

COUNTRY BRIEFING
AUGUST 2020

Ukraine



INTRODUCTION

The [Statelessness Index](https://index.statelessness.eu) (<https://index.statelessness.eu>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of over 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its [members](#)² to research and compile comparative information on statelessness in [Ukraine](#).³ This briefing summarises the findings on how Ukrainian law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Ukrainian Government for reform in priority areas.

To be stateless is not to be recognised as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Ukraine is a party to almost all core relevant international and regional legal instruments on prevention and reduction of statelessness, including both the [1954 Convention Relating to the Status of Stateless Persons](#) and the [1961 Convention on the Reduction of Statelessness](#). Ukraine is also a party to the [European Convention on Nationality](#). Ukraine acceded to all these treaties without any reservations, and is State party to almost all other relevant international human rights instruments.

Ukraine has signed the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession but has not yet acceded to it. Although Ukraine's policy is oriented towards European integration, European Union law is not binding for Ukraine and can only be taken into account as a reference for the development of its own legal system and policy.

Despite accession to all the relevant international instruments, the mechanisms for ensuring the rights of stateless persons and reduction of statelessness have not been established in Ukraine. The Government of Ukraine should ensure compliance in practice with the international obligations it has accepted. Ukraine should also

[accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.](#)



STATELESS POPULATION DATA

Data on the stateless population in Ukraine is limited and contested. The only official source of information on the number of stateless persons is the All-Ukrainian Population Census of 2001. However, the Census data is significantly outdated and does not reflect the real situation regarding the number of people without any nationality in Ukraine. Besides, the Census data contains information on two overlapping categories of the population – stateless persons (82,550 people⁴) and persons who did not indicate their nationality (40,464 people). The Government scheduled the All-Ukrainian population census for 2020 and completed the pilot census in late 2019 in limited locations. An e-census using mobile operators' data was also carried out, but this lacks socio-demographic data.

Other sources of data or information about statelessness include UNHCR, NGOs and the Ombudsperson of Ukraine on Human Rights, but NGOs have raised concerns about the lack of reliable data on statelessness in Ukraine. For example, according to data provided by the Ombudsperson's Office in 2017, there were 6,500 stateless persons⁵ officially registered in Ukraine. At the same time, according to UNHCR, at the end of 2018, 35,650 stateless persons⁶ lived in Ukraine.

Statistical data of the executive bodies cannot be recognised as credible sources of information on the stateless population as several state registers and statistical reports do not contain a category of "stateless persons".

The Ukrainian Government should create a reliable source of information on the number of stateless persons in Ukraine to ensure effective policies to prevent and eliminate statelessness. The next All-Ukrainian population census should collect and report reliable data on the stateless population.



STATELESSNESS DETERMINATION AND STATUS

There is a definition of a "stateless person" in Ukrainian law that is in line with the 1954 Convention.

Ukraine has a dedicated stateless status but, until 2020, it had no formal mechanism to identify or determine this. Despite the international obligations of Ukraine, administrative procedures are still weak, and legislation is inconsistent.

The legal status of stateless persons derives from the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons". The Constitution of Ukraine and other laws allow for restrictions of the rights of stateless persons only on the basis of the law. Nevertheless, only those stateless persons who are documented and entitled to residence on the territory of Ukraine have access to social and economic rights, in particular, to the right to work, social security, housing, education and medical care.

On 16 June 2020, the Verkhovna Rada (Ukrainian Parliament) approved by a constitutional majority of deputies a bill that introduces a statelessness determination procedure (SDP). The new law entered into force on 18 July 2020.⁷ The new SDP meets good practice standards in several respects. It is accessible to people who do not have proof of legal stay on the territory; the competent authority must decide on the applicant's case within six months (extendable by up to 12 months in exceptional cases); an interview is mandatory; and, in the absence of documents, the applicants' statements can be confirmed by witnesses. The applicant should be provided with a temporary identity document and the right to exercise fundamental rights (including the right to work) during the procedure. If the applicant is determined to be stateless, they will receive a temporary residence permit and may apply for a permanent residence permit after two years, eventually leading to eligibility for naturalisation. There is a right to appeal a negative decision to a court, and the right to free legal aid to do so. The new law will become effective within three months from its entry into force. During this time, the Ukrainian Government must adopt a by-law, which regulates the procedure on a more detailed level and must ensure that other by-laws are brought into line with the new law.

The Ukrainian Government should ensure that the new statelessness determination procedure is effectively implemented in line with good practice, and grant the rights enshrined in the 1954 Convention to all stateless persons on the territory (including a residence permit, right to work, study, and facilitated naturalisation). The Ukrainian Government should ensure the confirmation and acquisition of nationality of persons in the temporarily occupied territories.



DETENTION

Ukrainian legislation allows for the detention of foreigners and stateless persons in immigration detention centres. Immigration detention powers are provided for in law, but the grounds for detention go beyond the purposes allowed under ECHR Article 5(1)(f). A person who has entered the country without legal grounds for residence can be placed in immigration detention before a deportation or extradition decision has been taken or for the purpose of identification. Certain provisions in law still allow the State Migration Service and State Border Guard Service to detain people without a court order.

The legislation of Ukraine on immigration detention of stateless persons contains a number of significant gaps. In particular, a proposed country of removal does not need to be identified prior to detention, statelessness is not considered juridically relevant, the law does not stipulate assessment of vulnerability of a person prior to detention. The legislation of Ukraine provides for two alternatives to detention in Ukraine - bail or a surety deposit - but these are rarely used.

Ukrainian legislation enshrines procedural guarantees of rights of persons in immigration detention. The term of detention of a stateless person is six months and can be extended for no more than 18 months. The extension of the term of detention is made by a court decision, which is ruled following consideration of a claim by a relevant governmental body. A person has the right to appeal against a court decision on their detention, but undocumented stateless persons do not have access to free legal aid. A detained person must be informed of their rights and duties in a language they understand.

People released from detention are issued with a certificate of immigration detention and are entitled to apply for a temporary residence permit for a period of one year. Although Ukrainian legislation provides for two alternatives to immigration detention in Ukraine, only persons who were in detention are entitled to a temporary residence permit.

The Ukrainian Government should amend its legislation to ensure that stateless persons are fully protected from arbitrary and unlawful detention in line with international standards, and that detention is only ever used as a measure of last resort. Referral mechanisms should be put in place to the new statelessness determination procedure for people subject to detention and removal.



PREVENTION AND REDUCTION

Ukrainian nationality law is based on a combination of the principles of *jus sanguinis* and *jus soli*. There are legal safeguards in Ukrainian nationality law to prevent statelessness in the case of foundlings, adopted children and children born to Ukrainian nationals abroad. The most significant gap is the absence of provisions in law to automatically grant Ukrainian nationality to some children born on the territory who would otherwise be stateless, as eligibility is dependent on the status of the parents. So, there is not a full safeguard against children being born stateless on the territory.

Access to birth registration for children whose parents are stateless is limited. Parents with no identity documents are not able to register the birth of their child as a passport must be shown to the competent authority in the procedure for registration. Romani people are particularly vulnerable to this problem, due to a range of factors including discrimination, lack of documentation and marginalisation. Late birth registration is provided by law, but registration of birth after one year requires other documents to be submitted, for example, the medical records of a child. Registration of the birth of a person older than 18 years is only possible on the basis of a court decision. However, persons without any ID cannot apply to a court without the assistance of an attorney.

When applying for an ID, the applicant should provide a set of documents confirming the ground to obtain Ukrainian nationality. Although the basic requirements are provided by law, in practice there are often additional requirements set by the officials to confirm the grounds for nationality. Usually, these other requirements cannot be met by a person without legal assistance, for example, when an application to the court is necessary.

Children born in non-Government controlled areas (NGCA) face additional challenges to birth registration. The documents issued in these areas are considered invalid by the Government of Ukraine, and the procedures aimed at resolving this issue have not been

implemented in practice. The Ministry of Justice has estimated that only 45% of children reported to have been born in the areas of Donetsk and Luhansk and 12% in Crimea have obtained a birth certificate. The judicial procedure must be used to register the birth of a child born in NGCA, but this is costly and often lengthy. Adults who were born or live in NGCA face additional barriers when applying for IDs. The State Migration Service requests that they provide pieces of evidence confirming their identity and applications are subject to additional verifications. This situation prolongs the timescales to access documentation and, in some cases, leads to the refusal to issue an ID.

Ukraine should guarantee that children born on the territory of Ukraine who would otherwise be stateless acquire a nationality. The Government of Ukraine should simplify the administrative procedure for late birth registration and ensure the barriers faced by Romani communities are addressed to guarantee universal access to legal identity for all children in line with international law. The Government should remove administrative barriers during the application for Ukrainian nationality, birth registration, and obtaining IDs, especially for the conflict-affected population. Procedures should be flexible and accessible to people who lack documentation and are unable to provide this.

SUMMARY OF RECOMMENDATIONS

The Government of Ukraine should:

- Ensure that the new statelessness determination procedure is effectively implemented in line with good practice, and grant the rights enshrined in the 1954 Convention to all stateless persons on the territory (including a residence permit, socio-economic rights and facilitated route to naturalisation);
- Accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession;
- Collect and report reliable and up-to-date information on the stateless population residing on the territory;
- Amend legislation to ensure stateless persons are fully protected from arbitrary and unlawful detention in line with international standards, and that detention is only ever used as a measure of last resort;
- Remove practical barriers to birth registration so that all children's births are registered, including children whose parents do not have identity documents;
- Ensure the acquisition of nationality for children born on the territory of Ukraine if they would otherwise be stateless;
- Remove administrative barriers during the application for Ukrainian nationality, birth registration, and obtaining IDs, especially for the conflict-affected population.

ENDNOTES

- ¹ <https://www.statelessness.eu>
- ² Lead Country Researchers for the Statelessness Index in Ukraine are Kateryna Gaidei and the NGO “Desyate Kvitnya”.
- ³ <https://index.statelessness.eu/country/ukraine>
- ⁴ State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: <http://2001.ukrcensus.gov.ua/publications/#p14>
- ⁵ The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine 2017: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=3>
- ⁶ UNHCR Statistics, The World in Numbers: <http://popstats.unhcr.org/>
- ⁷ Law of Ukraine on Amending Certain Legislative Acts of Ukraine regarding Recognition as a Stateless Person, 16 July 2020, available at: <https://www.refworld.org/docid/5f2196bb4.html>. Original version available at: <https://zakon.rada.gov.ua/laws/show/693-IX#Text>

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