

Proposed Decree of, containing integration requirements for the granting of Dutch citizenship (Naturalization Test Decree 2021)

*(Besluit van, houdende inburgeringseisen ten behoeve van de verlening van het Nederlanderschap (Besluit naturalisatietoets 2021))*¹

UNHCR Observations

I. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) thanks the Ministry of Justice and Security for the opportunity to submit its observations on the Proposed Decree of, containing integration requirements for the granting of Dutch citizenship (Naturalization Test Decree 2021) (*Besluit van, houdende inburgeringseisen ten behoeve van de verlening van het Nederlanderschap (Besluit naturalisatietoets 2021)*).

2. UNHCR has been entrusted by the United Nations General Assembly (UNGA) with the mandate to provide international protection to refugees and, together with Governments, to seek permanent solutions to the challenges of refugees. For refugees in Europe integration is a relevant durable solution. UNHCR's interest and involvement in integration thus stems from its mandate to seek solutions, enshrined in the 1951 Convention relating to the Status of Refugees (1951 Convention) as well as various soft law and policy documents related to integration.² UNHCR has also been entrusted by the UNGA with responsibility for stateless persons generally, including the identification, prevention and reduction of statelessness, and the protection of stateless persons.³

3. Article 34 of the 1951 Convention and Article 32 of the 1954 Convention relating to the Status of Stateless Persons set out in identical terms that States shall, as far as possible, facilitate the integration and naturalization of refugees and stateless persons. Based on its supervisory responsibility, UNHCR herewith presents its main observations regarding the proposed Naturalisation Test Decree 2021:

II. General observations

4. UNHCR does not object to the use of clear integration criteria for accessing citizenship as long as it allows for exceptions and gives due regard to the vulnerability of refugees and stateless persons. UNHCR agrees that language is fundamental to integration and cohesion for communities. Thus, in UNHCR's view, refugees, their family members and those granted humanitarian status or persons granted a no-fault permit (*'buitenschuldvergunning'*), who are often stateless, should be given the opportunity to learn Dutch following their arrival in the Netherlands.

5. UNHCR is of the view that the language requirements imposed on refugees and their family members should be understood in the context of their flight. Refugees, unlike migrants, have not chosen to leave their country in freedom and are therefore particularly disadvantaged. UNHCR encourages the Government to ensure that refugees have access to Government funded Dutch language classes. Many will have fled from communities that have been torn apart by conflict; spent years in makeshift refugee camps; or lived in remote areas of the world where education facilities are minimal and access to

¹ *Ontwerp Besluit van, houdende inburgeringseisen ten behoeve van de verlening van het Nederlanderschap (Besluit naturalisatietoets 2021)*, available at: <https://www.internetconsultatie.nl/naturalisatietoets>.

² UNHCR's ExCom Conclusion No. 104 on Local Integration (2005), the note on 'Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance through a Strategic Approach' (2009), and 'Better Protecting Refugees in the EU and Globally' (2016)

³ UN General Assembly Resolution A/RES/50/152, 9 February 1996, ExCom, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, No. 106 (LVII), 6 October 2006

specialized language training as well as the internet is limited. Language classes should be further accessible to refugees taking into account the gender, age and diversity of the refugees to ensure that all refugees have equal access to assistance. In addition, targeted courses should be offered taking into consideration the different educational levels, including illiteracy, be linked to other integration measures such as employment support, buddying projects and mentoring schemes, provide blended approaches, thus addressing care-responsibilities of refugees and ensure sufficient hours and flexibility for accessing courses of different levels over a longer period of time and not only as an early integration measure.

6. At the same time, UNHCR notes that a language requirement and increasing its threshold as provided for by the proposed decree may distinctly limit, and perhaps even preclude, access to naturalization for certain categories of refugees with certain specific needs such as torture and trauma survivors, older persons, and illiterate persons⁴, if such requirements do not provide for exemptions. In particular, studies have shown that experiences of war, torture, assault, and other extreme events that cause harm, can create significant barriers to learning a second language.⁵

7. Naturalization offers the full range of protection, extended to refugees by the host country and is thus the aspired long-term durable solution for local integration as stated in the 1951 Convention. It also supports the local integration outcomes, such as the contributions of refugees to the host society through work and community engagement, their identification with the host country and the integration of their descendants. UNHCR thus recommends to carefully consider the benefits of naturalization, both for the refugee but also for the host country, particularly for those unable to fulfil the language requirements due to personal hardships and vulnerabilities.

III. Specific observation: Exemptions for persons with specific needs from language requirement

8. The draft Naturalisation Test Decree 2021 proposes to increase the language requirement for naturalization from level A2 to level B1. This is to bring the language requirement for naturalization in line with the language requirement for the civic integration exam of the new civic integration system as proposed in the draft Civic Integration Act, expected to enter into effect on 1 January 2022.

9. The draft Naturalization Test Decree 2021 only allows for an exemption for persons who are unable to pass the actual exams that are part of the naturalization test due to a medical or psychological disability or due to a mental disability. UNHCR welcomes the consideration of exemption for specific need categories from the language requirement for integration and encourages a further clarification of all the categories that can be exempted from the requirement if they are, for reasons of an identified specific need, such as trauma, or particular age-consideration, not in a position to meet this requirement.

10. Under the draft Civic Integration Act, a distinct process for exemption is foreseen. Notably, the draft Act foresees the possibility for municipal authorities in consultation with the person obliged to integrate and the language institute, to determine to downscale the language requirement from the B1 to the A2-level, where considerable efforts to attain the required level have been demonstrated. The

⁴ UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>, para. 43; UNHCR, *Note on Refugee Integration in Central Europe*, April 2009, available at: <http://www.refworld.org/docid/4bfe70d72.html>.

⁵ See e.g. Heather Borrow Finn, 'Overcoming Barriers: Adult Refugee Trauma Survivors in a Learning Community' (2010) 44 (3) *Migration and Adult Language Learning* 586; Adkins, M.A, Birman, D. and Sample, B *Mental health and the adult refugee: The role of the ESL teacher*, (1999) Washington DC: National Clearing house for ESL Literacy Education; Janet Isserlis, *Trauma and the Adult English Language Learner*, (2000) Washington DC: National Clearing house for ESL Literacy Education.

draft Act can also propose an alternative integration pathway if it is evident from the outset that a person obliged to integrate will not be able to fulfil the B1-level language requirement. The explanatory note to the draft Decree references refugees as a category to benefit from this alternative pathway.⁶ As such, these exemptions allow for refugees to comply with the civic integration requirement through the various pathways provided. As a result of this discrepancy between the two drafts, individuals exempted from the civic integration requirement under the draft Civic Integration Act at B1 level, and are permitted to take the test at a lower level, may still be asked to take a language test at the B1 level for purposes of naturalization under the proposed decree.

11. The ground for exemption due to demonstrable efforts as contained in the draft Civic Integration Act and the current Naturalization Test Decree, has been deleted from the draft Naturalisation Test Decree 2021. In the explanatory note, the government states that it believes that, *‘because of the great importance that the government attaches to Dutch citizenship, the possibility of exemption for the naturalization test should be limited to what is strictly necessary. The possibility of obtaining an exemption for demonstrably made efforts is not among them.’*⁷

IV. Conclusion

12. UNHCR welcomes the draft Decree’s provision for exemption on account of physical and mental disabilities and encourages to allow for exemption for others with specific needs who may not be able to fulfil a language requirement or permit a test at a lower level if attainable in view of the specific need identified.

13. As the draft Decree aims at harmonization with the draft Civic Integration Act, UNHCR further recommends that the exemption process provided for in the latter be included in the draft Decree to ensure alignment. By harmonizing the draft Decree with the draft Act, access to citizenship can be better ensured for refugees with specific needs encouraging their integration.

UNHCR
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⁶ *Memorie van toelichting wetsvoorstel Wet inburgering 20.., versie Raad van State*, p. 13, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/04/memorie-van-toelichting-wetsvoorstel-wet-inburgering>.

⁷ Ontwerp Besluit van, houdende inburgeringseisen ten behoeve van de verlening van het Nederlanderschap (Besluit naturalisatietoets 2021), p. 13.