TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT
UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Estonia, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Estonia, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

ESTONIA REVIEW

Justice System

- ***Independence***

The UN Human Rights Committee, in its 2019 concluding observations, expressed concern about the significantly low number of convictions for torture and ill-treatment, and regretted the paucity of information on the procedure for investigating such allegations and on the independence of existing investigative bodies. It found Estonia should ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an effective and fully independent and impartial body, that perpetrators are prosecuted and, if convicted, punished with sanctions commensurate with the nature and gravity of the crime, and that victims and, where appropriate, their families are provided with full reparation, including rehabilitation and adequate compensation (CCPR/C/EST/CO/4, para 19, 20).

- ***Quality of justice***

In its 2019 concluding observations, the UN Human Rights Committee noted that notification of custody may be denied with the permission of the relevant prosecutor's office if such notification would prejudice a criminal proceeding, and that the duration of the delay of notification is based on the principle of proportionality. Nonetheless, the Committee was

concerned that exception and the safeguards against its misuse were not clearly defined and noted the absence of a statutory limit for the deferral of notification. The Committee was also concerned about reports that persons deprived of their liberty met their State-appointed lawyer for the first time at the court hearing, even in cases where counsel was requested shortly after their detention. It found that Estonia should ensure that any exceptions to the right of notification of custody be clearly defined and time-bound. That sufficient safeguards be in place against the misuse of such exceptions; and that detainees in criminal cases have prompt access to counsel from the outset of detention (CCPR/C/EST/CO/4, para 25, 26).

In its 2019 concluding observations, the UN Human Rights Committee recommended Estonia to intensify its efforts to raise awareness about the Covenant on Civil and Political Rights and its Optional Protocol, including by providing specific training on the Covenant to government officials, judges, prosecutors and lawyers. Besides, it welcomed the measures taken to combat hate speech and hate crimes but remained concerned about reports of hate speech, including by opinion makers and politicians, and hate crimes. In order to ensure effective protection against hate speech and hate crimes, both in law and in practice, it recommended inter alia to ensure continuous training on hate crimes for law enforcement officials, border guards, prosecutors and judges (CCPR/C/EST/CO/4, para 5, 6, 12,13,14).

In its 2019 concluding observations, the UN Human Rights Committee noted that both the Chancellor of Justice and the Supreme Court analysed data retention legislation and found it compatible with the UN Covenant on Civil and Political Rights. The Committee expressed concern that such regulations, including article 111 of the Electronic Communications Act, provide for blanket retention of communications data (metadata), and that access to such data is reportedly not limited to the investigation and prosecution of serious crimes, but is also used for investigating and prosecuting minor crimes and misdemeanours. The Committee noted that possible amendments to the relevant regulations on data retention were being analysed and discussed with a view to further clarifying the relevant domestic norms. The Committee recommended that Estonia bring its regulations governing data retention and access thereto, into full conformity with the Covenant, including with the principles of legality, proportionality and necessity (CCPR/C/EST/CO/4, para 29, 30).

- ***Efficiency of the justice system***

In its 2019 concluding observations, the UN Human Rights Committee welcomed measures taken to address violence against women, including domestic and sexual violence, but expressed concerns about low prosecution rate and allegedly high underreporting, partly due to safety concerns. It found that Estonia should inter alia, ensure the timely issuance of restraining orders against perpetrators and the introduction of emergency restraining orders and ensure that cases of violence against women are thoroughly investigated, perpetrators prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies (CCPR/C/EST/CO/4, para 17, 18).

In its 2019 concluding observations, the UN Committee on Economic, Social and Cultural Rights welcomed Estonia's overall achievement in reducing the number of persons with undetermined citizenship, but remained concerned at the large number of such persons,

comprising 5.5 per cent of the population as of January 2019. It recommended that Estonia accelerate the acquisition of Estonian citizenship by persons with undetermined citizenship, by removing the remaining obstacles (E/C.12/EST/CO/3, para 14, 15). While also welcoming the measures taken by Estonia, the UN Human Rights Committee, in its 2019 concluding observations, similarly remained concerned at the remaining gaps. In particular, the Committee recommended Estonia to ensure that stateless individuals are systematically identified and afforded protection, to facilitate the naturalization of persons with "undetermined citizenship" and remove excessive barriers that hinder the process, and to ensure that every child be granted citizenship, regardless of their age or the legal status of their parents if also stateless (CCPR/C/EST/CO/4 para, 35, 36).

In its 2019 concluding observations, the UN Committee on on Economic, Social and Cultural Rights noted that some Covenant rights are protected in the Constitution, and that article 123 of the Constitution establishes the primacy of international treaties over domestic law. However, the Committee was concerned at the lack of information on judicial remedies and of examples of cases where Covenant rights are protected by domestic courts. The Committee recommended that Estonia incorporate all the rights enshrined in the Covenant in the domestic legal order; strengthen judicial remedies for the protection of Covenant rights in its domestic legal order; enhance training for judges and lawyers on the Covenant; and raise the awareness of the public on the Covenant and the justiciability of economic, social and cultural rights. In this context, the Committee drew Estonia's attention to its general comment No. 9 (1998) on the domestic application of the Covenant (CCPR/C/EST/CO/4, para 4,5).

Other institutional issues related to checks and balances

- ***Independent authorities***

In December 2020, GANHRI Sub-Committee on Accreditation recommended that the Chancellor of Justice be accredited as an A-status national human rights institution. With the view to further strengthening the institution, the SCA recommended the NHRI to advocate for a broader and more transparent selection and appointment process; and for amendments to its enabling law to prevent the possibility of unlimited tenure of office and to make encouraging ratification of and accession to regional and international human rights instruments an explicit part of its mandate (see GANHRI Sub-Committee on Accreditation Report –December 2020).

In its 2019 concluding observations, the UN CESCR Committee expressed concern at the insufficient level of financial and human resources allocated to the Gender Equality and Equal Treatment Commissioner to fully carry out its mandate. It was also concerned that the Equal Treatment Act only prohibits discrimination on the grounds of religion or views, age, disability and sexual orientation in areas relating to working life and the acquisition of professional qualifications, and regretted the delay in amending the Act to broaden its scope and application to other social sectors. The Committee recommended that Estonia amend the Act without delay to ensure that it prohibits all direct, indirect and intersectional forms of discrimination and with the view to providing effective remedies for victims of discrimination,

incl. through judicial and administrative proceedings. Drawing attention to its general comment No. 20 on non-discrimination in economic, social and cultural rights, the Committee recommended Estonia to allocate a sufficient level of financial and human resources to the Commissioner for the effective functioning of its mandate (E/C.12/EST/CO/3, para 10,11).

In its 2019 concluding observations, the UN Human Rights Committee noted the general prohibition of discrimination and the open-ended list of prohibited grounds in article 12 of the Constitution, but similarly expressed concern that the Equal Treatment Act does not afford equal protection against discrimination on all the grounds prohibited under the Covenant on Civil and Political Rights in all spheres of life. The Committee welcomed the increase in the budget of the Office of the Gender Equality and Equal Treatment Commissioner but regretted that the Commissioner did not have standing in domestic court proceedings, neither as a legal representative of victims of discrimination nor as an expert party, and that no tangible progress had been achieved in that regard despite the Government's consideration of the matter. The Committee was also concerned that awareness among the population at large about equal treatment legislation and the available remedies remained insufficient. Among several recommendations, it stated Estonia should consider granting standing to the Commissioner in domestic court proceedings relating to discrimination. (CCPR/C/EST/CO/4, para 11).

- ***Accessibility and judicial review of administrative decisions***

In its 2019 concluding observations, the UN Human Rights Committee was concerned about the lack of sufficient safeguards against arbitrary interference with the right to privacy with regard to surveillance and interception activities by State security and intelligence agencies and with regard to intelligence sharing with foreign entities. It found that Estonia should ensure that (a) any such interference with privacy requires prior authorization from a court or other suitable independent body and is subject to effective and independent oversight mechanisms; (b) access to communications data is limited to the extent strictly necessary for investigations into and prosecution of serious crimes; and (c) persons affected are notified of surveillance and interception activities, where possible, and have access to effective remedies in cases of abuse (CCPR/C/EST/CO/4, para 29, 30).

In its 2019 concluding observations, the UN Human Rights Committee expressed concern that legal and procedural safeguards for involuntary treatment of persons with psychosocial or intellectual disabilities may not be sufficient to guarantee their rights and interests. As part of the recommended comprehensive safeguard procedures, the Committee recommended that decisions relating to non-consensual psychiatric treatment be under regular independent review and that there should guarantee effective access to judicial review of such decisions, including by ensuring that relatives and any other legal representatives of patients are sufficiently informed about the procedure for requesting the termination of coercive treatment, pursuant to article 403 of the Code of Criminal Procedure (CCPR/C/EST/CO/4, para 23, 24).

In the case of asylum procedure, the UN Human Rights Committee was also concerned about the limited access to effective remedies against asylum decisions taken at the border, due to

the lack of access to free legal counselling or assistance in suitable cases. The Committee was further concerned at reports that asylum seekers have been accused of irregular entry or stay under the second item of article 258 (1) of the Criminal Code, and that application for international protection does not preclude the initiation of criminal proceedings under the said provision. It recommended inter alia that Estonia should provide free legal aid, in suitable cases, to applicants for asylum at the border to ensure the exercise of their right to appeal in practice; consider including adequate safeguards in the Criminal Code to ensure that individuals exercising their right to seek asylum are released from any criminal liability for illegal entry or stay; and ensure that any legislation adopted following the further consideration clarifies the term “danger to the community of Estonia” (CCPR/C/EST/CO/4, para 27, 28).

In its 2019 concluding observations, the UN Human Rights Committee expressed concern about the absence of effective mechanisms and legal procedures for authors of individual complaints submitted to the Committee, to seek, in law and in practice, the full implementation of Views adopted under the Optional Protocol to the Covenant. It found Estonia should ensure the full implementation of the concluding observations and Views adopted by the Committee, and guarantee the right of victims to an effective remedy when there has been a violation of the Covenant on Civil and Political Rights. The Committee also recommend Estonia to intensify its efforts to raise awareness about the Covenant and its Optional Protocol, including by providing specific training on the Covenant to government officials, judges, prosecutors and lawyers (CCPR/C/EST/CO/4, para 5,6).