

Comments by the United Nations High Commissioner for Refugees (UNHCR) on the draft Decree Evident Statelessness

I. Introduction

1. UNHCR appreciates the opportunity to present its comments on the draft Decree Evident Statelessness in the Netherlands.
2. UNHCR offers these observations in its capacity as the Agency entrusted by the United Nations General Assembly with a global mandate to provide protection to stateless persons worldwide and to engage in prevention and reduction of statelessness. The General Assembly has specifically requested UNHCR “to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States”.¹ It has also entrusted UNHCR with the specific role foreseen in Article 11 of the 1961 Convention on the Reduction of Statelessness (1961 Convention).²
3. UNHCR’s Executive Committee has further requested UNHCR to undertake “targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons”.³ The Executive Committee also requests the Office “to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions”. UNHCR thus has a direct interest in national legislation that is impacting on the prevention and reduction of

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

² UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>

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

statelessness and protection of stateless persons, including implementation of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention).⁴

4. UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international instruments concerning statelessness, in particular the 1954 and the 1961 Statelessness Conventions. Such guidelines are included, among others, in the UNHCR Handbook on Protection of Stateless Persons (UNHCR Handbook)⁵, which serves as the basis for these observations.
5. In line with its mandate responsibility to address statelessness and to assist the Government of the Netherlands in ensuring that its legislation is in compliance with the 1954 and 1961 Conventions which the Netherlands ratified in 1962 and 1985 respectively, UNHCR offers its comments on the proposed legislation and its explanatory memorandum. UNHCR would greatly appreciate the opportunity to continue this dialogue with the Government of the Netherlands on this important legislation.

II. Observations

6. UNHCR welcomes the decision of the Government of the Netherlands to clarify that for certain situations of manifestly well-founded statelessness there will be no need for a full determination procedure. UNHCR especially welcomes the decision to declare statelessness in those cases where the mother is unable to pass on her nationality under the operation of the law in the mother's country of origin/habitual residence. UNHCR also appreciates that in those cases the government refers to UNHCR as being the leading organization providing an overview of countries where women are not able to pass on their nationality by law.⁶
7. UNHCR has noticed that the draft Decree lists four categories of manifestly well-founded statelessness situations. UNHCR would like to raise that there are also other situations where the available evidence is clear, and a statelessness claim is manifestly well-founded. Various types of evidence can be considered in proving a person's statelessness to a reasonable degree. UNHCR wishes to highlight that a letter by embassies or consulates stating that an applicant is not a citizen of the country concerned; is not entitled to a passport; or containing information of a similar scope (pro forma), can be considered as proof of a person's statelessness. Furthermore, depending on the individual circumstances of the person

⁴ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>

⁵ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>

⁶ Besluit houdende nadere regels met betrekking tot de vaststelling van staatloosheid in evidente gevallen, para. 3.3, p.3; UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2022*, 4 March 2022, available at: <https://www.refworld.org/docid/6221ec1a4.html>

concerned, the lack of a response of an embassy or consulate can, after a reasonable period of time, also be considered as proof that the individual is not considered as a national of that State.⁷

8. As commented in October 2016 in relation to the draft law proposal aiming at establishing a statelessness determination procedure⁸, UNHCR would like to suggest that competent authorities⁹ continue to register or consider such persons as stateless without going through the proposed SDP. This would avoid additional procedures, delays and costs for all parties involved. Further guidance could be developed as to what is considered a manifestly well-founded statelessness claim and when a person should be referred to the statelessness determination procedure for a formal determination.
9. UNHCR is available to provide any further support and expertise, as needed, in support of this important legislative initiative.

UNHCR recommends that:

- The current process where a person can be considered or registered as stateless by respective competent authorities is maintained for manifestly well-founded statelessness claims mentioned in the Decree, and others where available evidence is clear, without going through the proposed SDP.

⁷ For example, in the Republic of Moldova, where the SDP was established in 2011, If there is no reply from the foreign authorities to a request for information from the Moldovan authorities, this is interpreted as meaning that the applicant is not considered a national by that State. For more information, please see UNHCR Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, July 2020, available here: <https://www.refworld.org/docid/5f203d0e4.html>

⁸ <https://www.tweedekamer.nl/downloads/document?id=2e565712-853a-4101-821b-6c5b900de516&title=Reactie%20UNHCR.pdf>

⁹ This is the case for example of the civil registry, the IND or Mayors.