BIRTH IN THE STATE TERRITORY

Article 1 (1) of the 1961 Convention provides: “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.” Importantly, the test is not whether the parents are stateless, but whether the person born in its territory is stateless. A child can be otherwise stateless even if both parents have a citizenship but cannot transmit it to the child. Such situations could arise, for example, when children cannot acquire the nationality of their mother because of gender discriminatory laws of her country of nationality, or where a country that adheres to a *jus soli* citizenship framework does not guarantee transmission of citizenship to children born abroad. These are but two examples of situations in which a child might have parents with a citizenship but that child might himself or herself be stateless.

Article 1 (1) allows a Contracting State to provide for the grant of its nationality to such a person either a) “at birth, by operation of law,” or b) by way of an application procedure.<sup>307</sup> Where Contracting States opt to grant nationality upon application pursuant to Article 1 (1) (b) of the 1961 Convention, it is permissible for them to do so subject to the fulfilment of one or more of four conditions. Permissible conditions are set out in the exhaustive list in Article 1 (2) of the 1961 Convention. The four conditions are: a fixed period for application within certain rules set forth by Article 1 (2) (a); a requirement of habitual residence within the rules set forth by Article 1 (2) (b); certain exceptions for certain criminal offences, as described by Article 1 (2) (c); and that the person concerned has always been stateless, as provided by Article 1 (2) (d).

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 its 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.<sup>308</sup>

As agreed by experts convened in 2011 by UNHCR, if a Contracting State is to grant its nationality to a stateless person born in its territory pursuant to an application, as contemplated by Article 1 (1) (b) of the 1961 Convention – rather than by operation of law – the State is obligated to grant the applicant nationality, provided that he or she meet the conditions permitted to be imposed pursuant to Article 1 (2).

The use of the mandatory “shall” (“Such nationality shall be granted...”), indicates that a Contracting State must grant its nationality to otherwise stateless children born in their territory where the conditions set forth in Article 1 (2) and incorporated in their application procedure are met. The exhaustive nature of the list of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Convention. As a result, providing for a discretionary naturalization procedure for otherwise stateless children is

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<sup>306</sup> Section 5 (4) of the Citizenship Act.

<sup>307</sup> Article 1 (1) (b) provides for the grant of nationality “upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.” Article 1 (1) (b) 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.

<sup>308</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 33, see *supra* fn. 22.

not permissible under the 1961 Convention. A State may choose not to apply any of the permitted conditions and simply grant nationality upon submission of an application.<sup>309</sup>

The 1961 Convention does not permit Parties to impose any requirement on an otherwise stateless child born within its territory relating to the child's *parent(s)*' period of residency. Article 1 (2) (b) permits a State to require that "a *person concerned* has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all" (emphasis added). Hence, the habitual residence exception can only be imposed on the "person concerned," i.e. on *the otherwise stateless applicant seeking citizenship*.

Article 1 (2) (a) permits a State Party to set a fixed period for application for citizenship by otherwise stateless children born within its territory. According to this article, a State can require:

that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so.<sup>310</sup>

Hence, a State that opts for an application procedure pursuant to Article 1 (1) (b) must allow an otherwise stateless child born in its territory to apply for citizenship beginning no later than his or her 18<sup>th</sup> birthday. In other words, it is preferable that such a child be allowed to apply before attaining the age of 18, but in no circumstances may he or she be prevented from applying once the person has attained that age. Moreover, the application period must not end prior to the individual's attaining the age of 21.

In countries where the age of majority is 18, this means that there must be a three-year window of opportunity in which to apply. The clause providing that "the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so" should be understood to take account of States that have a higher age of majority or certain situations where the law has recently changed and left certain age groups unintentionally unprotected.

Where States change their laws or practice to provide a path to citizenship for otherwise stateless persons born in their territory, UNHCR recommends that the changes be retroactive.<sup>311</sup>

The importance of a child's obtaining a nationality is reiterated by Article 7 of the CRC and Article 24 of the ICCPR, the latter of which has been described in the UN *Human Rights Committee General Comment No. 17* as follows: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born."<sup>312</sup> It follows from these articles and Article 3 of the CRC, which describes the principle of the best interests of the child, that a child may not be left stateless for an extended period of time.<sup>313</sup> Specifically, when read with Article 1 of the 1961 Convention, the right of every child to acquire a nationality (Article 7 of the CRC) and the principle of the best interests of the child (Article 3 of the CRC) require that States grant nationality to children born in their territory who would otherwise be stateless either (i) automatically at birth or (ii) upon application shortly after birth. Thus, if the State imposes conditions for an application as allowed for under Article 1(2) of the

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<sup>309</sup> UN High Commissioner for Refugees (UNHCR), *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children* ("Dakar Conclusions"), September 2011, para. 26, available at: <http://www.refworld.org/docid/4e8423a72.html>.

<sup>310</sup> Article 1 (2) (a) of the 1961 Convention.

<sup>311</sup> See, e.g., Comments by the UNHCR Regional Representation for Northern Europe on the draft Law Proposal amending the Estonian Citizenship Act, para. 22 (May 2014) ("UNHCR recommends that provisions granting Estonian citizenship by birth to children born in Estonia would be applicable retroactively.").

<sup>312</sup> UN Human Rights Committee, *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, para. 8, available at: <http://www.refworld.org/docid/45139b464.html>.

<sup>313</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 11.

1961 Convention, this must not have the effect of leaving the child stateless for a considerable period of time.<sup>314</sup>

The ECN requires that each State Party shall provide in its internal law that its nationality may be acquired by children born on its territory who do not acquire any other nationality at birth.<sup>315</sup>

Even before amendments to the Citizenship Act were adopted in 2015, Estonia had in place a simplified naturalization procedure for children born in Estonia after 26 February 1992 to stateless parents who had lawfully resided in Estonia for at least five years.

In January 2015 the legal framework to prevent new generations from being born into a life of statelessness was further strengthened, when amendments were adopted to the Citizenship Act. The new Section 13 (4), in force since 1 January 2016, provides that:

[A] child under 15 years of age, who was born in Estonia, will acquire Estonian citizenship by naturalization starting from the time of his or her birth, if his or her parents or a single parent have been legally residing in Estonia for at least five years by the time of birth of the child and they are not considered as citizens by any other State on the basis of any legal act in force.

The Explanatory Note to this amendment explains that the drafters' aim was to halt the perpetuation of statelessness and to guarantee all children born in Estonia to "persons with undetermined citizenship" the right to acquire Estonian citizenship at birth through naturalization. The amendment has also been applied retroactively to all children fulfilling the criteria in Section 13 (4) who, on 1 January 2016 when the changes entered into force, were below 15 years of age.

Section 13 (5) of the amended Citizenship Act further provides that parents of a child who has acquired Estonian citizenship in accordance with Section 13 (4), can within one year of the birth of their child submit an application to renounce the naturalization of the child.<sup>316</sup>

As of 13 June 2016, 741 stateless children born between 1 January 2001 and 31 December 2015 have acquired Estonian citizenship pursuant to the amended Citizenship Act. Additionally, 79 children born to stateless parents in the period 1 January to 12 June 2016 have acquired Estonian citizenship.<sup>317</sup> Hence, as of 12 June 2016, 820 children have benefited from these amendments to the Estonian Citizenship Act. However, there is no information about any campaigns or other efforts to disseminate information about this law reform.<sup>318</sup>

Estonia is to be commended for these amendments, which play a significant role in preventing childhood statelessness.

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<sup>314</sup> *Ibid.*, para. 34.

<sup>315</sup> Article 6 of the ECN. The article further provides that States can grant nationality "at birth *ex lege* or subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application."

<sup>316</sup> The amendments to the Citizenship Law provide a safeguard that ensures that children who will lose Estonian citizenship because of the decision of their parents, will be entitled to apply for restoration of Estonian citizenship at any time later (new paragraph 1.1 of Section 16). The Citizenship Act foresees no limitations, including on age, for persons wishing to have their Estonian citizenship restored. However, a person wishing to do so must have a legal ground for residing in Estonia, as must applicants in the first instance.

<sup>317</sup> According to information provided by the PBGB to UNHCR on 14 June 2016.

<sup>318</sup> The European Network on Statelessness, Working Paper: *Ending Childhood Statelessness: A Study on Estonia*, 04/15, p. 9, available at: <http://www.statelessness.eu/sites/www.statelessness.eu/files/Estonia.pdf>.

On the one hand, this provision foresees an automatic mode of acquisition of nationality since it does not require any form of expression of intent (application, declaration, making use of an option or similar action) by the child or his or her parent or guardian in order to acquire nationality. A child born to stateless parents becomes an Estonian citizen *ex lege* at birth. At the same time, the language of this section specifically underscores that Estonian citizenship is acquired by naturalization, which is a **non-automatic** mode of acquisition of nationality. Normally naturalization happens after birth and requires an application or another act by the person or his or her guardian as well as an act of granting nationality by a public authority. As such, the acquisition of citizenship under Section 13 (4) seems to occur by operation of law (*ex lege*), and therefore, in UNHCR's view, is automatic and technically not naturalization.<sup>319</sup> The combination of the fact that citizenship is acquired automatically and that it is acquired at birth essentially amounts to acquisition of citizenship *by birth*, as opposed to acquisition of citizenship through naturalization. However, UNHCR recognizes that under Estonian law individuals who acquire citizenship pursuant to this provision are legally considered to be naturalized citizens.

The analysis below of Section 13 (4) of the Citizenship Act is premised on the standards and principles enshrined in the 1961 Convention and human rights treaties, including CRC, which recognize every child's right to acquire a nationality. While these treaties do not require States to adopt a pure *jus soli* regime whereby States grant nationality to all children born in their territory, nor do they require adoption of the principle of *jus sanguinis*, they generally require contracting States to ensure that every child has a nationality. The 1961 Convention specifically requires that in instances where a child would otherwise be stateless, the State in which he or she is born has to grant the child its nationality to prevent statelessness. Article 1 of the 1961 Convention provides States with two alternative means for granting nationality to otherwise stateless children born in their territory. States can either provide for automatic (*ex lege*, i.e., by operation of law) acquisition of nationality at birth pursuant to Article 1 (1) (a), or for acquisition of nationality upon submission of an application pursuant to Article 1 (1) (b).<sup>320</sup>

Careful analysis of the wording of Section 13 (4) of the Citizenship Act and the Explanatory Note to the draft law indicates that the objective of this amendment is to ensure an automatic acquisition of Estonian citizenship from the time of their birth by a certain group of children under 15 years of age who are born in Estonia. It is thus evident that Estonia opted for an automatic (*ex lege*) acquisition of nationality in accordance with Article 1 (1) (a) of the 1961 Convention. This approach is in line with contemporary developments in international human rights law, which create a strong presumption that States should limit requirements so as to allow children to acquire nationality as soon as possible after birth.<sup>321</sup>

Nevertheless, Section 13 (4) falls short of being a complete safeguard consistent with Article 1 of the 1961 Convention, as it imposes a number of restrictions.

It should be noted that the word "shall" ("Such nationality shall be granted...") in Article 1 (1) of the 1961 Convention indicates that a State must grant its nationality to otherwise stateless children born in its territory where the conditions set forth in the Article are met. The exhaustive nature of possible requirements means that States cannot establish conditions for the grant of nationality additional to those stipulated in the Article. When a State opts for automatic grant of nationality at birth in accordance with Article 1 (1) (a), the only requirements permitted are that the child is born in the territory of the State and would otherwise be stateless. Article 1 (2) provides a list of additional permissible requirements in cases where a State opts for grant of nationality upon application. In addition to assessing Section 13 (4) of the Estonian Citizenship Act against the general conditions of Article 1, UNHCR has analysed it in light of Article 1 (1) (a), as Section 13 (4) provides for automatic grant of nationality at birth.

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<sup>319</sup> See e.g. UNHCR *Handbook on Protection of Stateless Persons*, paras 33–34.

<sup>320</sup> Article 1 of the 1961 Convention also allows Contracting States to provide for the automatic grant of nationality to otherwise stateless children born in their territory subsequently, at an age determined by domestic law. See UNHCR, *Dakar Conclusions*, September 2011, para. 20, available at: <http://www.refworld.org/docid/4e8423a72.html>.

<sup>321</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 11.

Firstly the reference in Section 13 (4) to “parents or a single parent...[that] are not considered as citizens by any other State on the basis of any legal act in force” prevents its application to all children born in Estonia who would otherwise be stateless. The concept “otherwise stateless” requires evaluating the nationality or the lack of it of the child and not of his or her parents, as children may also be rendered stateless in situations where one or both parents possess a nationality but cannot confer it on their child.<sup>322</sup> The test is whether a child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child’s parents are stateless.<sup>323</sup> To restrict the application of the safeguards against statelessness to children of stateless parents is therefore insufficient in light of the different ways in which a child may be rendered stateless and the obligations of States under the 1961 Convention.

Secondly, Section 13 (4) of the Citizenship Act contains a requirement that the child’s parents, or a single parent, shall have been “legally residing in Estonia for at least five years by the time of birth of the child”, while Article 1 (1) (a) of the 1961 Convention does not allow any additional requirements than that the child was born in the territory of the State and would otherwise be stateless. This requirement *inter alia* prevents children born to parents meeting the profile of “persons with undetermined citizenship”, but who do not hold a residence permit (referred to as “recognized non-citizens” in Eurostat statistics) from being granted citizenship at birth by naturalization.

Thirdly, while Section 13 (4) applies retroactively to children under the age of 15 years at the time of the amendments’ entry into force, it excludes those children who otherwise meet the criteria but are between 15 and 18 years of age. As mentioned above, the 1961 Convention must be read in light of subsequent human rights treaties. Article 1 of the CRC provides that “a child” means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Additionally, under the 1961 Convention, when States opt for automatic acquisition of nationality for otherwise stateless children under Article 1 (1) they are only obliged to apply the provision to those who are born after the entry into force of the Convention for that State. If however the State opts for an application procedure, the Convention requires that to be applicable to persons born before as well as to persons born after the entry into force of the Convention.<sup>324</sup>

Finally, the possibility of parents to renounce their child’s Estonian citizenship within one year of the child’s birth is not consistent with the 1961 Convention. Article 7 of the 1961 Convention prevents States from permitting renunciation of nationality if it results in statelessness except in situations where application of this provision would be inconsistent with the principles stated in Articles 13 and 14 of the Universal Declaration of Human Rights. In addition, several provisions of the CRC are also pertinent in terms of acquisition and retention of a nationality by a child. Besides Article 7 of the CRC, which sets out that every child has a right to acquire a nationality, Article 8 of the CRC provides that every child has the right to preserve his or her identity, including nationality. Article 2 of the CRC is a general non-discrimination clause which applies to all substantive rights enshrined in the CRC, including Articles 7 and 8. It explicitly provides for protection against discrimination on the basis of the status of the child’s parents or guardians. Article 3<sup>325</sup> of the CRC sets out a general principle and also applies in conjunction with Articles 7 and 8, requiring that all actions concerning children, including in the area of nationality, must be undertaken with the best

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<sup>322</sup> For example, this could be the case when a child is born in Estonia to one stateless parent (e.g. a lawfully residing “person with undetermined citizenship”) and a national of another country than Estonia, who is unable to transmit his or her citizenship to the child as she or he is born outside the parent’s country of citizenship.

<sup>323</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 18.

<sup>324</sup> Article 12 of the 1961 Convention. Please also see UNHCR *Guidelines on Statelessness No. 4*, paras 64-66. It should also be noted that the requirement of legal residence of the parents is not compliant with Article 1 (2) either, even if a State opts for an application procedure. Article 1 (2) (b) only allows for a requirement of *habitual residence* (up to five years) of the *child*.

<sup>325</sup> Article 3 (1) of the CRC reads: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

interests of the child as a primary consideration.<sup>326</sup> The possibility to renounce the child's nationality within one year of the child's birth appears to be in contravention of these provisions of the CRC.

#### 4.3.1.2 BIRTH OUTSIDE THE STATE'S TERRITORY

Article 4 of the 1961 Convention provides that a State Party to the Convention shall grant its nationality to a child born outside the State's territory if at least one of the parents is a citizen of that State and if the child would otherwise be stateless.

Estonia adheres to a *jus sanguinis* citizenship framework. Accordingly, a child born outside Estonia will obtain Estonian citizenship by birth if at least one parent is an Estonian citizen.<sup>327</sup> Special rules apply to adopted children. Upon a written application by an adoptive parent who is an Estonian citizen, the relevant Governmental authority shall, by its decision, deem a minor alien child to have acquired Estonian citizenship by birth if the adoptive parent was an Estonian citizen at the time of the birth of the child and if the child is not a citizen of another State or it is proven that the child will be released from the citizenship of another State in connection with his or her acquisition of Estonian citizenship. On the written application of an adoptive parent who was not an Estonian citizen at the time of the birth of the child, the Governmental authority authorized by the Government of the Republic shall, by its decision, deem a minor alien child to have acquired Estonian citizenship as of the date on which Estonian citizenship was granted to the adoptive parent if the child is not a citizen of another State or it is proven that the child will be released from the citizenship of another State in connection with his or her acquisition of Estonian citizenship.

The Estonian provisions regarding children born to Estonian citizens abroad thus fulfil the requirements of Article 4 in the 1961 Convention.

As for children born abroad to legally residing "persons with undetermined citizenship", the Citizenship Act addresses this only in the situation when such a child immediately after birth takes up permanent residence in Estonia together with his or her parent(s). According to Section 13 (4) of the law, such children will acquire Estonian citizenship at birth by naturalization unless their parent(s) apply for renunciation of Estonian citizenship within one year after the birth of the child.<sup>328</sup> The law also requires that the parents of these children shall have lawfully resided in Estonia for at least five years.

#### 4.3.1.3 FOUNDLINGS

Article 2 of the 1961 Convention provides: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." Some scholars submit that this rule has become an international customary norm, having been reiterated in other international and regional conventions such as the ECN.<sup>329</sup>

A child of unknown parentage found in Estonia will, on the application of the guardian of the child or a guardianship authority, be deemed in a court proceeding to have acquired Estonian citizenship by birth, unless the child is proved to be a citizen of another State.<sup>330</sup> Commendably, Estonian provisions granting citizenship to foundlings are in line with Article 2 of the 1961 Convention and other relevant standards of international law.<sup>331</sup>

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<sup>326</sup> UNHCR, *Guidelines on Statelessness No. 4*, para. 10.

<sup>327</sup> Section 5 (1) of the Citizenship Act.

<sup>328</sup> Section 13 (5) of the Citizenship Act.

<sup>329</sup> Laura van Waas, *Nationality Matters: Statelessness under International Law*, Intersentia, 2008, pp. 70-71 and 90.

<sup>330</sup> Section 5 (2) of the Citizenship Act.

<sup>331</sup> For a discussion of the proper interpretation of Article 2, see UNHCR *Guidelines on Statelessness No 4*, Part IV, paras 57-61 (discussing the youth of the child, the child's ability to communicate his or her circumstances, the date the child is found, safeguards against loss of nationality of a foundling, and certain children born out of wedlock).

#### 4.3.1.4 BIRTH ON A SHIP OR AIRCRAFT

Article 3 of the 1961 Convention provides that a “birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.”<sup>332</sup>

The Estonian Citizenship Act does not contemplate the birth of a baby aboard a ship or aircraft, and UNHCR has not, within the scope of this research, been able to find any other legal provision governing such a situation. UNHCR would therefore recommend looking into whether a birth on board a ship or aircraft flying the flag of Estonia would be considered as having taken place within Estonian territory.

### 4.3.2 Avoidance of statelessness in the context of renunciation, loss or deprivation of nationality

Estonian citizenship can be lost through: 1) renunciation, 2) deprivation, or 3) acquisition of citizenship of another State.<sup>333</sup>

Article 6 of the 1961 Convention reads in its entirety: “If the law of a Contracting State provides for loss of its nationality by a person’s spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.” Put simply, Article 6 disallows a State Party from punishing a spouse or child for the other spouse/parent’s loss of nationality.

The Estonian Citizenship Act provides no safeguards against statelessness of spouses or children in situations when they obtained Estonian citizenship through marriage to or birth to a person who was later deprived of Estonian citizenship. Therefore, the Citizenship Act does not appear to be in line with Article 6 of the 1961 Convention.

Article 7 (1) of the 1961 Convention generally prevents States Parties from permitting renunciation of nationality “unless the person concerned possesses or acquires another nationality.” Article 7 (2) contains a similar safeguard against statelessness, applicable in situations where the person concerned is seeking naturalization in a foreign country and Article 7 (3) prohibits loss of nationality if the person would become stateless on account of residence abroad. Article 7 (4) contains an exception to the prohibition of Article 7 (3) as it allows loss of nationality by naturalized citizens on account of residence abroad of at least seven consecutive years. Article 7 (4) is the only provision of the Convention which allows for differential treatment of naturalized citizens as compared to citizens by birth.

According to Section 26 (1) of the Citizenship Act, renunciation of Estonian citizenship may be refused to a person, if he or she would become stateless as a result. This provision is in line with Article 7 (1) of the 1961 Convention. It is unclear to UNHCR, however, how the safeguard provided in Section 26 (1) of the Citizenship Law will be applied in respect of the children granted Estonian citizenship pursuant to Section 13 (4) of the Citizenship Act, as their parents have the right to renounce the child’s citizenship within one year of the birth, pursuant to Section 13 (5) of the Citizenship Act.

Pursuant to Section 29 (1) of the Estonian Citizenship Act the Government of Estonia shall deem a person to have ceased to be an Estonian citizen when the person accepts the citizenship of another State or when he or she renounces Estonian citizenship in favour of the citizenship of another State. This provision seems to be in line with Article 7 (2) of the 1961 Convention. Nor are there specific provisions in the Citizenship Act

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<sup>332</sup> See also *ibid.*, paras 62 and 63 (clarifying application of Article 3).

<sup>333</sup> Item 4 of Section 2 (1) of the Citizenship Act.

which would foresee loss of citizenship leading to statelessness on grounds such as departure, residence abroad or failure to register, or would allow loss of citizenship by naturalized citizens on account of their residence abroad.

Article 8 of the 1961 Convention governs deprivation of nationality. Article 8 (1) provides, “A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.” Articles 8 (2) through 8 (4) contain certain enumerated exceptions, as well as important procedural safeguards.

In regard to deprivation of citizenship, Estonian legislation provides for a differentiated treatment of its citizens based on how the citizenship was acquired (“by birth” or “by naturalization”). According to Article 8 of the Estonian Constitution, no one shall be deprived of Estonian citizenship acquired by birth. This means that while naturalized citizens of Estonia may be deprived of their citizenship, Estonian citizens who acquired citizenship “by birth” cannot be deprived of their citizenship under any circumstances. In practice, such a regulation has led to the de-facto existence of a dual citizenship option<sup>334</sup> for those Estonian citizens who acquired citizenship by birth, and currently at least 25,000 Estonian citizens have another citizenship.<sup>335</sup>

Section 28 (1) of the Citizenship Act foresees five grounds for deprivation of citizenship. A person is to be deprived of Estonian citizenship by an order of the Government of the Republic if he or she:

- 1) while an Estonian citizen, enters the public service or military service of a foreign state without the permission of the Government of the Republic;
- 2) joins the intelligence or security service of a foreign state or an armed organization of such a state, which is set up in accordance with military principles or which engages in military exercises;
- 3) has attempted to change the constitutional order of Estonia by force;
- 4) when acquiring Estonian citizenship or in relation to the restoration to him or her of Estonian citizenship, submits false information to conceals facts which would have precluded the grant or restoration of Estonian citizenship to him or her;
- 5) is a citizen of another state but has not been released from Estonian citizenship.

Importantly, the wording of Section 28 provides no safeguard against statelessness in the context of deprivation (as opposed to in the context of renunciation). Therefore, it would seem that persons who have acquired their citizenship through naturalization, including the children born to “persons with undetermined citizenship” who fall within the terms of the new Section 13 (4) of the Citizenship Act, could be deprived of their Estonian citizenship even if they would be left without the nationality of any State. This is not in line with Article 8 (1) of the 1961 Convention. Moreover, only one of the five above grounds for deprivation of citizenship (*provision of false information while applying for acquisition or restoration*) is compatible with the permitted exceptions stipulated in Article 8 (2) of the 1961 Convention.

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<sup>334</sup> In general, the Estonian Citizenship Act prohibits dual citizenship, except special provisions for children and only until the age of majority. See Section 1 (2) of the Citizenship Act.

<sup>335</sup> See “*Spetsialistid ei nõustu ministeeriumi hinnanguga mitmikkodakondsusele*” (Experts do not agree with the assessment of the Ministry of the Interior concerning dual citizenship), available at: <http://goo.gl/JlPxmn>.

## 4.3.3 Reduction of statelessness

### 4.3.3.1 NATURALIZATION

Article 32 of the 1954 Convention provides that “The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. 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.”

The conditions for acquiring Estonian citizenship by naturalization are provided in Section 6 of the Citizenship Act.

Any foreigner who meets the following conditions can apply for Estonian citizenship:<sup>336</sup>

- the applicant is at least 15 years of age;
- the applicant has a long-term residence permit or permanent residence rights at the time of applying for citizenship;
- the applicant has lived in Estonia on the basis of a residence permit or residence rights for at least eight years, the last five of which on a permanent basis;
- the applicant has a permanent legal income;<sup>337</sup>
- the applicant has a registered place of residence in Estonia;
- the applicant has passed an Estonian language examination at the B1 level<sup>338</sup> as a minimum, unless the applicant is above 65 years of age in which case he or she does not need to take the written part of the language exam,<sup>339</sup> or if he or she has obtained basic, secondary or higher education in Estonian;
- the applicant has passed the examination on awareness of the constitution and Citizenship Act of the Republic of Estonia; and
- the applicant swears the following oath: “In applying for Estonian citizenship, I promise to be loyal to the constitutional order of Estonia.”

The only condition of the above which “persons with undetermined citizenship” do not need to meet is that of having a long-term resident residence permit. Namely, according to Section 33 of the Citizenship Act, any applicant who settled in Estonia before 1 July 1990 is exempted from the requirement of holding a long-term residence permit or the right of permanent residence. Thus, this exemption not only applies to the “persons with undetermined citizenship”, but also to e.g. Belarusian or Ukrainian nationals who lived in Estonia prior to 1 July 1990, and who now want to change their citizenship to Estonian.

In view of the requirements listed above, it would seem that unlawfully residing “persons with undetermined citizenship” (or “recognized non-citizens”, as referred to by Eurostat) would not be eligible to apply for citizenship as they lack a valid residence permit in Estonia (which is also why they are not covered by the authorities’ administrative data, as explained in Section 2.2.2.1 above).

In addition, the Citizenship Act contains provisions further restricting access to Estonian citizenship.<sup>340</sup> In practice, these limitations are normally applied to former Soviet security service (KGB) officers as well as

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<sup>336</sup> See the MISA website, at: <http://www.meis.ee/applying-for-citizenship-as-an-adult>.

<sup>337</sup> According to Section 7 of the Citizenship Act, the permanent legal income is: 1) remuneration earned lawfully under a contract of employment, contract of service, civil law contract or membership; 2) income obtained from lawful business activity or property; 3) pensions; 4) grants; 5) maintenance payments; 6) benefits paid under a law; 7) maintenance provided by a family member with a permanent legal income.

<sup>338</sup> For more details, please visit the Innove Foundation website, available at: <http://www.innove.ee/en/language-examination/for-whom>.

<sup>339</sup> Based on amendments to the Citizenship Act that entered into force on 1 January 2016, Section 34 (1).

<sup>340</sup> Items 5 and 6 of Section 21 (1) of the Citizenship Act.

to former Soviet/Russian military servicemen and their spouses. Former military servicemen can receive citizenship only if they have been married for at least five years to a person who acquired Estonian citizenship by birth.<sup>341</sup> This application of the law, as well as the legal requirements and limitations themselves, has been unsuccessfully challenged in Estonian courts.<sup>342</sup>

There are no exemptions from the naturalization requirements for stateless refugees, despite the fact that Article 34 of the 1951 Refugee Convention provides that “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.” One positive step taken, however, was the adoption of an amendment to the Citizenship Act in 2015, which exempts refugees with a nationality from having to prove release from their current citizenship in order to be eligible for naturalization in Estonia.

**Table 33:** The number of persons who have acquired Estonian citizenship through naturalization 1992-2015 (as of 1 January 2016)<sup>343</sup>

1992	5,421	2004	6,523 <sup>344</sup>
1993	20,370	2005	7,072
1994	22,474	2006	4,753
1995	16,674	2007	4,228
1996	22,773	2008	2,124
1997	8,124	2009	1,670
1998	9,969	2010	1,184
1999	4,534	2011	1,505
2000	3,425	2012	1,331
2001	3,090	2013	1,316
2002	4,091	2014	1,589
2003	3,706	2015	884

The available statistics indicate that the number of naturalized persons for 2014 includes 501 children below 15 years of age, 305 of whom were children younger than one year old. This means that approximately 31 per cent of all persons who naturalized in 2014 were children. The figure for 2015 of 884 naturalized individuals includes 307 children below 15 years.

<sup>341</sup> See Citizenship Act, Section 21 (2).

<sup>342</sup> A legally residing “person with undetermined citizenship” married to a naturalized Estonian citizen filed a complaint against this rule in the UN Human Rights Committee (*Vjateslav Borzov v. Estonia*, Com no. 1136/2002, U.N. Doc. CCPR/C/81/D/1136/2002 (2004)), which however rejected his communication. The Committee concluded that considerations related to national security may serve as a legitimate aim in the exercise of a State Party’s sovereignty in the granting of citizenship. The Estonian Supreme Court reached a similar conclusion in its judgment of January 3, 2008 in administrative case no. 3-3-1-101-06, where a former KGB employee had been refused Estonian citizenship for working as a secretary in the office of the named organization during one month, available at: <http://www.nc.ee/?id=11&tekst=RK/3-3-1-101-06>.

<sup>343</sup> The data is based on information provided by the MFA, *Fact Sheet: Citizenship*, 3 June 2016, available at: <http://estonia.eu/about-estonia/society/citizenship.html>, and an article in Delfi “*В Рийгикозгу детям вручили свидетельства о гражданстве*” (Children were granted citizenship certificates in the Parliament), available in Russian at: <http://goo.gl/B5EJQI>.

<sup>344</sup> According to the website <http://estonia.eu/about-estonia/society/citizenship.html>, “With the accession of Estonia to the European Union in May 2004, Estonian citizens automatically became citizens of the EU. This greatly increased the appeal of Estonian citizenship, especially for younger people. This seems to be the main reason why in 2004, the number of people who acquired Estonian citizenship through naturalization was almost double that of the previous year.”

**Table 34:** Reduction in the number of persons with undetermined citizenship and naturalization (2000-2015)

Calendar year	Number of naturalized persons with undetermined citizenship (per year)	Total number of persons with undetermined citizenship (end of year)
2000	3,355	178,425
2001	3,022	174,201
2002	3,942	172,235
2003	3,664	164,730
2004	6,355	162,075
2005	6,635	150,536
2006	4,367	136,000
2007	3,934	125,799
2008	1,961	110,315
2009	1,556	104,813
2010	1,080	100,983
2011	1,341	97,749
2012	1,123	94,235
2013	1,129	91,281
2014	1,360	88,076
2015	737	85,285

Sources: PBGB,<sup>345</sup> UNHCR, 2016<sup>346</sup>

As illustrated by the tables above, the naturalization rates for “persons with undetermined citizenship” have been relatively low, especially in recent years. Available statistics on the annual reduction of “persons with undetermined citizenship” indicate that in recent years, the share of the decrease of the numbers of persons in this population attributable to naturalization was less than 50 per cent.<sup>347</sup>

The Government of Estonia has on numerous occasions over the years expressed its desire to increase the rate of naturalizations of “persons with undetermined citizenship”. The Government’s action plan for the integration programme for the years 2004-2007 included the aim of naturalizing at least 5,000 persons per year. The State Integration Programme for 2008-2013 also included decreasing the ratio of people in Estonia with undetermined citizenship as an important aim. Furthermore, the Strategy of Integration and Social Cohesion in Estonia 2020 aims at increasing the number of naturalized citizens and reducing the number of those with undetermined citizenship via certain measures financed via the action plan for 2014-2017.<sup>348</sup> Most recently, during the Human Rights Council’s Universal Periodic Review of Estonia, the Government affirmed that one of its priorities is to reduce the number of “persons with undetermined citizenship”.<sup>349</sup>

To facilitate their acquisition of citizenship, information campaigns about the procedures and benefits of naturalizing have been organized by the MISA. Information campaigns specifically targeting parents

<sup>345</sup> See: <https://www.politsei.ee/et/organisatsioon/analuus-ja-statistika/statistika.dot>.

<sup>346</sup> Some information provided in the Submission of the Government of Estonia on the draft version of this report, dated 28 August 2015.

<sup>347</sup> As shown in Table 34 above, in the period between 2000 and 2015 the overall reduction in the number of “persons with undetermined citizenship” was 93,124 persons, while the total number of “persons with undetermined citizenship” who naturalized in the same period was 45,561 individuals, thus accounting for around 49 per cent of the reduction.

<sup>348</sup> See <http://estonia.eu/about-estonia/society/citizenship.html>.

<sup>349</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Estonia*, 14 April 2016, A/HRC/32/7, para. 12, available at: <http://www.refworld.org/docid/576178df4.html>.

of stateless children (2009) and school-age children (2008) have been implemented over the years.<sup>350</sup> Also, the current Government, which took up office in April 2015, announced in its goals on the subject of citizenship<sup>351</sup> that it intends to ensure that Estonian language courses necessary for preparing for the citizenship test will be free of charge.<sup>352</sup>

As briefly mentioned in Section 2.3.5, free language courses have been provided by various government institutions. MISA has provided free language courses<sup>353</sup> for unemployed and vulnerable third-country nationals and “persons with undetermined citizenship” since December 2012. Additionally, through the MoC and the European Fund for the Integration of Third-Country Nationals, and as a part of the *Estonian Integration Programme 2008-2013*, more than 1,500 individuals have taken part in free language courses. MISA has also supported language courses from the State budget via the Ministry of Education and Research and the European Social Fund programmes *Language Studies Development 2007-2010* and *Language Studies Development 2010-2013*. With the support of these programmes, language training has been undertaken by 11,000 public sector employees (including teachers, police officers, medical workers and librarians) and by university and vocational school students, people with impaired vision and hearing and employees from the third sector.

Language training is also supported by the local government offices. For example, the Tallinn City Government finances language courses for comprehensive school and kindergarten teachers.

Individuals who have passed the Estonian language proficiency test, and been issued the certificate, are reimbursed for the costs of language learning (up to 384 euros per proficiency level). There is also a possibility to reimburse the costs of language courses for persons who are unable to seek compensation on the basis of the Citizenship Act or the Language Act, but who, however, have passed an Estonian language proficiency examination A2, B1, B2 or C1 (up to 320 euros per proficiency level).

Furthermore, the Estonian Unemployment Insurance Fund offers free language training, specialized Estonian language training and professional training courses, including an Estonian language module to clients whose employment is hindered by the lack of Estonian language skills.

Online Estonian language courses for beginners were introduced in 2014.<sup>354</sup> The e-learning course is either Russian or English-based, and free of charge. The Ministry of Education and Research is continuing to create online learning materials for language proficiency levels B1 and B2.

Finally, since 2007, the Ministry of Justice reimburses the costs of Estonian language studies to adult prisoners and persons in custody who have completed their studies with a positive result. In 2014, 771 prisoners and 51 persons in custody started language studies, and 615 persons completed the courses.

These measures, facilitating the ability of “persons with undetermined citizenship” to learn Estonian free of charge, are commendable, especially in view of the fact that proficiency in Estonian has been identified as one of the key obstacles to naturalization. As indicated in Section 2.3.5 of this report, it is important to ensure that information about the free language courses is widely disseminated, so all persons concerned are aware of existing opportunities. In this context, it is also important to ensure that all “persons with undetermined citizenship” who have obtained basic, secondary or higher education in Estonian are aware that they are exempted from the language exam.

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<sup>350</sup> Vadim Poleshchuk, EUDO Citizenship Observatory, *Naturalization Procedures for Immigrants: Estonia*, February 2013, p. 2. Available at: <http://goo.gl/JMlh1x>.

<sup>351</sup> Following the Parliamentary elections in March 2015, the new Government of Estonia assumed office on 9 April 2015. Read more about the goals of the Government at its website, available at: <https://valitsus.ee/et/valitsuse-tegevusprogramm>.

<sup>352</sup> For more details see the Government website, available at: <https://valitsus.ee/en/citizenship-policies>.

<sup>353</sup> More information can be found on the MISA website, available at: <http://www.meis.ee/eng-keeleope>.

<sup>354</sup> Available at: <https://www.keeleklikk.ee/et/welcome>.

Even though the Estonian Integration Monitoring Report 2015 provides valuable information about some of the reasons preventing persons from obtaining Estonian citizenship, namely inability to learn Estonian (46 per cent, according to Table 23 above), the ability to travel without a visa to Russia as well as other countries in the Commonwealth of Independent States, and difficulties in passing the naturalization exam, it should be recalled that these results are based on replies from individuals of non-Estonian ethnicity who are either of undetermined citizenship, or are citizens of e.g. the Russian Federation and Ukraine living in Estonia.

UNHCR would therefore recommend undertaking a comprehensive profiling survey of the “persons with undetermined citizenship”, including those who lack a residence permit and therefore do not appear in the administrative statistics, in order to determine their reasons for remaining without a citizenship. As suggested by the Estonian government authorities in their feedback on a draft version of this report,<sup>355</sup> it would be useful to include persons who have already obtained citizenship through naturalization in such a profiling survey, to inform the analysis of why some “persons with undetermined citizenship” have managed to naturalize, while others have not. It is likely that such a survey would reveal similar findings to those contained in the Estonian Integration Monitoring Report 2015, e.g. in relation to difficulties in learning the language, but also additional reasons. For example, it may be the case that some persons registered as “persons with undetermined citizenship” have the citizenship of another country. Such a survey could also serve as an opportunity to inform “persons with undetermined citizenship” about the existing naturalization procedure and the support available for learning Estonian, and highlight the benefits of acquiring Estonian citizenship and the importance of the individual’s responsibility for making an effort to naturalize. The findings of a comprehensive profiling survey could usefully inform further measures by the Government to facilitate the acquisition of Estonian citizenship.

#### 4.3.3.2 OTHER MODES

In addition to the regular naturalization procedure, up to 10 persons per calendar year may become Estonian citizens by naturalization based on their special merits in the fields of science, culture, sports or other areas, pursuant to Section 10 of the Citizenship Act.

As noted elsewhere in this report on the discussion of stateless persons in their “own country” as opposed to the migratory context, solutions for the Estonian *in situ* stateless population (“persons with undetermined citizenship”) may differ from solutions for stateless persons who are recent newcomers. More than half were born in Estonia<sup>356</sup> and the majority of the *in situ* stateless persons (67 per cent of all “persons with undetermined citizenship”<sup>357</sup>) consider Estonia as their only home, indicating they have close and genuine links with Estonia. Although 820 children have, as of 13 June 2016, benefited from the positive amendments of the Citizenship Act that entered into force in January 2016, there remain more than 80,000 legally residing “persons with undetermined citizenship” in Estonia, plus approximately 2,000 persons with the same profile but who lack a residence permit in Estonia. The “persons with undetermined citizenship” comprise both persons who settled in Estonia prior to 1 July 1990, as well as their children who were born there since re-establishment of independence and would – if Estonia had been a party to and implemented the 1961 Convention – have been entitled to Estonian citizenship at birth (or by application pursuant to Article 1 (1b) of the 1961 Convention). As of 1 January 2016 some of these children were already above 15 years of age and thus could not benefit from the recent amendments to the Citizenship Act.

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<sup>355</sup> In the Submission of the Government of Estonia on the draft version of this report dated 28 August 2015, para. 39.

<sup>356</sup> See *supra* Table 7.

<sup>357</sup> In addition to the 67 per cent of stateless person who consider Estonia as their only home, an additional 8 per cent of stateless persons consider Estonia and some other country as their home; put differently, 75 per cent of stateless persons residing in Estonia consider Estonia their home country. *Estonian Integration Monitoring Report 2011*, p. 23, available at: [http://www.kul.ee/sites/kulminn/files/integratsiooni\\_monitooring\\_2011.pdf](http://www.kul.ee/sites/kulminn/files/integratsiooni_monitooring_2011.pdf).

Many international human rights treaty bodies have addressed the situation of “persons with undetermined citizenship” in Estonia.<sup>358</sup> While commending the considerable commitment and efforts made by the Government of Estonia over the past 25 years to reduce statelessness by softening the official language requirements and simplifying the process of acquisition of Estonian citizenship by stateless children, the treaty bodies have also suggested a number of specific solutions for the remaining stateless population. This includes, *inter alia*:

- i) Providing free language courses to all persons who wish to naturalize;
- ii) Raising awareness about statelessness among stakeholders and introducing mechanisms to effectively identify stateless persons;
- iii) Addressing obstacles encountered by applicants for naturalization, and
- iv) Ratifying both statelessness Conventions.

Similar recommendations relating to the reduction of statelessness were made during the Universal Periodic Review of Estonia in 2016.<sup>359</sup> UNHCR encourages Estonia to consider these recommendations for developing further solutions facilitating the acquisition of Estonian citizenship by the *in situ* stateless population.

## 4.4 Conclusions and recommendations

Notwithstanding the fact that the two UN statelessness Conventions, which were used as a basis for the present study, are not legally binding on Estonia, UNHCR hopes that the recommendations below will be helpful for the Government of Estonia to bring national law and practice further in line with international standards. Assessing the country’s legal framework against the Conventions is also intended to facilitate the country’s understanding of any changes that would be necessary in order to accede to the Conventions.

Estonia has taken commendable steps to prevent childhood statelessness by introducing a provision in Section 13 (4) of the Citizenship Act that grants Estonian citizenship to children born to parents, or a single parent, who were not considered to be a citizen by any other State at the time of the birth of the child. As of 13 June 2016, 820 children had been granted Estonian citizenship thanks to this provision.

There are nonetheless some elements of the provisions in the Citizenship Act which are not consistent with the provisions of the 1961 Convention and of the CRC relevant to stateless children born in the territory of a State.

As Section 13 (4) grants Estonian citizenship automatically at birth, UNHCR has analysed the section in light of Article 1 (1) (a) which is applicable in situations where a State opts for automatic grant of nationality at birth, in addition to the general provisions of Article 1 of the 1961 Convention and the relevant CRC provisions.

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<sup>358</sup> See, for example, UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Estonia, 16 December 2011, E/C.12/EST/CO/2, para. 9, available at: <http://www.refworld.org/docid/52d6588c4.html>; also UN Committee Against Torture, *Concluding observations on the 5th periodic report of Estonia, adopted by the Committee at its 50th session, 6-31 May 2013: Committee Against Torture*, 17 June 2013, CAT/C/EST/CO/5, para. 22, available at: <http://www.refworld.org/docid/51dfe0564.html>; and UN Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth and eleventh periodic reports of Estonia, CERD/C/EST/CO/10-11, 22 September 2014, para. 11, available at: <http://goo.gl/2paaUu>.

<sup>359</sup> *Report of the Working Group on the Universal Periodic Review of Estonia, A/HRC/32/7*, 12 April 2016, available at: <http://www.refworld.org/docid/576178df4.html>.

Firstly, the way in which Section 13 (4) is formulated excludes its applicability to children born to parents who are nationals of other countries, but who are unable to transmit their citizenship to the child due to provisions of the nationality laws of their countries of origin. As a result, children born to such parents who have come to Estonia in a migratory context, may find themselves “otherwise stateless”. UNHCR thus recommends reviewing the formulation of Section 13 (4) and/or guidance regarding its application, to ensure that children in this situation are not excluded from its protection.

Secondly, the requirement that the child’s parent(s) should have been legally residing in Estonia for the past five years is not in line with Article 1 (1) (a) of the 1961 Convention, which contains no additional requirements than that the child was born in the territory of the State and would otherwise be stateless. UNHCR would therefore recommend that the legal residency requirement is reviewed, with the aim of ensuring that no child is left stateless.

Thirdly, the right set out in Section 13 (4) applies retroactively to such children who were below 15 years at the date of entry into force of the provision, on 1 January 2016. While it is highly commendable that Estonia has adopted a retroactive application of the new provision to grant nationality automatically to children up to 15 years of age, it unfortunately excludes children who are between 15 and 18. UNHCR would therefore recommend that the retroactive applicability of Section 13 (4) be extended to encompass all children born in Estonia who would otherwise be stateless, up to at least the age of 18 years.

Finally, the possibility given to parents under Section 13 (5) of the Citizenship Act to renounce Estonian citizenship for their child within one year of the child’s birth, is not consistent with Articles 1 and 7 (1) of the 1961 Convention, the latter of which prevents renunciation of nationality if it leads to statelessness, as well as with Articles 2, 3, 7 and 8 of the CRC.

The Estonian Constitution and Citizenship Act provides for absolute prohibition of deprivation of Estonian citizenship with regard to anyone who has acquired citizenship by birth, while persons who have acquired Estonian citizenship by naturalization can be deprived of it under certain circumstances, even if it would result in statelessness. In line with the 1961 Convention and the conclusion adopted by the CESCR, UNHCR would recommend that this issue is looked into to ensure that all citizens are treated equally irrespective of the mode of acquisition, and that deprivation, loss or renunciation of Estonian citizenship does not lead to statelessness. Moreover, UNHCR notes that while Section 13 (4) of the Estonian Citizenship Act defines the acquisition of citizenship under this provision as being by naturalization, the combination of the fact that citizenship is acquired automatically (*ex lege*) and that it is acquired at birth, essentially amounts to acquisition of citizenship *by birth*.

In regard to the prevention of statelessness amongst children born outside the territory of Estonia, the national legislation provides that children born to at least one Estonian national have the right to acquire citizenship by birth, which is fully in line with the 1961 Convention. Children born to “persons with undetermined citizenship” abroad have the right to acquire citizenship provided they immediately take up permanent residence in Estonia together with the parent(s), which is positive.

Foundlings are likewise protected from statelessness under Estonian law, while the situation of children born stateless on board an Estonian ship or aircraft is unregulated and would thus need to be reviewed.

In regard to the reduction of statelessness, the Citizenship Act provides some exceptions to the general naturalization criteria for stateless persons. Namely, persons who lived in Estonia prior to 1 July 1990 and who have a valid residence permit at the time of applying for citizenship are not required to hold a long-term residence permit or permanent residence rights at the time of applying. In UNHCR’s understanding of this provision, persons having the profile of those with “undetermined citizenship”, but who lack a residence permit, are thus not eligible for naturalization. Also, citizenship applicants who have obtained basic, secondary or higher education in Estonian are not required to pass the language exam, while applicants above 65 years of age are exempted from the written part of the language exam. In addition, to facilitate the ability of “persons with undetermined citizenship” who otherwise meet the criteria to pass the Estonian

language exam, language courses have been offered free of charge by several national authorities and offices.

From 2000 until the end of 2015, 45,561 “persons with undetermined citizenship” acquired Estonian citizenship through naturalization, which accounts for around 49 per cent of the total reduction of statelessness amongst this population during these years. Building on the welcome commitment expressed by the Estonian Government to further reduce statelessness, and related recommendations from UN human rights bodies, UNHCR encourages Estonia to consider additional ways of facilitating the acquisition of citizenship for, especially, the *in situ* stateless population for whom Estonia is their “own country”. As the UNHCR *Handbook on Protection of Stateless Persons* notes:

Targeted nationality campaigns or nationality verification efforts are preferable in these circumstances. The objective of such efforts is to resolve the statelessness situation through the grant of nationality. A number of States have undertaken such nationality campaigns with regard to longstanding stateless populations in their territory, in some cases with the assistance of UNHCR.<sup>360</sup>

Hence, as mentioned in Section 4.3.3.1 above, UNHCR would recommend undertaking a comprehensive profiling survey of the “persons with undetermined citizenship”, including those who lack a residence permit and therefore do not appear in the administrative statistics, in order to determine their reasons for remaining without a citizenship. The findings from such a survey could usefully inform further measures by the Government to facilitate this population’s acquisition of Estonian citizenship. In addition, it could serve as an opportunity to inform “persons with undetermined citizenship” about the existing naturalization procedure and support available for learning Estonian, and highlight the benefits of acquiring Estonian citizenship and the importance of the individual’s responsibility for making an effort to naturalize. UNHCR would be pleased to support and contribute to such a survey.

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<sup>360</sup> UNHCR, *Handbook on Protection of Statelessness*, para. 59.

# 5. Concluding remarks and recommendations

The occurrence of statelessness in Estonia has primarily arisen against the backdrop of the dissolution of the USSR and Estonia's re-establishment of independence in 1991, when a population referred to, nationally, as "persons with undetermined citizenship" was created. Within the national legal framework, the "persons with undetermined citizenship" are considered "aliens" and enjoy, in principle, the same rights as third-country nationals holding a temporary or long-term residence permit in Estonia. At the same time, this population exists *in situ* and has long-established ties to Estonia. The size of this population has decreased considerably, from around 500,000 in 1992, to around 82,000 in 2016, thanks, *inter alia*, to the commitment and efforts of the Government of Estonia to facilitate this population's naturalization, including the amendment of the Citizenship Act in 2015, which ensures that children born to "persons with undetermined citizenship" are granted citizenship at birth by naturalization. Based on the research conducted, UNHCR believes that there is momentum, and avenues for further reducing statelessness amongst this population in line with the Government's commitment, recommendations adopted by UN human rights bodies, and the documented wishes of the majority of this population to acquire Estonian citizenship. UNHCR therefore recommends that a comprehensive profiling survey be conducted to further analyse the current reasons behind these individuals' situation as stateless. The results of such a survey could usefully inform additional measures to reduce statelessness.

There has been less attention given in Estonia to stateless persons who have arrived in the country in a migratory context, which could include some of the "unreturnable" aliens in detention. This seems to be due to the focus on the aforementioned group, the lack of a definition of a "stateless person" in the national law and a procedure to determine if a person falls within this definition, as well as the recognition of rights based on a person's situation as stateless. UNHCR therefore recommends incorporating the definition of a "stateless person", set out in the 1954 Convention and in customary international law, in the national legislation, and establishing an accessible and fair statelessness determination procedure, which can lead to the granting of a legal status that permits residence and guarantees the enjoyment of rights contained in the 1954 Convention and facilitated naturalization.

Due to the lack of a statutory definition of a "stateless person" and common guidelines for their identification and registration, the respective authorities reporting on various categories of stateless, or potentially stateless persons, do not apply the same definitions and consistent methods of registration.

During this research, UNHCR has identified the following categories of stateless, or potentially stateless persons:

- Legally residing "persons with undetermined citizenship";
- "Recognized non-citizens", who appear to have the same profile as the "persons with undetermined citizenship", but are not legally residing in Estonia;
- Legally residing persons with "citizenship unknown";
- Unlawfully residing persons with "unknown citizenship"; as well as
- Asylum-seekers or beneficiaries of international protection who have been registered as "stateless".

However, due to the aforementioned lack of common definitions and consistent methods of registering, different authorities report slightly different numbers of persons falling within the same category. UNHCR therefore recommends developing common working guidelines for the authorities responsible for the registration of a person's nationality, or lack thereof, and strengthening the collection of quantitative and qualitative data, including on unlawfully residing stateless persons.

Finally, as a significant contribution to UNHCR's efforts to end statelessness globally, and as a sign of Estonia's continued commitment to identify, prevent and reduce statelessness nationally, UNHCR recommends the Government to accede to the 1954 and 1961 Statelessness Conventions.

Therefore, in order to bring Estonian law, policy and practice in line with the international standards on the prevention and reduction of statelessness, and protection of stateless persons, set out in the 1954 and 1961 Conventions, UNHCR makes the following summary suggestions and recommendations.

## Identification and registration of statelessness

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**IT IS RECOMMENDED THAT THE DEFINITION OF A “STATELESS PERSON” SET FORTH IN ARTICLE 1 OF THE 1954 CONVENTION BE INCORPORATED IN NATIONAL LEGISLATION** to ensure a common understanding and consistent application of the definition, also recognized as constituting customary international law.

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**IT IS RECOMMENDED THAT CONSISTENT ADMINISTRATIVE GUIDELINES BE USED BY THE AUTHORITIES THAT MAY REGISTER PERSONS AS STATELESS** in the context of asylum, immigration (including issuance/extensions of permits), and return-related procedures/situations, to ensure that the respective authorities use the same definition of a stateless person and apply the same criteria and procedural standards, including burden of proof.

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**IT IS RECOMMENDED TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESS PERSONS IN ESTONIA**, to ensure that all stateless persons are recorded, including in population censuses, and reflected in the statistics. This should include stateless persons who have entered Estonia in a migratory context, regardless of whether they hold a valid residence permit in Estonia, as well as “persons with undetermined citizenship” who have never obtained, or have lost, their legal basis for residence in Estonia. The collection of qualitative data on stateless persons can be expanded by using a range of methods, such as targeted surveys and studies, in addition to strengthening the analysis of existing data maintained by e.g. the PBGB and Statistics Estonia.

## Determination of stateless persons and the rights attached to the status

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**IT IS RECOMMENDED THAT ESTONIA ACCEDES TO THE 1954 CONVENTION** and takes steps to align its national legislation to the provisions of the Convention where gaps exist.

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**IT IS RECOMMENDED THAT A STATELESSNESS DETERMINATION PROCEDURE BE ESTABLISHED** to determine who, within Estonian territory, is stateless, including among the unlawfully residing persons with “unknown citizenship” and “unreturnable” aliens in detention. The procedural standards and safeguards that should govern fair and efficient statelessness determination procedures are set out in the UNHCR *Handbook on Protection of Stateless Persons*, while the UNHCR *Good Practices Paper on Establishing Statelessness Determination Procedures to Protect Stateless Persons* provides useful guidance and examples of how such procedures can be established and managed in practice.

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**IT IS RECOMMENDED TO INTRODUCE PROVISIONS GUARANTEEING APPLICANTS, AS WELL AS PERSONS RECOGNIZED AS STATELESS, THE RESPECTIVE RIGHTS TO WHICH THEY ARE ENTITLED UNDER THE 1954 CONVENTION.** The UNHCR *Handbook on Protection of Stateless Persons* outlines which rights all stateless persons on a State’s territory are entitled to, which are applicable to persons seeking the status as stateless, and which are reserved for persons determined to be stateless.

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**IT IS RECOMMENDED TO INTRODUCE A SPECIFIC RESIDENCE PERMIT FOR PERSONS RECOGNIZED AS STATELESS** and that these persons be granted the “lawfully staying” rights guaranteed by the 1954 Convention, as elaborated in the UNHCR *Handbook on Protection of Stateless Persons*. In regard to the *in situ* stateless population of “persons with undetermined citizenship”, UNHCR recommends that they instead be granted an *ex lege* right to reside, pending their acquisition of Estonian citizenship.

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## Prevention and reduction of statelessness

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**IT IS RECOMMENDED THAT ESTONIA ACCEDES TO THE 1961 CONVENTION** and takes steps to align its national legislation to the provisions of the Convention where gaps exist.

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**IT IS RECOMMENDED THAT THE ESTONIAN CITIZENSHIP ACT BE FURTHER ALIGNED WITH ARTICLE 1 OF THE 1961 CONVENTION** to ensure that all children born on the territory of Estonia who would otherwise be stateless are granted Estonian nationality. This includes children born to parents who are unable to confer any of their nationalities on the child, as well as to children born to stateless parents who are not lawfully residing in Estonia. It is moreover recommended to apply the provisions preventing children falling within the scope of Article 1 of the 1961 Convention retroactively to all individuals concerned up to, at least, the age of 18.

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**IT IS RECOMMENDED TO ADDRESS THE DIFFERENCES IN RIGHTS AFFORDED TO CITIZENS WHO HAVE BEEN GRANTED CITIZENSHIP “BY BIRTH” COMPARED TO THOSE WHO HAVE ACQUIRED CITIZENSHIP “BY NATURALIZATION”** to ensure that they are treated equally irrespective of the mode of acquisition, and that children and adults who have acquired citizenship “by naturalization” cannot end up stateless due to renunciation, deprivation or revocation of citizenship, in contravention to the relevant standards set out in the 1961 Convention.

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**IT IS RECOMMENDED TO UNDERTAKE A COMPREHENSIVE PROFILING SURVEY OF THE “PERSONS WITH UNDETERMINED CITIZENSHIP”**, including those who lack a residence permit and therefore do not appear in the administrative statistics, in order to determine their reasons for remaining without Estonian citizenship. The findings from such a survey could usefully inform further measures by the Government to facilitate this population’s acquisition of Estonian citizenship. In addition, it could serve as an opportunity to inform “persons with undetermined citizenship” about the existing naturalization procedure and support available for learning Estonian, and highlight the benefits of acquiring Estonian citizenship and the importance of the individual’s responsibility for making an effort to naturalize. UNHCR would be pleased to support and contribute to such a survey.

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**IT IS RECOMMENDED TO CONSIDER WAYS OF FURTHER FACILITATING THE ACQUISITION OF CITIZENSHIP OF THE “PERSONS WITH UNDETERMINED CITIZENSHIP”** based on the data previously collected in e.g. the *Estonian Integration Monitoring Report 2015* and the results of the proposed comprehensive profiling survey. This could include disseminating more widely information about the availability of free Estonian language courses, and making such courses increasingly accessible to all.



# STATELESSNESS



UNHCR Regional Representation  
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