

Contents

International and Regional Instruments	3
1954 Convention	3
1961 Convention	3
Other conventions	4
Stateless Population Data	7
Availability and sources	7
Stateless in Detention data	11
Statelessness Determination and Status	12
Definition of a stateless person	12
Existing SDP procedure	12
Alternative administrative procedures for identification	12
Access to procedures	13
Assessment	14
Procedural Protections	15
Stateless Status	16
Detention	18
Detention screening	18
Alternatives to immigration detention	23
Procedural safeguards	25
Protections on release	30
Readmission agreements	31
Prevention and Reduction	34
Stateless born on territory	34
Foundlings	38
Adoption	39

Ius sanguinis and discrimination	40
Access to birth registration	42
Late Birth Registration	44
Reduction	45
Withdrawal of nationality	46
Jurisprudence and Training	48
Published	48
Judgements	48
Legal training	48
Pro Bono	49
Literature	49

International and Regional Instruments

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
IOB	1	a	1954 Convention	Is your country party to the 1954 Statelessness Convention?	<ul style="list-style-type: none"> • UN Convention Relating to the Status of Stateless Persons, 1954 	No	<p>Polish Ministry of Foreign Affairs, InternetowaBazaTraktatowa (online treaty database): https://traktaty.msz.gov.pl/ (Polish (PL))</p> <p>Polish text of the Conventions available at: http://www.ref-world.org/cgi-bin/texis/vtx/rwmain/open-docpdf.pdf?reldoc=y&docid=54c0b8844 (PL)</p>
IOB	1	b		If yes, when was ratification/accession?		Does not apply	
IOB	1	c		Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Best practice is no reservations. If there are, they should have little or no effect on the rights of stateless persons. 	Does not apply	
IOB	1	d		Does the Convention have direct effect?	<ul style="list-style-type: none"> • Best practice is that the Convention has direct effect, though this may depend on legal regime. 	Does not apply	
IOB	2	a	1961 Convention	Is your country party to the 1961 Statelessness Convention?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961 	No	<p>Polish Ministry of Foreign Affairs, InternetowaBazaTraktatowa (online treaty database): https://traktaty.msz.gov.pl/ (PL)</p>
IOB	2	b		If yes, when was ratification/accession?		Does not apply	
IOB	2	c		Are there reservations in place? Please list them.	As above	Does not apply	
IOB	2	d		Does the Convention have direct effect?	As above	Does not apply	

IOB	3	a	Other conventions	State party to European Convention on Nationality 1997? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • European Convention on Nationality, 1997 	Poland signed the Convention but has not acceded to it. No reservations were made.	Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures
IOB	3	b		State Party to European Convention on Human Rights 1950? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • European Convention on Human Rights, 1950 	Yes, Poland is party to the Convention. No reservations were made.	Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/signatures?p_auth=cOI2D9Yu
IOB	3	c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 	No.	Council of Europe website, Chart of signatures and ratifications: http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/200/signatures?p_auth=cOI2D9Yu
IOB	3	d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive). Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive) 	Yes. No reservations.	EUR-Lex database : http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32008L0115
IOB	3	e		State Party to Convention on the Rights of the Child 1989? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989 	Yes. No reservations, but Poland has made two declarations: 1. The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in Articles 12-16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family; 2. With respect to Article 24(2)(f), of the Convention, the Republic of Poland considers that family planning and education services for	UN Treaties Database: https://treaties.un.org/pages/ViewDe tails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en

						parents should be in keeping with the principles of morality.	
IOB	3	f		State Party to International Covenant on Civil and Political Rights 1966? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • International Covenant on Civil and Political Rights 1966 	Yes. No reservations.	UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en
IOB	3	g		State Party to International Covenant on Economic, Social and Cultural Rights 1966? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • International Covenant on Economic, Social and Cultural Rights 1966 	Yes. No reservations.	UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&lang=en
IOB	3	h		State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Convention on the Elimination of all Forms of Discrimination Against Women 1979 • Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness. 	Yes. No reservations.	UN Treaties Database: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en
IOB	3	i		State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 	Yes. Two reservations were made upon signature: 1. Under Article 28, the Polish People's Republic does not consider itself bound by Article 20 of the Convention. 2. The Polish People's Republic does not consider itself bound by Article 30(1) of the Convention.	UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en
IOB	3	j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1965? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • International Convention on the Elimination of All Forms of Racial Discrimination 1965 	Yes. No reservations.	UN Treaties Database: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en

International and Regional Instruments – March 2019

IOB	3	k		<p>State Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990? Are there reservations in place? Please list them.</p>	<ul style="list-style-type: none"> • International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990 	No.	<p>UN Treaties Database: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-13&chapter=4&clang=en</p>
-----	---	---	--	--	--	-----	---

Stateless Population Data

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
POP	1	a	Availability and sources	Does the Govt have a discrete category for statelessness in its data collection system (e.g. in the census)? If so, what are the Govt figures for the total stateless population on the territory? Is the data disaggregated? If so, how?	<ul style="list-style-type: none"> • Gen. Rec. 32 of CEDAW (para.39): States parties should... gather, analyse and make available sex-disaggregated statistical data and trends... • European Council, Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness: Recognise the importance of exchanging good practices...concerning the collection of reliable data on stateless persons... • UNHCR Global Action Plan to End Statelessness 2014-2024 (Action 10): Improve quantitative and qualitative data on stateless populations... • Institute on Statelessness and Inclusion (The World's Stateless) pg.11: States should adopt and/or strengthen measures to count stateless persons on their territory... 	The use and the interpretation of the term 'stateless' is not consistent in records held by different authorities. In the last census, two relevant categories were applied: 'stateless' (understood as a person without any nationality) and 'undetermined nationality'. Both categories may have significance in estimating the stateless population in Poland, as the census results were based on self-declared answers by interviewees and no additional verification followed. In the census (2011), 2,020 persons residing in Poland declared they were stateless while in relation to 8,805 no nationality was established (mostly due to the fact that over 75% of those persons were homeless and lacked any documentation). The census data is disaggregated by gender and place of birth (Poland or abroad).	Statistics Poland, Population: demographic and social status and structure, 2013: http://stat.gov.pl/spisy-powszechne/nsp-2011/nsp-2011-wyniki/ludnosc-stan-i-struktura-demograficzno-spoleczna-nsp-2011,16,1.html (PL)
POP	1	b		Do Govt authorities define categories of persons who may overlap with stateless (e.g. unknown nationality, unspecified nationality, other)? Are statistics on these available? If, yes, please indicate categories and statistics.	As above	The last Polish census used the category 'undetermined nationality' as well as 'stateless'. The Office for Foreigners uses the term 'without nationality' and 'undefined nationality'. The Polish Border Guard in its records applies several other terms. According to the Border Guard Headquarters (BG HQ): 'a stateless person' is defined as ' <i>a foreigner of no state affiliation</i> [descriptive term that could also be translated simply as stateless], <i>a foreigner</i>	Statistics Poland, Population: demographic and social status and structure, 2013: http://stat.gov.pl/spisy-powszechne/nsp-2011/nsp-2011-wyniki/ludnosc-stan-i-struktura-demograficzno-spoleczna-nsp-2011,16,1.html (PL)

					<p><i>stripped of citizenship or claiming to be a citizen of the so-called unrecognized state</i>. The second category used by the BG HQ, persons of 'unknown nationality' is defined as: <i>'persons that are not defined as stateless, those that do not claim being citizen of any state, claim potential affiliation with many states or – even though they indicate a state affiliation – were not recognised by that state as a citizen'</i>. A third category used by BG HQ is persons whose 'citizenship was not confirmed', understood as <i>'persons with no identity documents, whose personal details (including citizenship) are accepted based on oral statements, which are subsequently verified'</i>. According to information provided by the Ministry of Digital Affairs in 2016, there were 1,328 people registered in the <i>Powszechny Elektroniczny System Ewidencji Ludności</i> (PESEL) (universal electronic population register) holding the status of a stateless person. None of the quoted data sources make an estimation on the number of stateless persons who are undocumented in Poland. As of 2018 (December) the Office for Foreigners reported the total number of "stateless persons" and persons of "unknown nationality" holding a valid residence permit as 435, of whom 390 are registered as stateless, and 45 of unknown nationality. In 2017 these number were: 397 stateless and 41 unknown nationality (total: 438). No information about their origin is available. According to statistics published by the Office for Foreigners, in 2017 there were only 11 applications for international protection lodged by stateless people and 4 by people of unknown nationality. In</p>	<p>Information provided by the Border Guard Headquarters, Management Board of Department for Foreigners, in reply to an information request about statistics on stateless persons and definitions used, submitted by the Halina Niec Legal Aid Center in 2016.</p> <p>Statistics from PESEL: written answer to a formal information request by Halina Niec Legal Aid Center in 2016.</p> <p>Statistics Poland: https://stat.gov.pl/en/</p> <p>Urząd do Spraw Cudzoziemców (Office for Foreigners), Statistics: https://udsc.gov.pl/en/statystyki/</p> <p>Office for Foreigners Migration Statistics: www.migracje.gov.pl</p>
--	--	--	--	--	---	--

Stateless Population Data – March 2019

						the same year 4 stateless people received refugee status and 1 stateless person was granted subsidiary protection. Similarly, in 2018 there were 11 applications for international protection lodged by stateless people and 2 by people of unknown nationality. 7 stateless people were granted refugee status while 4 received subsidiary protection.	
POP	1	c		What is the UNHCR estimate for the population of stateless persons and/or those at risk of statelessness on the territory? What is UNHCR's source for this information?	As above	UNHCR relies on data from the last Polish Census of 2011 and does not have other estimates.	Information provided by UNHCR Country Office in Poland.
POP	1	d		Are there indirect (proxy) sources of statistics on stateless persons? E.g. categories of persons for which statistics are available where stateless persons may be more highly represented (e.g. relevant country of origin or profiles (e.g. Palestinians or Syrian Kurds)? Please provide explanation and figures.	As above	The Office for Foreigners publishes statistics on international protection requests by people recorded as 'Palestinian' (2 applicants in 2017), for example, and other countries of origin where stateless people may be more highly represented.	Urząd do Spraw Cudzoziemców (Office for Foreigners), Information of the Head of the Office for Foreigners on implementation of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (uniform text in Journal of Law of 2016, item 1836) in the scope of performing the obligations of the Republic of Poland under the Geneva Convention Relating to the Status of Refugees and the New York Protocol Relating to the Status of Refugees in 2017, March 2018: https://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2017-2/

Stateless Population Data – March 2019

POP	1	e		Have there been surveys or mapping studies done to estimate the population of stateless persons in the country?	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-2024: Action 10 	UNHCR Poland commissioned a mapping study of statelessness in Poland in 2017, which is forthcoming.	UNHCR Country Office Poland
POP	1	f		Are there other sources of estimates for the population of stateless persons (not covered by the above)? If so, list sources and figures.	As above	There are no other estimates available.	
POP	1	g		Are there issues with reliability of stateless data? If yes, please describe why.	As above	Poland does not apply a uniform definition of the term stateless. The Border Guard applies a multitude of terms, partially overlapping which may blur the overall understanding of the size of this population. The data collected during the last census is based on self-declared answers, which means that the actual status of the interviewees was not verified. There are no estimates of the number of stateless undocumented persons.	
POP	1	h		Are there indications that the stateless population is either over or under reported? Please describe.	As above	The available statistical sources provide an overview of stateless people who either hold valid legal residence permits or who are subject to one of the protection or legalization procedures. Undocumented stateless persons are not reflected in these statistics, which gives grounds to believe that the overall population of persons without nationality in Poland is actually higher.	
POP	1	i		Please provide any available figures on stateless refugees or asylum seekers (if there is data, please clarify whether Govt also counts stateless refugees and asylum seekers in the stateless population to avoid under/over reporting).	As above	There are no general statistics for stateless persons so there is no case of over-reporting. Separate data sources quote the number of stateless asylum seekers, recognised refugees, and persons with other types of residence. In June 2017 there were 52 recognised refugees who were stateless. In 2017 there were 11 applications for international protection lodged by stateless persons and 4 by persons of unknown nationality. In the same year	Information on recognised refugees who are stateless, Office for Foreigners Migration Statistics: www.migracje.gov.pl Information on asylum applications, Office for Foreigners: www.udsc.gov.pl

Stateless Population Data – March 2019

						4 stateless persons received refugee status and 1 stateless person was granted subsidiary protection. Similarly, in 2018 there were 11 applications for international protection lodged by stateless persons and 2 by persons of unknown nationality. 7 stateless persons were granted refugee status while 4 received subsidiary protection. Information on valid residence permit holders, who were issued the permit based on their refugee or subsidiary protection status indicates that in 2017 there were 55 stateless persons with valid residence permits as recognised refugees and 3 stateless persons holding subsidiary protection; in 2018 there were 49 stateless persons with valid residence permits as recognised refugees and 8 stateless persons holding subsidiary protection.	
POP	2	a	Stateless in Detention data	Number of stateless persons in immigration detention	As above and see also norms in Detention section.	This information is not publicly available.	ENS, 2015, <i>Protecting stateless persons from arbitrary detention in Poland</i> : http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland
POP	2	b		Are there statistics on individuals released from immigration detention who were unremovable, their country of origin and length of detention? If yes, please provide.	As above	This information is not publicly available.	

Statelessness Determination and Status

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
IDP	1	a	Definition of a stateless person	Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details.	<ul style="list-style-type: none"> • UN Convention Relating to the Status of Stateless Persons, 1954: Article 1(1) and 1(2). 	There is no legal definition of a stateless person in Polish national law.	
IDP	1	b	Existing SDP procedure	<p>Which of the following best describes the situation in your country?</p> <p>2. There is no dedicated SDP procedure but there are other administrative procedures by which statelessness can be identified (e.g. through citizenship, residence permit and international protection procedures or ex-officio) (proceed to Q.10a).</p>	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: ... it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments. • UNHCR (Good Practices Paper 6): Establishing a statelessness determination procedure is the most efficient means for States Parties to the 1954 Convention to identify the beneficiaries of that Convention. • European Council, Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness: Recognise the importance of exchanging good practices among Member States concerning... procedures for determining statelessness. 	Group 2 - There is no dedicated SDP but there are other administrative procedures by which statelessness can be identified.	
IDP	10	a	Alternative administrative procedures for identification	If there is no dedicated SDP in your country , are there other administrative procedures by which statelessness can be identified (e.g. through citizenship, residence, and international protection procedures or ex-officio)?	<ul style="list-style-type: none"> • ENS (2013), Statelessness Determination and the Protection of Stateless Persons: a summary guide of good practices: For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. 	Statelessness may come up as a legally relevant fact in many proceedings, but none of them is tailored to make a determination of statelessness as a status. These procedures include primarily: 1. International protection procedure	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item</p>

						<p>2. Return proceedings as these typically include a component of identification, including citizenship assessment and determining the country of origin/return.</p> <p>3. Legalisation proceedings may also be of relevance but have limited scope.</p> <p>4. Amnesty proceedings for undocumented stateless persons but these are not accessible on a regular basis.</p>	<p>1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>NB: available translated versions of these acts are not in line with the currently binding versions.</p>
IDP	11	a	Access to procedures	How is statelessness identified in the course of other procedures?	<ul style="list-style-type: none"> • UNHCR (Good Practices Paper 6): Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. 	<p>The identification of statelessness is part of the more general identification process and the assessment of nationality. There are no legally set criteria for this process and they are understood as technical steps taken by the authorities aimed at ensuring that the administrative proceedings may be continued.</p>	<p>National Contact Point to the European Migration Network in Poland, Establishing Foreigners' Identity for International Protection. Challenges and Practices (2013), available in English at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/20a.poland.national.report.establishing.identity.for.international.protection.final.en.oct2012.en.pdf</p>
IDP	11	b		Are there obligations in law on authorities to consider a claim for statelessness made within another procedure?		No.	
IDP	11	c		Are there clear instructions on how to make a claim for statelessness within the particular administrative procedure?		No.	
IDP	11	d		Is the examination of statelessness conducted by a centralized or localised body?		<p>It depends on the type of procedure: the international protection procedure is run by a centralised body (Office for Foreigners); the legalisation</p>	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650:</p>

						procedures and return proceedings are run locally by the Voivode's Office (for the former) and the Commander in Chief of the relevant Border Guard division (the latter).	http://www.bip.udsc.gov.pl/ustawy (PL) Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)
IDP	11	e		Is there training to inform different governmental bodies about statelessness and determination procedures? Is there training of public officials in identifying statelessness? If yes, please provide details (i.e. who provides the training to whom and how often?)		There are no such dedicated trainings available to governmental bodies and public officials.	
IDP	11	f		Is there cooperation between agencies that may come into contact with stateless persons? If so, how are cases referred to the appropriate authority for determination?		The authorities responsible for carrying out administrative procedures in the case of stateless persons (protection or return proceedings) cooperate with the Border Guard for the identification of the person and their nationality.	National Contact Point to the European Migration Network in Poland, Establishing Foreigners' Identity for International Protection. Challenges and Practices (2013), available in English at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/20a_poland_national_report_establishing_identity_for_international_protection_final_en_oct2012_en.pdf
IDP	12	a	Assessment	What is the burden of proof when identifying an individual's stateless status?		There is no 'stateless status' in Polish law, but in the process of identification, which includes the assessment of nationality, the burden of proof is shared between the individual and the authorities.	

Statelessness Determination and Status – March 2019

IDP	12	b		What is the standard of proof? Is it the same as in asylum applications?		Yes.	
IDP	12	c		Are decision makers presented with clear guidance on how to determine statelessness, including sources of evidence and procedures for evidence gathering to establish statelessness? Please provide details.	<ul style="list-style-type: none"> • ENS (2013), Statelessness Determination and the Protection of Stateless Persons: a summary guide of good practices: determining authorities can benefit significantly from any concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances. 	There are no such guidelines prescribed by law. The process of identification, which includes the assessment of nationality, is carried out by the Border Guard relying on their internal procedures.	
IDP	13	a	Procedural Protections	Is there legal aid available during the application?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: applicants are to have access to legal counsel; where free legal assistance is available, it is to be offered to applicants without financial means. • ENS (2013), Statelessness Determination and the Protection of Stateless Persons: a summary guide of good practices: If state funded legal aid is available in the country it should be provided to stateless claimants. If there is no state funded legal aid... but asylum claimants can access legal aid free of charge, then the same level of access should be provided to stateless claimants. 	Free legal aid (state funded) is provided at the appeal stage of the international protection procedure and at the judicial review stage of administrative proceedings. There is no such legal aid granted by state in return proceedings and at present (August 2017) such aid is also not provided by NGOs.	Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)
IDP	13	b		Is an interview always offered (unless granting without interview)?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: The right to an individual interview, and necessary assistance with translation/interpretation throughout the process, are essential to ensure that applicants have the opportunity to present their cases fully... 	Interviewing the applicant in the international protection procedure is mandatory (except for manifestly unfounded applications). There is no obligation to interview in return proceedings.	Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL) Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)

IDP	13	c		Is an interpreter provided? Free of charge?	<ul style="list-style-type: none"> • ENS (2013), Statelessness Determination and the Protection of Stateless Persons: a summary guide of good practices: assistance should be available for translation and interpretation in respect of written applications and interviews (good practice is free of charge). 	An interpreter is provided free of charge in return proceedings and international protection proceedings whenever necessary.	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>
IDP	13	d		Are decisions given with reasons? In writing?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: States are encouraged, therefore, to incorporate the following safeguards: [...] decisions are made in writing with reasons. 	Decisions are delivered in writing and include a justification.	<p>Code of Administrative Procedure, Act of 14 June 1960 Journal of Laws 1960 No. 30, item 168: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p>
IDP	14	a	Stateless Status	Does identification of a person as stateless result in permission to stay/legal status or any other benefit to the individual? Please describe what status is provided and what benefits attach to it.	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: The 1954 Convention ...[grants] stateless persons a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in States party to the 1954 Convention. The status granted to a stateless person in a State Party... must reflect these international standards... Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty... It is therefore recommended that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of 	Identification of a person as stateless in return proceedings results in issuing a permit for tolerated stay, provided that it has been established that the country of former habitual residence will not accept the returnee. A permit for tolerated stay legalises the stay of the foreigner in Poland but does not entitle them to cross the border. Foreigners with this type of permit are entitled to work without the need to obtain a permit. They have access to healthcare and social assistance. A person granted tolerated stay is obliged to report to the Commander in Chief of the Border Guard Division in their current place of residence, as well as notify of any change to place of residence.	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

					stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.		
--	--	--	--	--	--	--	--

Detention

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
DET	1	a	Detention screening	Are immigration detention powers provided for in law?	<ul style="list-style-type: none"> • ICCPR Art 9 (1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. • ECHR Art 5 (1): Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 	According to Polish law, a foreigner may be placed in detention only on the basis of a court decision delivered in writing. The relevant principles are prescribed within the Act on Foreigners and the Code of Criminal Procedure. The application for placing a foreigner in detention or prolongation of detention is submitted by the Border Guard.	<p>Code of Criminal Procedure, Act of 6 June 1997, Journal of Laws Item 1997, Item 555: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p>
DET	1	b		Does domestic law allow immigration detention for purposes other than those allowed under ECHR 5(1)(f)?	<ul style="list-style-type: none"> • ECHR Art 5 (1)(f) 	<p>According to the Act on Foreigners, immigration detention can be ordered in the following situations:</p> <ol style="list-style-type: none"> 1. it is probable that a return decision without a possibility of voluntary departure period will be issued; 2. a return decision without a possibility of voluntary departure period has been issued; 3. the foreigner has not left Poland within the voluntary departure period and his immediate removal is not possible; 4. it is necessary to ensure transfer of a person to a non-EU or Schengen country, under the EU Dublin Regulation or based on international agreement and an immediate transfer is not feasible; 	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

						<p>5. the foreigner does not comply with the duties imposed on him by the decision ordering alternatives to detention.</p> <p>If the foreigner has lodged an application for international protection, detention is permissible in the following situations:</p> <ol style="list-style-type: none"> 1. when it is necessary to establish his identity; 2. in order to collect information necessary to determine the reasons on which the application for international protection is based where this information could not be obtained in the absence of detention, in particular when there is a high risk of absconding; 3. if the foreigner is in pre-removal detention in accordance with the EU Returns Directive and the foreigner had the opportunity to apply for protection before and it can be substantiated that the application for international protection is submitted merely in order to delay or frustrate the enforcement of the return order; 4. for reasons of state security or public order; or 5. according to the Dublin Regulation, where there is a serious risk of absconding and an immediate transfer is not possible. <p>The risk of absconding is interpreted as a situation, when the asylum applicant, inter alia:</p>	
--	--	--	--	--	--	---	--

						<p>1.Is not in the possession of identity documents when submitting the asylum application</p> <p>2.Has crossed or attempted to cross the border contrary to the law, unless he/she is arriving directly from a territory where their life or freedom has been threatened with persecution or there was a risk of serious harm and the applicant has presented credible reasons for irregular entry to the territory of Poland and has submitted asylum application immediately after crossing the border, or;</p> <p>3.Has entered Poland during the period for which their data were entered to the list of undesirable foreigners in Poland or to Schengen Information System in order to refuse entry.</p> <p>The analysis of the above-mentioned detention grounds indicates that they are in line with the standard of ECHR article 5(1)(f). The only doubt concerns the first of the enumerated grounds mentioning the probability of issuing a return decision without a possibility of voluntary departure period. The mere possibility of issuing such a decision seems an excessive interpretation of the premises of ECHR 5(1)(f).</p>	
--	--	--	--	--	--	--	--

DET	1	c		<p>Does a proposed country of removal need to be identified before a person is detained for the purpose of removal? Please describe the situation in law and in practice.</p>	<ul style="list-style-type: none"> • ICCPR Art 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Repeated attempts to expel a person to a country where his/her well-being is not guaranteed and where he/she could be subject to cruel, inhuman or degrading treatment or punishment or to a country that is refusing to admit the individual in question could amount to inhuman or degrading treatment. • ECHR Art 5 (1)(f) • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): ...the only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant. • EU Returns Directive: Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. • ECRE, Point of No Return: The Futile Detention of Unreturnable Migrants, 2014: Once un-returnability is established, migrants should not be detained. 	<p>Detention for the purpose of removal can be ordered even where it is merely probable that a return decision without a possibility of voluntary departure period will be issued. A final assessment of the country of removal is thus not a precondition of ordering detention.</p>	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p>
DET	1	d		<p>Is statelessness a juridically relevant fact in any decision to detain (in practice and in law)? If so, at what point(s) is a risk of statelessness identified? Is referral to an SDP possible within the detention regime?</p>	<ul style="list-style-type: none"> • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): as above. • UNHCR (2014), Handbook on Protection of Stateless Persons: Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary... For stateless persons, the absence of status determination procedures to verify identity or nationality can lead to prolonged or indefinite detention. SDPs are therefore an important mechanism to reduce the risk of prolonged and/or arbitrary detention. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 13 – states must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. • International Commission of Jurists, Migration and International Human Rights Law: a Practitioner's Guide 2014: the detention of stateless persons can never be 	<p>There are no explicit legal grounds determining the results of finding that the foreigner to be detained (or already placed in detention) is stateless. Identifying statelessness may however render the decision of removal unenforceable and thus lead to granting a permit for tolerated stay (and release from detention). There is no dedicated SDP.</p>	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

					justified when there is 'no active or realistic progress towards transfer to another State'.		
	1	e		Are stateless persons detained in practice? Please provide figures and source of information if available.	<ul style="list-style-type: none"> • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): as above. • UNHCR (2014), Handbook on Protection of Stateless Persons: as above. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: as above. • International Commission of Jurists, Migration and International Human Rights Law: a Practitioner's Guide 2014: as above. 	There is no publicly available data on detention and the status of detainees. However, the practice of the Halina Niec Legal Aid Center in providing legal assistance in migration detention corroborates the view that stateless persons or those at risk of statelessness may be found in detention.	European Network on Statelessness, 2015, <i>Protecting stateless persons from arbitrary detention in Poland</i> : http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland
DET	1	f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives to detention have been exhausted?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. • EU Returns Directive: Art 15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process. 	According to the Act on Foreigners and the Act on Granting Protection, when deciding on a detention order in relation to a foreigner in international protection proceedings as well as in return proceedings, the court is obliged to consider non-custodial measures. There is no provision in either of these acts that explicitly establishes the rule that detention should be used as a measure of last resort.	<p>Article 401(5), Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Article 88(b)(2), Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Sieniow, T. (2016), Report: <i>Monitoring the use of alternatives to detention of foreigners in Poland: 2014–2015</i>, The Rule of Law Institute Foundation: http://panstwoprawa.org/wp-content/uploads/2016/09/Stosowanie-alternatyw-do-detencji-cudzoziemcow_ca%C5%82o%C5%9B%C4%87.pdf(PL)</p>

DET	1	h		<p>Are individual vulnerability assessments carried out before a decision to detain (or shortly thereafter), and are stateless persons defined as a vulnerable group?</p>	<ul style="list-style-type: none"> • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless persons are not understood and addressed... • EU Returns Directive: Art 16(3) Particular attention shall be paid to the situation of vulnerable persons... • UNHCR (2012), Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention: The special circumstances and needs of particular asylum-seekers must be taken into account... • Council of the European Union Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons 2013: European entities should assess the situation of LGBTI persons in detention... 	<p>Stateless persons are not defined as a vulnerable group. Although there are specific grounds prohibiting detention in certain cases of vulnerability, there is no legally determined procedure for carrying out such assessments before taking a decision on detention. In practice, everyone entering detention is subjected to a basic vulnerability screening upon placement. Detention is prohibited in the case of unaccompanied minor asylum seekers and unaccompanied minors under the age of 15, where there is a presumption that the person has been subjected to violence, if detention would pose a threat to life or health of the detainee, in the case of disabled asylum seekers.</p>	<p>Przybyslawska, K. (ed), Pajura, M.(2013), <i>Report: Vulnerable Foreigners in Poland: Identification, Detention and Judicial Practice, 2012-2013</i>, Halina Niec Legal Aid Center:https://docs.wix-static.com/ugd/1fb8cf_3878e7a2673c41dea0d5cba811c1e26c.pdf</p>
DET	2	a	Alternatives to immigration detention	<p>Does the country have alternatives to detention which individuals are considered for prior to any decision to detain? Are alternatives to detention established in law? Are they subject to a statutory time limit and periodic reviews of their necessity and proportionality?</p>	<ul style="list-style-type: none"> • ICCPR Art 9 • FKAG v Australia (HRC): Any decision relating to detention must take into account less invasive means of achieving the same ends... • UN General Assembly Resolution on the protection of migrants 63/184 2009: Calls upon all States ... to adopt, where applicable, alternative measures to detention. • UNHCR (2014), Handbook on Protection of Stateless Persons: Detention...can only be justified where other less invasive or coercive measures have been considered and found insufficient... Alternatives to detention...are part of any assessment of the necessity and proportionality of detention. • UNHCR (2012), Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention: alternatives to detention refers to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their 	<p>Yes, there are several alternatives to detention prescribed in law. The Act on Foreigners provides for: regular reporting to the Border Guard, paying a bail, relinquishing travel documents, and/or residing in an indicated place of residence. The Act on Granting Protection lists the same measures, except for handling in the travel documents.</p>	<p>Article 401(5), Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Article 88(b)(2), Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

				<p>freedom of movement and since they can involve restrictions on movement of liberty they are bound by human right standards.</p> <ul style="list-style-type: none"> • Human Rights Council (HRC), Report of the Special Rapporteur on the human rights of migrants, François Crépeau (2012) A/HRC/20/24: Alternatives to detention should not become alternatives to unconditional release [...] the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention should be established by law. • Council of Europe (2005), Twenty Guidelines of the Committee of Ministers of Europe on Forced Return: After a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems. • EU Returns Directive: Art 15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: (31) ...states have an obligation in the first instance to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive than detention, ensure the greatest possible freedom of movement and that respect the human rights of the individual. • International Detention Coalition (2015), There Are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition): immigration 		
--	--	--	--	---	--	--

					detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.		
DET	2	b		Is there evidence that immigration detention is used in practice prior to all alternatives being considered? Please cite relevant reports.	As above	In a comprehensive study of court detention orders between 2014–2015, the Rule of Law Institute Foundation found that in 939 analysed cases, the courts ordered detention as requested by the Border Guard 869 times. This means that in 92.5% of cases the courts decided in favour of detention. Worryingly, in the majority of analysed decisions, it was impossible to find to what extent the court had considered the feasibility of non-custodial measures. Often no reference to alternatives was made in the justification of the detention order. The same report quotes statistics proving that since alternative measures were introduced, the number of persons placed in detention has dropped.	Sieniow, T. (2016), Report: <i>Monitoring the use of alternatives to detention of foreigners in Poland: 2014–2015</i> , The Rule of Law Institute Foundation: http://panstwoprawa.org/wp-content/uploads/2016/09/Stosowanie-alternatyw-do-detencji-cudzoziemcow_ca%C5%82o%C5%9B%C4%87.pdf (PL)
DET	3	a	Procedural safeguards	Is there a maximum time period for immigration detention set out in the law? What is it?	<ul style="list-style-type: none"> • UN Human Rights Council (HRC) (2010), Report of the UN Working Group on Arbitrary Detention to the Human Rights Council, 13th Session, A/HRC/13/30: a maximum period of detention must be established by law and upon expiry of this period the detainee must be automatically released. • UNHCR (2012), Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention : to guard against arbitrariness, maximum periods of detention should be set in national legislation. • EU Returns Directive: Art 15(5) Each Member State shall set a limited period of detention, which may not exceed six months (extendable by 12 months in spe- 	The Law on Foreigners specifies that the maximum length of migration detention is 18 months.	Article 403, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)

					<p>cific circumstances of the detainee refusing to cooperate with removal proceedings or delays in obtaining documentation from third countries).</p> <ul style="list-style-type: none"> • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: It is desirable that states clearly specify a reasonable maximum time limit. Under no circumstances should indefinite detention be tolerated. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 39 Detention should always be for the shortest time possible. There should be a reasonable maximum time-limit for detention. It is highly desirable that states do not detain stateless persons for more than six months. States which at present have a lower than six-month maximum time-limit for detention are urged not to increase it, and all states are urged to review and reduce their maximum time limit for detention. 		
DET	3	b		Does law/policy provide that individuals must be informed in writing of the reasons for immigration detention?	<ul style="list-style-type: none"> • UN General Assembly (UNGA) (1988), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution A/RES/43/173: Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him. • EU Returns Directive: Detention shall be ordered in writing with reasons being given in fact and in law. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 37 Stateless detainees shall receive their order of detention in writing and in a language they understand and this must outline the reasons for their detention. 	Yes. A decision to order the placement of a foreigner in detention is delivered in writing and includes reasoning.	Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)
DET	3	c		Are all detainees provided with information on their rights, contact de-	<ul style="list-style-type: none"> • International Commission of Jurists (ICJ) (2014), Migration and International Human Rights Law: a Practitioner's Guide (updated edition): The authorities are required to take steps to ensure that sufficient information is available to detained persons in a language 	Yes, all detainees are provided with written information in a language they understand on their rights, obligations, contact details of NGOs providing assistance as well as UNHCR.	Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)

				<p>tails of organisations to assist them, including in challenging the legality of their detention and conditions of detention? Does this include guidance on how to access a dedicated SDP?</p>	<p>they understand, regarding the nature of their detention, the reasons for it, the process for reviewing or challenging the decision to detain.</p> <ul style="list-style-type: none"> • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 37 Detainees must be informed of their rights related to the detention order, including the right to legal advice, the right to apply for bail, seek judicial review and/or appeal the legality of the detention. Where appropriate, they should receive free legal assistance; they must be informed of the maximum time limit which they can be held in detention; and they must be provided with a handbook in a language which they understand and that contains information on all their rights and entitlements during detention. 		<p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>
DET	3	d		<p>Are there regular periodic reviews of the necessity for the continuation of detention before a court or an independent body? If yes, are detainees released when it becomes evident that their removal will not be possible within a reasonable time?</p>	<ul style="list-style-type: none"> • ICCPR Art 9(3): Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. • EU Returns Directive: Any detention shall ... only be maintained as long as removal arrangements are in progress and executed with due diligence. • Avud v Bulgaria [2011] Application no 46390/10 (ECtHR): ...the only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant... the length of the detention should not exceed that reasonably required for the purpose pursued. • Kim v Russia [2014] Application no 44260/13 (ECtHR): The purpose of Art 5(4) ECHR is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. • A. v. Australia, CCPR/C/59/D/560/1993, (HRC): Decisions to detain should be open to review periodically so that the grounds justifying the detention can be assessed. 	<p>Detention can only be ordered and extended by decision of a court, at the request of the Border Guard. The extension of detention by a court constitutes a de facto periodic review of detention. If removal to the country of origin is deemed unenforceable, the person is granted a permit for tolerated stay and released but there are no set deadlines prescribed in law nor evident from practice that are understood as “reasonable time”.</p>	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Helsinki Foundation for Human Rights (HFHR), <i>Country report: Poland: fourth update</i>, Asylum Information Database (AIDA), 2015, http://www.asylumineurope.org/reports/country/poland</p>

				<ul style="list-style-type: none"> • Saïd Shamilovich Kadzoev v Direktsi aMigratsia' pri Ministerstvo navatreshniteraboti [2009] Case C-357/09 (ECJ): There must, at the time of the national Court's review of the lawfulness of detention, be a real prospect that the removal can be carried out successfully. • Council of Europe (2005), Twenty Guidelines of the Committee of Ministers of Europe on Forced Return: Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 41 To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities. 		
DET	3	e	What remedies are available to an individual to challenge detention? How often can these be invoked? Are there any obstacles in practice?	<ul style="list-style-type: none"> • ICCPR Art 9(4): Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. • ECHR: Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. • Kim v Russia [2014] Application no 44260/13 (ECtHR): the purpose of Art 5(4) ECHR is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. 	<p>Detainees have a right to appeal the detention order and the decision on extension of this measure to the court. The appeal should be filed within seven days of receiving the order (or its translation) and the court has seven days to examine the request. In practice the courts take approximately three weeks to decide the appeal. A detainee can also file an application for release to the Border Guard under the Act on Foreigners (e.g. if detention would threaten life or health) or to the Head of the Office for Foreigners under the Act on Protection if there is a high probability that international protection will be granted. If these applications are refused, the decision of the Border Guard or Head of Office for Foreigners can be appealed to court.</p>	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, Journal of Laws 2003, item 1176: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

						Under the Act on Protection, the initial detention period of an applicant for international protection is 60 days. If the individual files an application for protection from detention (following a court order under the Act on Foreigners), and there are valid reasons for detention under the Act on Protection, it can be extended by 90 days. In both cases, if asylum proceedings have not been concluded during the period of 60 or 90 days and the grounds justifying detention still exist; detention can be extended up to six months.	
DET	3	f		<p>Are there rules/guidance in place that govern the process of re-documentation and/or ascertain entitlement to nationality, for the purpose of removal?</p> <p>Do these rules articulate the respective roles that state and individual are expected to play?</p> <p>Are there time limits clearly set out?</p> <p>Are the outcomes of such processes used/considered relevant for subsequent determination of whether an</p>	<ul style="list-style-type: none"> • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): The only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation (see also above). • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality...the respective roles that the state and the individual should be expected to play and related time limits should be clearly articulated. The longer it takes to do so, detention is more likely to become unreasonable and disproportionate. • ECRE, Point of No Return: The Futile Detention of Unreturnable Migrants, 2014: Once un-returnability is established, migrants should not be detained. Detention should not be used for nationals of countries to which forced returns are not generally possible. 	<p>Under the Act on Foreigners, if a return order is issued for someone without valid documentation, the Border Guard should file a motion for redocumentation to the appropriate diplomatic representation or authority in the country of origin. If redocumentation is impossible, the Commander in Chief of the Border Guard may issue a Temporary Polish Travel Document, valid for seven days, to allow the person to cross the Polish Border. The Act on Foreigners does not further specify the process for assessment of nationality and redocumentation and no deadlines are set. If the removal order cannot be enforced due to reasons beyond the control of the Border Guard and individual, a permit for tolerated stay is granted.</p>	<p>Arts. 268(2), 325& 351, Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>European Network on Statelessness, 2015, <i>Protecting stateless persons from arbitrary detention in Poland</i>: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland</p>

				individual is stateless?			
DET	3	g		Is free legal aid available to challenge detention? Are there any barriers to accessing this in practice?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. • EU Returns Directive: Art 13(3) The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. 	Currently (August 2017) due to a shortage of funds Polish NGOs only provide free legal aid in detention to people in the international protection procedure. Foreigners can be granted a state appointed attorney in detention proceedings– here the general rules of the criminal procedures code apply. In practice, this opportunity is almost never accessed by non-citizen detainees.	<p>Code of Criminal Procedure, Act of 6 June 1997, Journal of Laws Item 1997, Item 555: http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970890555 (PL)</p> <p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p> <p>HNLAC casework/practice.</p>
DET	4	a	Protections on release	Are those released from detention issued with any identification, including confirmation of their statelessness status, and thus protected from arbitrary re-detention?	<ul style="list-style-type: none"> • UN Convention Relating to the Status of Stateless Persons, 1954: Art 27 • UNHCR (2014), Handbook on Protection of Stateless Persons: Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons. • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: Article 27 of the 1954 Statelessness Convention... applies to all stateless persons, which includes those not staying legally in the state's territory... state parties to the 1954 Convention have an obligation to provide stay rights to stateless persons who have been released from detention. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guidelines 55 & 56 Special care should be taken to address the vulnerabilities of stateless persons who are 	If the detention order is lifted due to unenforceability of the removal order, a permit for tolerated stay will be issued, which legalises stay in Poland. There is no practice of officially confirming the fact of statelessness, unless lack of nationality is part of the written justification of a decision.	<p>Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)</p>

Detention – March 2019

					released from detention and to ensure that they enjoy all human rights which they are entitled to under international law... Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.		
DET	4	b		If the purpose of detention cannot be fulfilled (e.g. removal) and the person is released, what legal status is provided to them by law? Can they access social services, accommodation, welfare, education and healthcare? Do they have the right to work?	<ul style="list-style-type: none"> • Saïd Shamilovich Kadzoev v Direktsia Migratsia' pri Ministerstvo navatreshniteraboti [2009] Case C-357/09 (ECJ): Article 15(4) and (6) of the Directive should be interpreted as requiring that after the maximum period of detention has expired, the person must be released immediately... the individual's lack of valid documentation, his/her inability to support him/herself or his/her "aggressive conduct" should not be a deterrent to his/her release. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 55 as above. 	Unenforceability of the removal order is the basis for issuing a permit for tolerated stay. This status grants access to social assistance, education and healthcare and gives the right to work.	Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)
DET	4	c		If re-detention does occur, is the cumulative time spent in detention counted towards any maximum time limits?	• Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention : Guideline 40 When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.	If re-detention occurs, the cumulative time spent in detention counts towards the maximum time limit only if it was ordered on the same basis and in the same procedure as before.	Act on Foreigners of 12 December 2013, Journal of Laws, 2013, Item 1650: http://www.bip.udsc.gov.pl/ustawy (PL)
DET	5	a	Readmission agreements	Is statelessness considered a juridically relevant fact in any readmission and/or bilateral return agreements?	UNHCR (2014), Handbook on Protection of Stateless Persons : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.	Stateless people are mentioned in readmission agreements concluded by Poland, inter alia, in the agreements between Poland and the Republic of Kazakhstan, Armenia and Moldova. Statelessness is explicitly mentioned in the agreement between Poland and the Republic of Kazakhstan. A stateless person is defined as a person 'who has no evidence confirming his possession of citizenship of any state'. This definition does not comply with the 1954	Implementing protocol between the Government of the Republic of Poland and the Government of the Republic of Moldova to the Agreement between the European Community and the Republic of Moldova on readmission of persons residing without authorization: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150000777/O/D20150777.pdf (PL)

						<p>Convention as it clearly shifts the burden of proof onto the stateless person and equates the lack of evidence in their possession with the absence of citizenship. The appendix to the agreement lists documents that are to be recognised as proof of a link of a person to one of the state-parties to the agreement. In case of stateless persons, the type and categories of required documents is very broad and as a result, the agreement may allow for readmission of stateless persons with a merely incidental link to the country in question (e.g. a visa, driving license, service card etc.). There is no prescribed procedure for verifying the status or statelessness of the person in question. Another example is the Protocol for the implementation of the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting citizens of both States. The Protocol includes a list of documents for citizenship determination and presumption. Interestingly, in the section devoted to documents that may be used as reference in presuming Vietnamese citizenship several types of documents indicating only indirectly a link to Vietnamese citizenship are mentioned e.g. Army identity card, ship-crew passport, household registration book, most recent polling card, driving license. There is no prescribed procedure</p>	<p>Protocol for the implementation of the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting citizens of both States, http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20051561306/O/D20051306.pdf (PL)</p> <p>Agreement between the European Community and Ukraine on the readmission of persons: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.332.01.0046.01.ENG</p> <p>Agreement between the Government of the Republic of Poland and the Government of the Republic of Kazakhstan on the readmission of persons: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001623/O/D20171623.pdf (PL)</p>
--	--	--	--	--	--	--	--

						<p>dure for verifying the status or statelessness of the person in question. In the Implementing protocol between the Government of the Republic of Poland and the Government of the Republic of Moldova to the Agreement between the European Community and the Republic of Moldova on readmission of persons residing without authorisation, one of the documents proving or indicating a presumption of citizenship is a marriage certificate. The Agreement between the European Community and Ukraine on the readmission of persons, which is binding also in Polish-Ukrainian relations, defines a stateless person as 'any person who does not hold a nationality'. The list of documents used to substantiate an application for readmission is similar to the agreements quoted above and is very broad.</p>	
DET	5	b		Are you aware of cases of cases of stateless people being returned under such agreements?		No.	

Prevention and Reduction

Cat	Q	Sub	Subtheme	Question	International Norms/Good Practice	Answer	Source
PRS	1	a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to be granted nationality?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless... • European Convention on Nationality, 1997: Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality... • Convention on the Rights of the Child 1989: The child shall have... the right to acquire a nationality... States Parties shall ensure the implementation of these rights...in particular where the child would otherwise be stateless... States Parties undertake to respect the right of the child to preserve his or her identity, including nationality... • Genovese v. Malta (ECtHR) Application No. 53124/09, 11 October 2011 	The provision grants Polish nationality only to foundlings and children whose parents are stateless or with undetermined nationality. This safeguard does not fully encompass the scope of protection afforded by the 1961 Convention.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	1	b		Is the provision for stateless children to access nationality automatic or non-automatic (i.e. by application)?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Article 1 of the 1961 Convention provides Contracting States with two alternative options for granting nationality to children who would otherwise be stateless born in their territory. States can either provide for automatic acquisition of nationality upon birth pursuant to Article 1(1)(a), or for acquisition of nationality upon application pursuant to Article 1(1)(b) ... • ENS (2015), No Child Should Be Stateless: Article 1 of the 1961 Convention and article 6(2) of the ECN are the most important of these norms for the European context. Both oblige the conferral of nationality to children born on the territory if they would otherwise be stateless but allow some leeway in how states transpose this safeguard into their domestic systems. The first, and optimal, method – as it is all- 	The provision is automatic (for a foundling or child born to stateless parents, or to parents whose nationality is undetermined).	Article 14(2) & 15, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

					encompassing and does not tolerate even a temporary period of statelessness – is to grant nationality to otherwise stateless children automatically, at birth.		
PRS	1	c		Is it a requirement that the parents are also stateless for the child to acquire the nationality of the host state?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: The test is whether a child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child's parents are stateless. Restricting the application of Article 1 of the 1961 Convention to children of stateless parents is insufficient in light of the different ways in which a child may be rendered stateless and contrary to the terms of those provisions. • ENS (2015), No Child Should Be Stateless: Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the child's parent(s) do hold a nationality themselves, but are unable to pass this on... 	Yes, the parents must be stateless or their nationality undetermined.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	1	d		<p>Are children born stateless required to prove they cannot access another nationality to acquire nationality of the country of birth?</p> <p>If yes, please describe the requirement e.g. what is the standard and burden of proof, and how lack of any other nationality (i.e. statelessness) is determined in practice?</p>	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: A Contracting State to the 1961 Convention cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless...based on its own interpretation of another State's nationality laws where this conflicts with the interpretation applied by the State concerned... the burden of proof must be shared between the claimant and the authorities... decision makers need to take into account Articles 3 and 7 of the CRC and adopt an appropriate standard of proof, for example... 'reasonable degree'... Requiring a higher standard of proof would undermine the object and purpose of the 1961 Convention. Special procedural considerations to address the acute challenges faced by children, especially unaccompanied children, in communicating basic facts with respect to their nationality are to be respected. 	No.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

PRS	1	e		<p>Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, what is it? Must this be legal and/or permanent residence?</p>	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State may make the grant of its nationality...subject to one or more of the following conditions: <ul style="list-style-type: none"> ...b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all. • UNHCR Guidelines on Statelessness #4 2012: States may stipulate that an individual who would otherwise be stateless born in its territory fulfils a period of “habitual residence” This period is not to exceed five years immediately preceding an application nor ten years in all. In light of the standards established under the CRC, these periods are lengthy. States which ...require a certain period of habitual residence are encouraged to provide for a period as short as possible...The term “habitual residence” is ...to be understood as stable, factual residence. It does not imply a legal or formal residence requirement. The 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence. • Convention on the Rights of the Child 1989: Arts 3 & 7 • Committee on the Rights of the Child, Concluding observations on the 4th periodic report of the Netherlands CRC/C/NDL/CO/4, 2015:The Committee recommends that the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions. • European Convention on Nationality, 1997: Article 6 (2)(b) ... Such an application may be made subject to the lawful and habitual residence on its territory 	<p>No – the provision is automatic.</p>	<p>Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf</p>
-----	---	---	--	--	---	---	--

					for a period not exceeding five years immediately preceding the lodging of the application. <ul style="list-style-type: none"> • ENS (2016), Ending Childhood Statelessness: The ECN cannot be interpreted as undermining states' obligations under the CRC...and the requirement of lawful residence should be removed. 		
PRS	1	f		Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, what is it? Must this be legal and/or permanent residence?	<ul style="list-style-type: none"> • Committee on the Rights of the Child, Concluding Observations Czech Republic CRC/C/CZE/CO/3-4, 2011: The outcome of an application for citizenship, legal residence or similar status by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State party where the child would otherwise be stateless. • ENS (2015), No Child Should Be Stateless: Demanding that the child or his/her parents reside lawfully on the territory is... prohibited by the 1961 Convention which permits only the condition of a certain period of habitual residence. 	No.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	1	g		What are the age limits, if any, for making an application for nationality for a stateless person born on the territory?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State may make the grant of its nationality...subject to one or more of the following conditions: (a) that the application is lodged during a period... beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years... • UNHCR Guidelines on Statelessness #4 2012:...Contracting States ...need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. • ENS (2015), No Child Should Be Stateless:...any application procedure which only becomes available in late childhood or even upon reaching majority is particularly problematic [...] closing the window of opportunity to apply for a nationality through such safeguards too early has the effect of leaving it in the 	N/A	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

					hands of parents to take the necessary steps to secure a nationality for their child and may mean children are left stateless due to the lack of action on the part of their parents.		
PRS	1	h		Are there specific provisions for the nationality or statelessness of children born to beneficiaries of international protection?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Some children are born to refugee parents who are themselves stateless or cannot acquire the nationality of their parents owing to restrictions on transmission of nationality to children born abroad. Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. 	There are no such provisions in place, but beneficiaries of international protection and stateless persons enjoy a facilitated access to naturalization (a shorter residency requirement).	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	2	a	Foundlings	Are foundlings granted citizenship <i>by law</i> ? If it's not automatic, is there an application procedure?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State. • European Convention on Nationality, 1997: Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons: [...] b) foundlings found in its territory who would otherwise be stateless. 	Foundlings are granted citizenship by law, automatically.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	2	b		If yes to either question immediately above, is there an age limit (or status e.g. 'newborn') specified for foundlings to be granted citizenship? If not, when would a child usually qualify in practice?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: At a minimum, the safeguard ... is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth... If a State provides for an age limit for foundlings to acquire nationality, the age of the child at the date the child was found is decisive and not the date when the child came to the attention of the authorities. 	There is no age limit imposed, and "newborn" status is not legally defined. In practice cases of foundlings concern primarily newborns.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	2	c		Can citizenship be withdrawn from foundlings if parents are identified	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Nationality acquired by foundlings pursuant to Article 2 of the 1961 Convention may only be lost if it is 	No. A foundling is granted Polish nationality ex officio and there is no decision issued that could be later revoked.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf

				even if this leads to statelessness?	proven that the child concerned possesses another State's nationality.		citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	3	a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is adopted?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality. • European Convention on Nationality, 1997: Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: ...d) children adopted by one of its nationals... Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless. • Committee on the Rights of the Child, Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04, 2015: [recommended that Switzerland] accelerate the assessment procedure and ensure that a child adopted from abroad is not stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption. • ENS (2015), No Child Should Be Stateless: ...the "sending" state in a situation of inter-country adoption may be a non-European one, so even if Europe's nationality laws were all in alignment with international standards, children may be exposed to a (temporary) risk of statelessness during the adoption process. 	Foreign adoption does not interfere with the Polish nationality of the minor child. If the foreign parents want to confer their nationality to an adopted Polish child and the law on nationality binding in their country of origin does not allow for dual nationality, they may submit an application to the President of Poland asking for consent for renunciation of nationality.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	3	b		Does a foreign child adopted by national parents acquire nationality? Is there a risk of statelessness during the	<ul style="list-style-type: none"> • European Convention on Nationality, 1997: Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: ...d) children adopted by one of its nationals... • Committee on the Rights of the Child, Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04, 	According to the Polish Citizenship Act, a minor child adopted by (a) Polish national(s) acquires Polish citizenship if the full adoption has been completed before the child turns 16. In this case, the child	Arts. 16, 18, & 30, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/Natio-

				adoption process? Are there any age limits?	2015 : ...ensure that a child adopted from abroad is not stateless or discriminated against during the waiting period between...arrival...and formal adoption.	is considered as possessing Polish citizenship from birth. There are no identified gaps that would lead to statelessness as the adoption leads to obtaining Polish citizenship by virtue of the law (Art.16). The child cannot lose their nationality due to annulment of the adoption (there is no explicit provision in the law but there is no legal ground for such loss of nationality). Polish nationality is also not lost due to foreign adoption. If the minor has turned 16 at the time of adoption, they may obtain Polish citizenship through a process of 'acknowledgment' of Polish citizenship (Art. 30). According to this article, the minor foreigner is acknowledged as a Polish citizen if they are in the parental custody of a Polish citizen (including adoption) who has resided uninterruptedly within the territory of the Republic of Poland legally under a permit to settle, a long term resident's EC residence permit, or a right of permanent residence, whereas the other custodial parent is not a Polish citizen and has duly declared consent to the acknowledgment of Polish citizenship of the minor. Children over 16 need to consent for the acknowledgement to take effect. Another option for adopted children over 16 is the 'conferral' of Polish citizenship (Art. 18). Conferral is carried out by the President of Poland at their discretion and there are no specific conditions.	nalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf
PRS	4	a	ius sanguinis and discrimination	Can children of a parent who is a national, born	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: Art 4 	All children with at least one Polish parent are Polish nationals by law (<i>ius sanguinis</i>), irrelevant of their place of birth.	Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-

			<p>outside the country, access nationality by descent (ius sanguinis)? Are there any conditions? Could these conditions be regarded as discriminatory?</p>	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: ...where a child who would otherwise be stateless is born in a Contracting State to parents of another Contracting State but does not acquire the nationality of the State of birth automatically and either misses the age limit to apply for nationality or cannot meet the habitual residence requirement in the State of birth... responsibility falls to the Contracting State of the parents to grant its nationality to the child (or children) of its national... where children of a national of a Contracting State who would otherwise be stateless are born in a non-Contracting State... the Contracting State of the parents [is required] to grant its nationality to the child (or children) of its nationals born abroad... Article 4 of the 1961 Convention must be read in light of developments in international human rights law, in particular the right of every child to acquire a nationality... and the principle of the best interests of the child ... • Genovese v. Malta (ECtHR) Application No. 53124/09, 11 October 2011: While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that article. Maltese legislation expressly granted the right to citizenship by descent and established a procedure to that end. Consequently, the state which has gone beyond its obligations under Article 8 in creating such a right [. . .] must ensure that the right is secured without discrimination within the meaning of Article 14. • ENS (2015), No Child Should Be Stateless: States are free to impose additional conditions [to ius sanguinis conferral], as long as these are not discriminatory in nature... safeguards should again be in place to ensure that statelessness does not result.... 	<p>Nevertheless, there are practical problems concerning children born abroad which may result in their statelessness. Even though Polish nationality at birth is acquired <i>ex lege</i> (meaning that registration is not a condition for a child to acquire Polish nationality at birth), in practice, registration in Poland (or transcription of the birth certificate) is sometimes made a condition for receiving a passport or Polish ID at the Polish embassy. This means that for a child to avail themselves of nationality in some cases registration in Poland is required. Recent cases of children raised by same sex partners abroad show that obtaining a passport is sometimes problematic. Poland does not regulate same sex partnerships and the transcription of a birth certificate where two persons of the same-sex are named as parents proves to be impossible.</p>	<p>citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf</p> <p>ENS (2015) Ending Childhood Statelessness: a study on Poland, p.13: https://www.statelessness.eu/sites/www.statelessness.eu/files/Poland.pdf</p> <p>Przybyslawska, K. (ed), Przybylska, M. Pudzianowska, D., Strama, A., (2017), <i>Mapping Statelessness in Poland</i>, UNHCR(forthcoming)</p>
--	--	--	--	--	---	---

					<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24: Action 4 • Fighting statelessness and discriminatory nationality law in Europe, Laura van Waas, 2012 • Convention on the Elimination of all Forms of Discrimination Against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, November 2014 		
PRS	4	b		Can children of a parent who is a national, born outside the country, access nationality by descent (ius sanguinis) if they would otherwise be stateless? Are there any conditions? Could these conditions be regarded as discriminatory?	As above	See above.	
PRS	5	a	Access to birth registration	Does the law provide that all children are registered immediately upon birth? Can children be registered if parents are undocumented and/or not legally residing in the country (by law)?	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989: The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. • International Covenant on Civil and Political Rights 1966: Art 24(2) • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: register the birth of all children born on their territory, even if they are born to a foreign parent with an irregular immigration status or if the parents are unknown, in order to safeguard their right to a nationality. The registration of birth should be free of charge and be performed without delay, even if the period within which the birth should have been declared has already expired. 	The Civil Registry Records Act stipulates that all births must be registered within 21 days of a birth card being issued by the hospital, which is then transferred to the local Civil Registry Records Office. Legal residence of parents is not required.	Civil Status Records Act of 28 November 2014, Item 1741: http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140001741 (PL)

					<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012:... registration of the birth provides proof of descent and of place of birth and therefore underpins implementation of the 1961 Convention and related human rights norms. Article 7 of the CRC specifically requires the registration of the birth of all children and applies irrespective of the nationality, statelessness or residence status of the parents. • UNHCR Global Action Plan to End Statelessness 2014-24: Action 7 Ensure birth registration for the prevention of statelessness. • UN Sustainable Development Goal 16: By 2030, provide legal identity for all, including birth registration. • UN Human Rights Council, Resolution A/HRC/RES/20/4: Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child, and underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of his or her immigration status and that of his or her parents or family members, which can contribute to reducing statelessness, as well as reducing vulnerability to trafficking in persons and other abuses and violations of their human rights. 		
PRS	5	b		Are there credible reports that suggest that children are prevented from registering <i>in practice</i> because of lack of documentation and/or parents' legal residence?	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989: Art 7(1) • International Covenant on Civil and Political Rights 1966: Art 24(2) • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • UNHCR Guidelines on Statelessness #4 2012: as above. • UNHCR Global Action Plan to End Statelessness 2014-24: Action 7 • UN Sustainable Development Goal 16 	There are no such reports.	

					<ul style="list-style-type: none"> • UN Human Rights Council, Resolution A/HRC/RES/20/4:as above 		
PRS	5	c		Are there mandatory reporting requirements for authorities which would deter undocumented parents coming forward to register their children (e.g. medical authorities required to report undocumented migrants)?	<ul style="list-style-type: none"> • UNICEF, Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration, 2012: While there is generally a separation between civil registries and immigration enforcement, undocumented parents may also fear detection, particularly in countries where civil servants have a duty to report undocumented migrants... • PICUM, Rights of Accompanied Children in an Irregular Situation, 2011:Certain barriers that prevent access to basic rights for children in an irregular migration situation arise across the registry, health, education and housing sectors. National legislation is often below the standards set out in human rights law, inexplicit or contradicted by other rules and practices, such as the duty to denounce or administrative requirements. 	There are no such requirements.	
PRS	6	a	Late Birth Registration	Is there a statutory deadline before which birth registration should be completed? If yes, what is it? Is late birth registration possible by law?	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24:Low levels of birth registration can be difficult to correct subsequently because procedures for late birth registration have not been established or are lengthy, costly and complex and therefore inaccessible to undocumented populations... States also need procedures for late and delayed birth registration and may consider undertaking campaigns to register older children and adults. Birth registration needs to be free, accessible and undertaken on a non-discriminatory basis. • UN Human Rights Council, Resolution A/HRC/RES/20/4:as above. • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • ENS (2015), No Child Should Be Stateless: One of the ways in which states have sought to deal with an intergenerational lack of documentation is by simplifying the procedures for the late registration of 	The Civil Registry Records Act stipulates that all births must be registered within 21 days of a birth card being issued by the hospital, which is then transferred to the local Civil Registry Records Office. If the birth is not registered during the prescribed time limit, the Head of the Civil Registry Records Office records the birth acting <i>ex officio</i> . There are no legal obstacles to late registration.	Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 212, Item 1264

					births, making it easier for adults who do not have a birth certificate to acquire one, which can subsequently be used to register their own children's births...		
PRS	6	b		Is late birth registration possible in practice?	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24:as above. • UN Human Rights Council, Resolution A/HRC/RES/20/4:as above. • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • ENS (2015), No Child Should Be Stateless: as above. 	There are no legal obstacles to late registration. There are no reports of such obstacles encountered in practice.	
PRS	6	c		Are there any additional requirements (e.g. fee) for the late birth registration procedure? Are these problematic or do they cause lengthy delays?	<ul style="list-style-type: none"> • UN Human Rights Council, Resolution A/HRC/RES/20/4:as above. 	No.	Civil Registry Records Act of 29 September 1986 (Journal of Laws No. 212, Item 1264
PRS	7	a	Reduction	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24:Action 7 • Council of Europe, 3rd European Conference on Nationality, 11-12 October 2004:Taken together Art 7 & 8 ECHR should be understood to encourage States Parties not only to take positive steps to avoid statelessness – including the promotion of birth registration – but also to grant citizenship to children who would otherwise be stateless... 	There are no such programmes.	
PRS	7	b		Are there sections of the population believed to be stateless/at risk of statelessness? Are minorities disproportionately affected? Please provide details and source of information.	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961 Article 9 • UNHCR Global Action Plan to End Statelessness 2014-24:Action 4 	There are no such reports. Cases of statelessness are few and far between and concern various nationality groups and in most situations - persons of migrant background are affected.	European Network on Statelessness, 2015, Protecting stateless persons from arbitrary detention in Poland: http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-poland
PRS	7	c		Has the Government implemented any other	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961 	No such measures have been implemented.	

				measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.)	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24: Action 1, Action 8 • UNHCR, Good Practices Paper – Action 1: Resolving Existing Major Situations of Statelessness, 2015 		
PRS	8	a	Withdrawal of nationality	Are there any provisions on loss and/or deprivation of nationality? If yes, are these established in law? If not, where can they be found? Do any provisions allow for statelessness? If there is a safeguard against statelessness, is it applied in practice?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: Article 8: A contracting state shall not deprive a person of its nationality if such deprivation would render him stateless. • European Convention on Nationality, 1997: Article 7(3): A State party may not provide in its internal law for the loss of its nationality...if the person concerned would thereby become stateless... • Universal Declaration of Human Rights: Article 15(2) No one shall be arbitrarily deprived of his nationality ... 	There is no provision for deprivation of Polish citizenship in national law. People who have lost their Polish citizenship under regulations in force prior to 1 January 1999 may apply for restitution or granting of Polish citizenship. The loss of Polish citizenship is governed by the Constitution of the Republic of Poland which provides that a Polish citizen shall not lose Polish citizenship except by renunciation thereof. Therefore, a Polish citizen cannot lose Polish citizenship, except at their own request. According to the Polish Citizenship Act, a Polish citizen loses Polish citizenship at their request, but only after the President of the Republic of Poland has granted consent for the renunciation. Loss of Polish citizenship shall come into force 30 days from the date of the issuance of a respective decision by the President, or after a shorter period, should the President decide accordingly. The consent to renounce Polish citizenship granted to parents, applies to children under their custody. The approval for renouncing Polish citizenship by both parents is extended to children under their parental custody. The approval for renouncing	<p>Article 46, 49, Polish Citizenship Act of 2 April, 2009, Journal of Laws of 2012, Item 161: http://eudo-citizenship.eu/NationalDB/docs/POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf</p> <p>Article 34(2) of The Constitution of the Republic of Poland of 2nd April, 1997, Journal of Laws of 1997, No. 78, item 483: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm</p>

						<p>Polish citizenship by only one parent is extended to children under their parental custody, if a) children are under their sole custody, or b) the other parent declared their consent before the proper authority (e.g. a Consul) that children could renounce Polish citizenship. Children over 16 should express their prior consent before a proper authority (e.g. a Consul) for renunciation of Polish citizenship. The applicant for renunciation needs to present documentary evidence proving that they hold or have been promised the citizenship of another state, but this safeguard is insufficient, as there is no explicit requirement to prove that minor children covered by the application also hold another citizenship and will not become stateless as a result of the renunciation procedure.</p>	
PRS	8	b		<p>Who is the competent authority in any procedure for ordering deprivation of nationality? What procedural guarantees are there? (e.g. judicial oversight, time limit, subject to prior sentencing, appeal rights, legal aid)</p>	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: Article 8(4): A contracting state shall not exercise a power of deprivation...except in accordance with the law, which shall provide for ...the right to a fair hearing by a court or other independent body. • European Convention on Nationality, 1997: Article 11: Each state party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing... 	<p>Polish law does not allow for deprivation of nationality (see above).</p>	
PRS	8	c		<p>Are withdrawal provisions (both for loss and deprivation) applied in practice?</p>		<p>No such provisions are applied.</p>	

Jurisprudence and Training

Cat	Q	Sub	Subtheme	Question	International Norms/Good Practice	Answer	Source
LIT	1	a	Published Judgements	Number of published judgements adjudicating statelessness (broken down by level of jurisdiction). Please list.		There are no published judgments specifically deciding about statelessness.	
LIT	1	b		Number of published judgements mentioning statelessness (broken down by level of jurisdiction).		Within the framework of Polish law statelessness may be addressed in international protection proceedings and return proceedings, which are administrative procedures (no courts are involved). The matter of statelessness may also be addressed marginally in court decisions regarding the application of administrative detention.	Centralna Baza Orzeczeń Sądów Administracyjnych (National Database of Decisions of the Administrative Courts): http://orzeczenia.nsa.gov.pl/cbo/query (PL) III SA/Kr 1400/1 - Wyrok WSA w Krakowie, Judgment of the Regional Administrative Court in Krakow: http://orzeczenia.nsa.gov.pl/doc/431B8D990D Case concerns the denial of transcription of the birth certificate of the child of a same-sex Polish couple in the UK. The issue of access to a Polish identity document confirming Polish nationality is discussed. II OSK 1020/11 - Wyrok NSA, Judgement of the Supreme Administrative Court: http://orzeczenia.nsa.gov.pl/doc/680560D84F Case concerns the acquisition of Polish nationality by an applicant originating from Ukraine. The court inter alia states that the subjective conviction of the applicant that he is stateless is not enough to establish statelessness.
LIT	2	a	Legal training	Is there judicial training on statelessness? If yes, please provide details	<ul style="list-style-type: none"> • UNHCR (Good Practices Paper 6): officials who may be in contact with stateless persons 	There is no systematic judicial training on statelessness available in Poland. To date the only such trainings were	Halina Niec Legal Aid Center: www.pomocprawna.org

				(e.g. provider, frequency).	<p>need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p> <ul style="list-style-type: none"> • UNHCR Expert Meeting, Statelessness Determination Procedures and the Status of Stateless Persons 2010: It is recommended that States provide specialized training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. 	organised by the Halina Niec Legal Aid Center in cooperation with ENS (trainings for Border Guard officials and Office for Foreigners staff).	
LIT	2	b		Is there training for lawyers on statelessness? If yes, please describe.	<ul style="list-style-type: none"> • UNHCR Expert Meeting, Statelessness Determination Procedures and the Status of Stateless Persons 2010: as above 	There is no systematic training on statelessness available for lawyers in Poland. To date the only such trainings were organised by the Halina Niec Legal Aid Center in cooperation with ENS.	Halina Niec Legal Aid Center: www.pomocprawna.org
LIT	3	a	Pro Bono	Are there specialised lawyers, law firms or organisations providing free advice to stateless persons or those at risk of statelessness? If yes, please describe.	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Applicants are to have access to legal counsel. • UNHCR (Good Practices Paper 6): Provides the example of Liverpool Law Clinic providing legal assistance to stateless clients in the UK. 	Among various entities offering legal advice, only two Polish NGOs (Helsinki Foundation for Human Rights and the Halina Niec Legal Aid Center) have been actively providing legal assistance to stateless persons or those at risk of statelessness.	<p>Halina Niec Legal Aid Center: www.pomocprawna.org</p> <p>Helsinki Foundation for Human Rights: www.hfhr.pl</p>
LIT	4	a	Literature	<p>Is there domestic legal academic literature on statelessness?</p> <p>If possible, please provide number of scholarly articles/references/bodies and hyperlinks etc.</p>			<p>Przybyławska, K. (2012), <i>Sytuacja bezpaństwowców na Bliskim Wschodzie a międzynarodowe standardy ochrony praw człowieka</i>, in: Marcinko, M. (ed), <i>Ochrona praw człowieka w wymiarze regionalnym</i>, Jagiellonian University, Krakow: http://www.zpmp.law.uj.edu.pl/documents/17903628/4b5d72a8-12e2-46ae-9ee2-441351f62d12 (PL)</p>

							<p>Dyduch, J. (2014), <i>Bezpaństwowość</i>, in: Florczak, A., Lisowska, A., <i>Organizacje międzynarodowe w działaniu</i>, Wydawnictwo OTO, Wrocław: http://www.repozytorium.uni.wroc.pl/Content/62930/19_Joanna_Dyduch.pdf (PL)</p>
--	--	--	--	--	--	--	---