

COUNTRY BRIEFING  
AUGUST 2021

# 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 \(ENS\)](#),<sup>1</sup> a civil society alliance of over 170 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](#)<sup>2</sup> to research and compile comparative information on statelessness in [Ukraine](#).<sup>3</sup> 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 people 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 State Party to almost all international and regional legal instruments relevant to the prevention and reduction of statelessness with no reservations, including both the [1954 Convention Relating to the Status of Stateless Persons](#) and the [1961 Convention on the Reduction of Statelessness](#). Ukraine is also State Party to the [European Convention on Nationality](#), although with reservations. 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.

Despite accession to all the relevant international instruments, the mechanisms for ensuring the rights of stateless persons and reduction of statelessness have not yet been fully established in Ukraine.

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The Government of Ukraine should ensure compliance in practice with the international obligations it has accepted.

Ukraine should 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 outdated and does not accurately reflect the number of people without any nationality in Ukraine. The Census data also contains two potentially overlapping categories – stateless persons (82,550 people<sup>4</sup>) and persons who did not indicate their nationality (40,464 people). The All-Ukrainian population census had been scheduled for 2020 and a limited pilot census was conducted in late 2019, but the census was re-scheduled for 2023.

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 persons<sup>5</sup> officially registered in Ukraine. At the same time, according to UNHCR, at the end of 2018, 35,650 stateless persons<sup>6</sup> lived in Ukraine. As of 2021, UNHCR Ukraine estimates the number of stateless persons and those at risk of statelessness in Ukraine to be 35,000.<sup>7</sup>

Official sources of information on the stateless population are unreliable as several State registers and statistical reports do not contain a category of 'stateless persons'.

The Ukrainian Government should collect and publish reliable disaggregated data on the stateless population in Ukraine to ensure effective policies to prevent and eliminate statelessness, including through the next All-Ukrainian population census in 2023.



## 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 statelessness status but, until 2020, it had no formal mechanism to identify or determine this. Despite Ukraine's international obligations, administrative procedures remain 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 rights of stateless persons in Ukraine are guaranteed in the Constitution and other legislation, but 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.

A new law introducing a statelessness determination procedure (SDP) in Ukraine entered into force on 18 July 2020.<sup>8</sup> The by-law required to implement the SDP was adopted in April 2021, and the procedure became available for applicants in late May 2021.

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.

In practice, however, applicants face various technical and administrative obstacles to accessing the SDP. Only a limited number of territorial departments of the State Migration Services (SMS) register applications, and responsibility for registering applicants is determined at the regional level. In some cases, applicants have had to prove their place of residence by providing specific documents. Other issues have been identified, including lack of access to translation, staff shortages, and lengthy times to complete and submit an application (from two to five hours, resulting in only a few applications being processed each day by the SMS). There is a lack of information materials on the SDP, rights and obligations of the applicants, and there has been no outreach to potential applicants. In some cases, applicants have been asked for documents that cannot be obtained without an ID. nonetheless, the SMS

has registered more than 400 applications under the SDP in its first three months of operation.

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 take measures to inform (potential) applicants about the procedure, rights, and obligations in a language they understand.

The Ukrainian Government should monitor and address emerging technical and administrative obstacles to the new procedure to ensure access is facilitated. This should include ensuring a shared burden of proof in line with UNHCR guidance and good practice.



## DETENTION

Ukrainian legislation allows for the detention of foreigners and stateless persons in immigration detention centres in certain circumstances.

There are a number of significant gaps to protect against the arbitrary immigration detention of stateless persons. 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 some procedural guarantees for persons in immigration detention. The term of detention of a stateless person is six months and can be extended to 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 for the maximum period of 18 months 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

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 at particular risk of remaining unregistered, 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 documents confirming the ground to obtain Ukrainian nationality. Although the basic requirements are provided by law, in practice additional requirements are often set by officials to confirm the grounds for nationality. Usually, these 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% of those 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 and confirm nationality.

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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 in non-Government-controlled areas (NGCA). 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:

- Accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession;
- Ensure compliance in practice with the international obligations it has accepted;
- Collect and publish reliable disaggregated data on the stateless population in Ukraine to ensure effective policies to prevent and eliminate statelessness, including through the next All-Ukrainian population census in 2023;
- 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);
- Take measures to inform (potential) applicants about the procedure, rights, and obligations in a language they understand;
- Monitor and address emerging technical and administrative obstacles to the new procedure to ensure access is facilitated. This should include ensuring a shared burden of proof in line with UNHCR guidance and good practice;
- 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;
- Implement referral mechanisms to the new statelessness determination procedure for people subject to detention and removal;
- Guarantee that children born on the territory of Ukraine who would otherwise be stateless acquire a nationality;
- 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;
- Remove administrative barriers during the application for Ukrainian nationality, birth registration, and obtaining IDs, especially for the conflict-affected population in non-Government-controlled areas (NGCA). Procedures should be flexible and accessible to people who lack documentation and are unable to provide this.

## ENDNOTES

<sup>1</sup> <https://www.statelessness.eu>

<sup>2</sup> Lead Country Researchers for the Statelessness Index in Ukraine are Kateryna Gaidei and the NGO “Desyate Kvitnya”.

<sup>3</sup> <https://index.statelessness.eu/country/ukraine>

<sup>4</sup> State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001: <http://2001.ukrcensus.gov.ua/publications/#p14>

<sup>5</sup> 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>

<sup>6</sup> UNHCR Statistics, The World in Numbers: <http://popstats.unhcr.org/>

<sup>7</sup> Stateless persons – UNHCR Ukraine: <https://www.unhcr.org/ua/особи-без-громадянства>

<sup>8</sup> 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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