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International and Regional Instruments

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
IOB.1.a	1954 Convention	Is your country party to the 1954 Statelessness Convention?	UN Convention Relating to the Status of Stateless Persons, 1954	Yes	Classified compilation of Swiss legislation, available at https://www.admin.ch/gov/en/start/federal-law/classified-compilation.html , listing all legislative acts in force in all official languages (German (DE), French (FR), Italian (I)) as well as an unofficial English translation for some acts. For the 1954 Convention see https://www.admin.ch/opc/de/classified-compilation/19540178/index.html (DE) and https://www.admin.ch/opc/fr/classified-compilation/19540178/index.html (FR). See also United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en
IOB.1.b		If yes, when was ratification/accession?		03/07/72	Entry into force: 1 October 1972 (https://www.admin.ch/opc/de/classified-compilation/19540178/index.html)
IOB.1.c		Are there reservations in place? Please list them.	Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people.	No	https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en
IOB.1.d		Does the Convention have direct effect?	Best practice is that the Convention has direct effect, though this may depend on the legal regime.	Yes, Switzerland is a monist country. If a norm is self-executing it has direct effect.	For the official government position the information provided by the Federal Department of Foreign Affairs (FDFA) see: https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/respect-promotion/national-international-law.html On the direct effect of the 1954 Convention, see also: BGE, X. gegen Bundesamt für Migration, 2C_763/2008, 26 March 2009, E.1.4, https://entscheide.weblaw.ch/cache.php?link=26.03.2009_2C_763-2008&q=&sel_lang=de
IOB.2.a	1961 Convention	Is your country party to the 1961 Statelessness Convention?	UN Convention on the Reduction of Statelessness, 1961	No	United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en
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? Please list any reservations.	European Convention on Nationality, 1997	No	Council of Europe Treaty Office: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=4UYTHUJV
IOB.3.b		State Party to European Convention on Human Rights 1950? Please list any relevant reservations.	European Convention on Human Rights, 1950	Yes. No, there are no reservations in place.	https://www.admin.ch/opc/de/classified-compilation/19500267/index.html (DE) https://www.admin.ch/opc/fr/classified-compilation/19500267/index.html (FR) See also: Council of Europe Treaty Office, http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=4UYTHUJV
IOB.3.c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations.	Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006	No	Council of Europe Treaty Office, http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=4UYTHUJV

IOB.3.d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)? Please list any relevant reservations.	Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)	Yes, Switzerland is bound by Directive 2008/115/EC as part of the Bilateral Agreements between the EU and Switzerland. There are no reservations in place.	https://www.admin.ch/opc/de/official-compilation/2010/5925.pdf (DE) https://www.admin.ch/ch/f/as/2010/5925.pdf (FR)
IOB.3.e		State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations.	Convention on the Rights of the Child 1989	Yes. Yes, Switzerland currently has three reservations in place concerning Articles 10(1), 37(c) and 40 CRC. Reservations to Article 5 CRC were withdrawn in 2004, to Article 7 para. 2 in 2007, as Switzerland introduced a provision on the simplified naturalisation of stateless children, and to Article 40 in 2004 and 2007.	Article 10 (1) CRC: Swiss legislation, which does not guarantee family reunification to certain categories of aliens, is unaffected. Art. 37 (c) CRC: The separation of children deprived of liberty from adults is not unconditionally guaranteed. Art. 40 CRC: The Swiss penal procedure applicable to children, which does not guarantee either the unconditional right to assistance or separation, where personnel or organisation is concerned, between the examining authority and the sentencing authority, is unaffected. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en
IOB.3.f		State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations.	International Covenant on Civil and Political Rights 1966	Yes. Yes, Switzerland currently has four reservations in place concerning Articles 12(1), 20, 25(b) and 26 ICCPR. Reservations were withdrawn with regard to Article 20, paragraph 2 (1995), Article 14, paragraph 3, sub-paragraphs (d) and (FR) (2004), Article 10, paragraph 2 (b) (2007) and Article 14, paragraph 1 and 5 (2007).	Art. 12 (1): The right to liberty of movement and freedom to choose one's residence is applicable, subject to the federal laws on aliens, which provide that residence and establishment permits shall be valid only for the canton which issues them. Art. 20: Switzerland reserves the right not to adopt further measures to ban propaganda for war, which is prohibited by article 20, paragraph 1. Art. 25 (b): The present provision shall be applied without prejudice to the cantonal and communal laws, which provide for or permit elections within assemblies to be held by a means other than secret ballot. Art. 26: The equality of all persons before the law and their entitlement without any discrimination to the equal protection of the law shall be guaranteed only in connection with other rights contained in the present Covenant. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en
IOB.3.g		State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations.	International Covenant on Economic, Social and Cultural Rights 1966	Yes. No, there are no reservations in place.	https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en
IOB.3.h		State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations.	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. Yes, Switzerland currently has two reservations in place concerning Articles 15(2) and 16(1)(h) CEDAW. Reservations were withdrawn with regard to Article 7 (b) (2004) and Article 16, paragraph 1 (DE) (2013).	Art. 15(2) and 16(1)(h): Said provisions shall be applied subject to several interim provisions of the matrimonial regime (Civil Code, articles 9 (e) and 10, final section). 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? Please list any relevant reservations.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Yes. No, there are no reservations in place.	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 1966? Please list any relevant reservations.	International Convention on the Elimination of All Forms of Racial Discrimination 1965	Yes. Yes, Switzerland currently has two reservations in place concerning Articles 4 and 2(1)(a) CERD.	Art. 4: Switzerland reserves the right to take the legislative measures necessary for the implementation of article 4, taking due account of freedom of opinion and freedom of association, provided for inter alia in the Universal Declaration of Human Rights. Art. 2(1)(a): Switzerland reserves the right to apply its legal provisions

					concerning the admission of foreigners to the Swiss market. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en
IOB.3.k		State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations.	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990	No.	https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtdsg_no=IV-13&src=IND
IOB.3.l		State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations.	Convention on the Rights of Persons with Disabilities 2006	Yes. No, there are no reservations in place.	https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4

Stateless Population Data

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
POP.1.a	Availability and sources	Does the Government have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence).	<p>Gen. Rec. 32, CEDAW: States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>Institute on Statelessness and Inclusion (2014): States should strengthen measures to count stateless persons on their territory.</p>	Yes. The State Secretariat for Migration (SEM) reports 651 persons recognised as stateless living in Switzerland as at 30 September 2020 (225 women, 426 men). SEM data is disaggregated by gender or type of residence permit as well as on the Federal and cantonal (sub-state) levels. Federal Statistical Office (FSO) reports 483 stateless persons as at 31 December 2019.	<p>SEM Statistics on the total number of non-national residents, including stateless, as at 31 October 2019: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/auslaenderstatistik/2020/09/2-10-Best-Tot-Kat-d-2020-09.xlsx.download.xlsx/2-10-Best-Tot-Kat-d-2020-09.xlsx (DE)</p> <p>FSO Statistics on foreign permanent resident population by nationality, 1980-2019: https://www.bfs.admin.ch/bfs/de/home/statistiken/bevoelkerung/migration-integration/auslaendische-bevoelkerung.assetdetail.13707208.html (DE)</p> <p>The difference in statistics can be explained by the fact that the two authorities use different sources and definitions (https://www.sem.admin.ch/dam/data/publiservice/statistik/auslaenderstatistik/auslaenderstatistik-lesehinweise-d.pdf, p. 2).</p> <p>SEM data is also disaggregated by age, civil status and length of residence (Aufenthaltsdauer) (see, for example, https://www.sem.admin.ch/sem/de/home/publiservice/statistik/auslaenderstatistik/archiv/2017/12.html).</p>
POP.1.b		Do government authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures.	As above	<p>Yes and no. The Government uses different terms, but the definitions are not publicly available. SEM uses the categories "stateless", "without nationality" (<i>ohne Nationalität</i>) and "state unknown" (<i>Staat unbekannt</i>). FSO uses the categories "stateless", "not attributable according to current borders" and "no indication". According to the statistics provided by SEM, 651 persons were recognised "stateless", 213 persons were registered as "without nationality" and 1099 as "state unknown" as of 30 September 2020. The FSO statistics lists 0 persons as "not attributable according to current borders" and 1946 as "no indication" as at 31 December 2019. In national statistics, immigrants are listed by nationality and not by ethnicity. Normally minorities such as Kurds are registered by country of origin rather than ethnicity. Additionally, Palestine and Tibet are not included as countries of origin. In response to a Parliamentary Question, the Federal Council clarified that the SEM instructed cantonal migration authorities to harmonise the data provided for Chinese nationals of Tibetan ethnicity, in part, because Switzerland does not recognise Tibet as a country. Persons who have been recognised as stateless though should not be affected by this change. It is more likely that stateless persons who are not yet recognised are recorded as "without nationality" or as "State unknown" in the SEM's statistics as outlined above.</p>	<p>SEM Statistics September 2020: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/auslaenderstatistik/2020/09/2-10-Best-Tot-Kat-d-2020-09.xlsx.download.xlsx/2-10-Best-Tot-Kat-d-2020-09.xlsx (DE)</p> <p>FSO Statistics on foreign permanent resident population by nationality, 1980-2019: https://www.bfs.admin.ch/bfsstatic/dam/assets/13707208/master (DE)</p> <p>Parliamentary Question of 21 September 2016 on the information stated on identity documents for Tibetan refugees (16.5439): „Bis vor Kurzem verwendeten die Schweizer Behörden in den Identitätsausweisen für Tibeterinnen und Tibeter die Herkunftsangaben "staatenlos", "Tibetischen Ursprungs" oder "Tibet (China)". Diese Praxis wurde geändert, heute wird bei Erneuerung der Ausweise die Herkunft "China" eingetragen.</p> <p>- Welche Gründe haben zur Praxisänderung geführt?</p> <p>- Welchen Nutzen ziehen die Behörden aus dieser neuen Bezeichnung?</p> <p>- Unter welchen Voraussetzungen könnte wieder zu den bisherigen Herkunftsbezeichnungen zurückgekehrt werden?</p> <p>Antwort des Bundesrates vom 26.9.2016:</p> <p>Das Staatssekretariat für Migration hat am 9. Juni 2015 die kantonalen Migrationsämter damit beauftragt, die Angabe der Staatsangehörigkeit auf Ausländerausweisen von chinesischen Staatsangehörigen tibetischer Ethnie zu harmonisieren. In den betreffenden Ausländerausweisen wurden seit mehreren Jahren sowohl China als auch Tibet als Staatsangehörigkeit aufgeführt. Die Schweiz anerkennt Tibet nicht als Staat; entsprechend kann auch nicht von einer tibetischen Staatsangehörigkeit gesprochen werden. Es handelt sich daher bei der früheren Bezeichnung der Staatsangehörigkeit um einen Erfassungsfehler der Verwaltung, der</p>

					nun korrigiert werden musste. Mit dieser Korrektur sind keinerlei Änderungen des Aufenthaltsstatus der betroffenen Personen verbunden. Personen, welche von der Schweiz als Staatenlose anerkannt wurden, sind von der Korrektur selbstverständlich nicht betroffen.“ https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20165439
POP.1.c		What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate?	As above	UNHCR Global Trends 2019 did not list any persons in Switzerland who fall under UNHCR's statelessness mandate, although in 2018 it reported 49 persons.	UNHCR Global Trends 2019, Annex Table 1: https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html UNHCR Global Trends 2018, Annex Table 1: https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html
POP.1.d		Have there been any surveys or mapping studies to estimate the stateless population in the country?	As above	No surveys or studies have been published in 2020. UNHCR Switzerland published a mapping study in November 2018.	UNHCR Brochure on Statelessness in Switzerland and Liechtenstein of December 2016: http://www.unhcr.org/dach/ch-de/was-wir-tun/staatenlosigkeit-beenden/staatenlosigkeit-in-der-schweiz-und-in-liechtenstein (DE) UNHCR, Staatenlosigkeit in der Schweiz, Nov 2018: https://www.unhcr.org/dach/wp-content/uploads/sites/27/2018/11/CH_UNHCR-Statelessness_in_Switzerland-GER-screen.pdf (DE) UNHCR, Résumé et recommandations: L'apatride en Suisse, Nov 2018 : https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5c4f20974 (FR)
POP.1.e		Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures.	As above	No. However, there have been studies that estimate the number of undocumented migrants, those who lack a residence permit to reside legally in CH. But there is no research to what extent there may be stateless persons in this group. A 2015 study estimated that there are approximately 76,000 undocumented migrants from third countries (non-EU/EFTA) residing without a residence permit in Switzerland. Other studies have given much higher estimates up to 180,000. It is unclear to what extent these individuals or their children may be stateless. Reportedly, many undocumented migrants are from Central and South American countries. There is anecdotal evidence that children born in Switzerland to parents from jus soli countries in the Americas may be stateless.	Sans-Papiers in der Schweiz: Studie 2015, B,S,S. Volkswirtschaftliche Beratung AG, Basel, Schweizerisches Forum für Migrations- und Bevölkerungsstudien (Universität Neuchâtel), Universität Genf https://www.sem.admin.ch/dam/data/sem/internationales/illegale-migration/sans_papiers/ber-sanspapiers-2015-d.pdf Definition employed in the 2015 study: "Folgende Definition von Sans-Papiers liegt dem Bericht zugrunde: Sans-Papiers sind Personen, die sich ohne Aufenthaltsberechtigung, mehr als einen Monat, und für eine nicht absehbare Zeit in der Schweiz aufhalten. Darunter fallen sowohl Personen, die zuvor einen gültigen Aufenthaltstitel hatten, wie auch solche, die nie eine entsprechende Bewilligung erhalten haben." (p. 1) Leben als Sans-Papiers in der Schweiz. Entwicklungen 2000-2010, Eidgenössische Kommission für Migrationsfragen EKM, 2010: https://www.ekm.admin.ch/content/dam/data/ekm/dokumentation/materiale/mat_sanspap_d.pdf For the situation of South Americans in Switzerland see for example journalism at TV Bordo Net: https://www.youtube.com/watch?v=Om_vEJ3a6ZE Information on stateless persons is also included in SEM's naturalisation statistics. For example, Erwerb Schweizer Bürgerrecht nach Nationalität vom 1.1.2017 bis am 31.7.2017, https://www.sem.admin.ch/sem/de/home/publiservice/statistik/auslaenderstatistik/archiv/2017/07.html
POP.1.f		Are there issues with the reliability of data or indications that the	As above	Yes. There are 3 different categories of identified persons who could be stateless and others who may not have contact with the	

		stateless population may be over/under reported? If yes, please describe.		authorities yet. Also, different data provided by SEM and Federal Statistical Office. It is likely underreported due to lack of awareness, lack of a formal SDP, restrictive recognition practice, lack of specialised legal advisory services and lack of relevant training of state officials.	
POP.1.g		Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the Government also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting).	As above	According to statistics provided by SEM there were 40 stateless persons, 527 persons “without nationality” and 528 persons with “state unknown” in the asylum procedure as of 31 October 2020. For the same period, the SEM statistics count 266 stateless persons, 6 persons “without nationality” and 632 with “state unknown” recognised as refugees. Recognised as asylum seekers, SEM counts 6 stateless persons, 33 “without nationality” and 65 with “state unknown”. The statistics also provide that 34 stateless persons, 494 “without nationality” and 463 with “state unknown” were granted temporary admission.	SEM Statistics as per 31 October 2020 (DE): The entire asylum procedure: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2020/10/6-10-Best-Asylprozess-d-2020-10.xlsx.download.xlsx/6-10-Best-Asylprozess-d-2020-10.xlsx Recognised refugees: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2020/10/6-23-Best-Fluechtlinge-B-Erwerb-d-2020-10.xlsx.download.xlsx/6-23-Best-Fluechtlinge-B-Erwerb-d-2020-10.xlsx Asylum seekers: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2020/10/6-21-Best-N-Erwerb-d-2020-10.xlsx.download.xlsx/6-21-Best-N-Erwerb-d-2020-10.xlsx Temporary admission: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2020/10/6-22-Best-VA-Erwerb-d-2020-10.xlsx.download.xlsx/6-22-Best-VA-Erwerb-d-2020-10.xlsx
POP.2.a	Stateless in detention data	Does the Government record and publish figures on stateless people held in immigration detention? If yes, please provide.	As above and see also norms in Detention section.	Data on persons in immigration detention is recorded. However, statistics on immigration detention are not publicly available. Moreover, as immigration detention is a cantonal competence, the federal authorities rely on information recorded and provided by the Cantons. The SEM only publishes statistics on enforcement support for individuals leaving Switzerland without going through the asylum procedure or after a negative asylum decision as well as the number of persons removed under a readmission agreement. This can include persons in immigration detention. It is not verifiable if the statistics on immigration detention include persons registered as stateless.	SEM Statistics on enforcement support as per 31 October 2020: https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/asylstatistik/2020/10/6-50-Best-RU-d-2020-10.xlsx.download.xlsx/6-50-Best-RU-d-2020-10.xlsx SEM Statistics on transfers under a readmission agreement in 2017 (up to August): https://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2017/08/7-55-Bew-RueA-J-d-2017-08.xlsx
POP.2.b		Does the Government record and publish figures on people released from immigration detention due to un-removability? If yes, please provide.	As above	No information available.	

Statelessness Determination and Status

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
SDS.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.	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 1(1) & 1(2).	No, there is no definition in national law. In principle the 1954 Convention definition applies, and the SEM applies Art. 1(1) 1954 Convention directly. However, according to Swiss interpretation, stateless persons must have lost their nationality through no fault of their own and have no means of reinstating it to be recognised, which differs from the 1954 Convention. All persons who, allegedly, would have the possibility of receiving assistance from another UN agency are excluded from the definition. Swiss Courts have held this interpretation to be compatible with the 1954 Convention. Moreover, recognition as a stateless person requires demonstration of an interest worthy of protection (schutzwürdiges Interesse), i.e. the applicant must substantiate that they would be in a better position if recognised as stateless. The practice of the SEM in this regard is very restrictive. In its third cycle of Universal Periodic Review Switzerland accepted a recommendation by Hungary to ensure that the definition of a stateless person is fully consistent with the 1954 Convention.	Information provided by SEM: https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html SEM Instruction, p. 6 ff.: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR) Federal Tribunal: X. gegen Bundesamt für Migration, 2C_36/2012, 10 May 2012: https://entscheide.weblaw.ch/cache.php?link=10.05.2012_2C_36-2012 (DE) A.X. et al. v. Office fédéral des migrations, 2C_1/2008, 26 March 2009: https://entscheide.weblaw.ch/cache.php?link=28.02.2008_2C_1-2008 (FR) For the application of the exclusion clause in Art. 1(2)(i) 1954 Convention, see, for example, Federal Administrative Court, A., B., C., D. gegen Bundesamt für Migration (BFM), C-6841/2008, 7 July 2011: http://links.weblaw.ch/BVGer-C-6841/2008 (DE): The FAC ruled that Palestinians registered with UNRWA were still receiving UNRWA protection in Switzerland as they could obtain travel documents, so the 1954 Convention would not apply to them. ISI, Universal Periodic Review – 28 th Session: overview and analysis of recommendations on the right to a nationality and statelessness, Nov. 2017: http://www.institutesi.org/UPR28_stateless.pdf
SDS.1.b	Training	Is there training to inform different government bodies about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?)	UNHCR Executive Committee (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons.	There is no information available on training for government bodies about statelessness.	
SDS.1.c		Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency).	UNHCR (2016) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels. UNHCR (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations.	There is no specialised training of lawyers, judges or government officials (migration and asylum procedure officials, staff of reception detention centres, police, etc), neither on federal nor on cantonal level on nationality laws and practices, statelessness and international standards. Statelessness is barely on the curriculum of law schools. Statelessness and nationality laws are not part of the bar exams. There are no specific professional trainings for lawyers on statelessness, though it might come up as an issue in more general trainings on migration, asylum and nationality law.	
SDS.1.d	Existence of a dedicated SDP	Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated stateless status (proceed to Question 2a). 2. There is no dedicated SDP leading to a dedicated stateless status, but there are other procedures in	UNHCR (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR (2016) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.	#1 - There is a procedure to determine statelessness, but it is not a dedicated, formalised procedure in law. The procedure is governed by the general administrative procedure and administrative guidance and initiated upon application. The procedure leads to a recognition of statelessness and a residence permit, although the residence permit is not specific to stateless persons.	SEM Instruction on Asylum and Return, https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR); https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-d.pdf (DE) See also: https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN)

		<p>which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights (proceed to Question 10a).</p> <p>3. There is a dedicated stateless status but no formal procedure for determining this (proceed to Question 16a).</p>			
SDS.2.a	Access to procedure (Group 1)	<p>Is the examination of statelessness claims conducted by a dedicated, centralised body with relevant expertise? Please note the competent authority and evaluate appropriateness to national context.</p>	<p>UNHCR (2014) : States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. UNHCR (2016): It is important that examiners develop expertise while ensuring that the procedures are accessible.</p>	<p>The examination is conducted by the SEM, which is the centralised immigration authority on federal level. Within the SEM there is no specific division on statelessness. Applications are handled by the two Aufenthalt sections under the Asylum Division.</p>	<p>Article 14(3) Ordonnance on the organisation of the Federal Department of Justice and Police https://www.admin.ch/opc/fr/classified-compilation/19995987/index.html#a14 (FR) See also SEM Instruction, p. 6: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR), https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN) SEM Instruction, p. 9 ff: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR) SEM organizational chart: https://www.sem.admin.ch/dam/data/sem/ueberuns/organisation/organigramm-sem-e.pdf (EN) https://www.sem.admin.ch/dam/data/sem/ueberuns/organisation/organigramm-sem-d.pdf (DE)</p>
SDS.2.b		<p>Are there clear, accessible instructions on how to make a claim of statelessness?</p>	<p>UNHCR (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.). UNHCR (2016): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p>	<p>There is little information on how to make a claim besides a guidance document published by the SEM. This information is, however, very difficult to access for individuals as it is aimed at government officials and uses very technical language. There is no public awareness-raising to facilitate access to the procedure. In November 2019, humanrights.ch in collaboration with UNCHR Switzerland published a model application for statelessness determination. The model form is mainly targeted at lawyers and NGOs advising stateless persons in the application procedure, but it can also be used by stateless persons directly.</p>	<p>SEM Instruction, p. 9 ff: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR) Additional Information provided by SEM: https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN) Model application for statelessness determination: https://www.humanrights.ch/de/menschenrechte-schweiz/inneres/auslaender/staatenlose/mustergesuch-erkennung-staatenlosigkeit</p>
SDS.2.c		<p>Can submissions be made orally and/or in writing in any language?</p>	<p>ENS (2013): Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.</p>	<p>The application must be submitted in writing in one of the Swiss official languages (German, French, or Italian). Documents in other languages in principle must be submitted with a certified translation. Exceptionally, the authority can accept documents in other languages.</p>	<p>Article 33a Administrative Procedure Act (APA) https://www.admin.ch/opc/fr/classified-compilation/19680294/index.html#a33a (FR) See also: https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN) SEM Instruction, p. 9 ff: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR), https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN)</p>
SDS.2.d		<p>Must a specific application form be used? Please note any difficulties with forms or other inflexible documentation requirements.</p>	<p>ENS (2013): Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.</p>	<p>An applicant must submit a written reasoned application including evidence. There is little information on how to make a claim besides a guidance document published by the SEM. The model application for statelessness determination published by humanrights.ch in collaboration with UNCHR Switzerland is a useful tool to complete the application form.</p>	<p>SEM Instruction, p. 9 ff: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR) Additional Information provided by SEM: https://www.sem.admin.ch/sem/en/h</p>

					ome/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN) Model application form: https://www.humanrights.ch/de/menschenrechte-schweiz/inneres/auslaender/staatenlose/mustergesuch-erkennung-staatenlosigkeit
SDS.2.e		Are competent authorities authorised to initiate SDPs <i>ex officio</i> ?	UNHCR (2016) : It is recommended that governmental authorities be authorised to initiate procedures <i>ex officio</i> . UNHCR (2014) : Given that individuals are sometimes unaware of SDPs or hesitant to apply, procedures can usefully contain safeguards permitting State authorities to initiate a procedure.	No, the SDP cannot be initiated <i>ex officio</i> .	SEM Instruction, p. 9 ff: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR), https://www.sem.admin.ch/sem/en/home/asyl/asylverfahren/weitere_themen/staatenlosigkeit.html (EN)
SDS.2.f		Are there obligations in law on authorities to consider the application?	UNHCR (2016) : Access to the SDP must be guaranteed.	Yes, if an application has been submitted it has to be considered by the authority responsible. If it is formally correct, the merits must be considered.	Article 29 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a29 (EN) Article 29 Administrative Procedure Act https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a29 (EN)
SDS.2.g		Is there an application fee?	UNHCR (2016) : Access to the SDP must be guaranteed.	In principle, the procedure is free of charge. However, there may be costs for certain services related to the procedure, e.g. the issuance of a residence permit or a document.	No legal basis, not explicitly stated in the instruction.
SDS.2.h		Is there a lawful stay requirement to access the SDP?	UNHCR (2016) : Access to the procedure needs to be open to anyone regardless of lawful stay or residence. ENS (2013) : There is no basis in the 1954 Convention for requiring lawful stay.	No, there is no requirement for lawful stay to access the SDP, but there is a dispute in legal scholarship as to whether a person recognised as stateless is only granted a residence permit if he or she has been staying lawfully. This has so far not been decided in court. Swiss law does not grant a right to stay during the SDP. In practice, recognised stateless persons do not seem to have difficulties obtaining a residence permit.	For the requirement of lawful stay in order to be granted a permit see Article 31(1) Foreign Nationals Act (FNA): https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a31 (EN)
SDS.2.i		Is there a time limit on access to the SDP?	UNHCR (2016) : Access to the SDP must be guaranteed and not subject to time limits. ENS (2013) : There is no basis in the 1954 Convention to set time limits for individuals to claim stateless status.	No, there is no time limit.	
SDS.2.j		Is there cooperation between agencies that may have contact with stateless people to refer cases for status determination?	UNHCR (2016) : Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.	Only on an informal level within the SEM, e.g. between officials dealing with asylum applications that can inform someone about the possibility to lodge an application for statelessness determination. There is no information available on cooperation between e.g. cantonal immigration authorities and the SEM on statelessness issues.	
SDS.3.a	Assessment (Group 1)	Who has the burden of proof in the SDP in law and practice?	UNHCR (2014) : The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). UNHCR (2016) : SDPs must take into consideration the difficulties inherent in proving statelessness. UNHCR Expert Meeting (2010) : Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. Hoti v. Croatia ECtHR (2018) : State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.	In principle, the SEM must establish the facts. The applicant has a duty to cooperate. In practice the burden of proof is primarily on the applicant who must provide documents that he or she is stateless.	Article 12 ff. APA https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a12 (EN) Judgment of the Federal Administrative Court, F-6073/2014, 6 April 2017 of 2017/04/06 http://www.bvger.ch/publiws/download?decisionId=7c8df117-97c7-4f84-ad7c-7750168f3652 (DE). For a summary of the judgment in English, see: http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=59394f1c4 . The FAC states that due to the lack of identity documents, A and B's identities and origins have not been sufficiently established. In the case at hand, only A and B could substantiate their identities and nationalities respectively to obtain identity documents and passports from their countries of origin.
SDS.3.b		What is the standard of proof? Is it the same as in refugee status	UNHCR (2014) : States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree').	Full proof, i.e. the applicant must prove that he or she is stateless. The Federal Administrative Court has in recent years consistently declared that the relevant	Article 12 APA (as there is no special provision on the standard of proof, the relevant standard is that of full proof): https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a12 (EN)

		determination procedures?	<p>Inter-Parliamentary Union (2018) The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence.</p> <p>Hoti v. Croatia ECtHR (2018): If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p>	standard of proof in statelessness determination procedures is full proof (e.g. BVGer judgment F-2453/2017, 4 October 2019, 3.2). In asylum applications the standard of proof is at a lower level as it is reduced to credibility.	<p>ed-compilation/19680294/index.html#a12 (EN)</p> <p>BVGer, A., alias B., C., alias D., E., alias F., G., alias H., gegen Staatssekretariat für Migration (SEM), D-1770/2014, 16. Februar 2015, 5.6; and BVGer, A. gegen Staatssekretariat für Migration (SEM), D-1912/2014, 8. April 2015, 5.7: „Glaubhaftigkeit“</p> <p>BVGer, A. gegen Staatssekretariat für Migration (SEM), E-1658/2013, 14. April 2015, 6.1; and BVGer, A. gegen Staatssekretariat für Migration (SEM), E-1708/2015, 15. April 2015, 3.2: „voller Beweis“</p> <p>BVGer judgment F-2453/2017, 4 October 2019, 3.2</p>
SDS.3.c		What measures are in place to guarantee substantive equality for women, children and other groups (e.g. disabled people, older people, LGBTQI people, etc.) at risk of discrimination in the SDP?	<p>UNHCR (2014): Due to discrimination, women might face additional barriers in acquiring documentation (e.g. birth certificates or other identification documents). Children may face acute challenges in communicating basic facts with respect to their nationality. States must follow the principle of the best interests of the child.</p> <p>Gen. Rec. 32, CEDAW: Nationality laws may discriminate directly or indirectly against women. Legislative provisions that appear gender neutral may in practice have a disproportionate and negative impact on the enjoyment of the right to nationality by women.</p> <p>Convention on the Rights of the Child, 1989</p> <p>Convention on the Rights of Persons with Disabilities: Article 18</p>	Other than for example in the asylum procedure, there is no explicit legal provision addressing the specific protection needs and evidentiary challenges for women and children. There is no information available as to whether this is in practice also done in statelessness procedures.	<p>For the situation in the Asylum Procedure see Article 17(2) Asylum Act https://www.admin.ch/opc/fr/classified-compilation/19994776/index.html#a6 (EN) and Article 6 Ordonnance on the Asylum Procedure https://www.admin.ch/opc/fr/classified-compilation/19994776/index.html#a6 (FR), as well as the relevant SEM Instruction https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/d/hb-d7-f.pdf (FR)</p>
SDS.3.d		Is there clear guidance for decision makers on how to determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)?	ENS (2013) : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.	The SEM Instruction on statelessness in principle serves as internal guidance for officials. There is no public information available on other internal guidance.	SEM Instruction: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR)
SDS.4.a	Procedural safeguards (Group 1)	Is free legal aid available during the procedure?	<p>UNHCR (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p>	In principle, free legal aid and representation is available both at first instance and appeals stage. It is, however, conditional on the person concerned not having sufficient means and the case having some prospect of success. In practice, free legal aid is virtually never granted in first instance procedures with the SEM and the legislator has not recognised the need for free legal aid in SDP, although it has done so in relation to first instance asylum procedures. In the recent case of F-4576/2017, 2 July 2018, the Federal Administrative Court confirmed that due to the complexity of the statelessness determination procedure the applicants are entitled to claim free legal representation.	<p>Article 29(3) Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a29 (EN)</p> <p>Article 65 Administrative Procedure Act (appeals procedure and first instance procedures) https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a65 (EN)</p> <p>Federal Administrative Court, case F-4576/2017, 2 July 2018</p>
SDS.4.b		Is an interview always offered (unless granting without interview)?	UNHCR (2014) : The right to an individual interview [is] essential.	No, according to the practice of the SEM the procedure is based on a written application followed by a decision in writing. In exceptional cases, the SEM might conduct an interview. At the appeal stage the procedure is normally also written.	For the appeal stage: Article 41 Law on the Federal Administrative Court https://www.admin.ch/opc/fr/classified-compilation/20010206/index.html#a41 (FR)
SDS.4.c		Is free interpreting offered for statelessness determination interviews?	<p>UNHCR (2014): The right to assistance with interpretation/translation [is] essential.</p> <p>ENS (2013): Assistance should be available for translation and interpretation.</p>	Applicants must submit documents and submissions in one of the official languages. In practice, the costs for translation are not covered. As the procedure is written, there is no right to an interpreter.	Article 33a https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a33a (EN)
SDS.4.d		Are there quality assurance audits of the SDP?	UNHCR (2016) : Quality assurance audits of SDPs are considered good practice.	There is no quality assurance audit of the SDP.	
SDS.4.e		What role does UNHCR play in the proceedings (e.g. access to files, monitoring, training)?	UNHCR (2014) : States are encouraged to guarantee access to UNHCR as a safeguard in the procedure.	UNHCR does not participate in the proceedings and does not have access to files.	
SDS.4.f		Are decisions (refusals and grants) given in writing with reasons?	UNHCR (2014) : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons.	Yes, the decision is written and reasoned.	Article 29(2) Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a29 (EN)

					compilation/19995395/index.html#a29 (EN) Articles 34 and 35 Administrative Procedure Act https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a34 (EN)
SDS.4.g		Is there a timeframe for the SDP set in law or policy and is it complied with in practice?	UNHCR (2014) : It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months.	No, there is no fixed timeframe. The general constitutional procedural right to have a case decided within a reasonable time however also applies to the SDP. In practice the duration of a procedure can vary between several days and several years. The link with the asylum procedure is also clarified in the SEM instruction and can also impact on length of the procedure.	Article 29(1) Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a29 (EN) For several days see e.g. Federal Administrative Court case C-1048/2006, 21 July 2010; C-1538/2009, 29 December 2011; C-5461/2008, 18 March 2009. Several years see Federal Administrative Court case C-2139/2013, 30 September 2014 (2.5 years); BVGE 2014/5 (2 years); C-4959/2007, 12 November 2008 (almost 2 years); C-3555/2007, 19 October 2009 (1.5 years); C-2139/2013, 30 September 2014 (more than 2.5 years). SEM Instruction, https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf (FR), pp. 10-11)
SDS.4.h		Is there a referral mechanism from refugee status determination procedures to the statelessness procedure (e.g. if refused asylum)?	UNHCR (2016) : Efficient referral mechanisms should be established and officials who may be in contact with stateless persons trained to identify and refer potential applicants. ENS (2013) : Cross-referral systems should exist in cases where the two determination procedures (refugee and stateless) are not conducted in a joint framework.	In general administrative law an authority must refer a person to the competent authority and procedure. However, this obligation exists only once an application has been formally lodged. If, however, only an unsubstantiated claim is made during the asylum procedure there is no obligation to formally refer the case to the right authority. In such a situation the person might informally be made aware of the possibility to lodge an application for statelessness determination. This is also possible because the SEM is responsible for both asylum and statelessness claims.	Article 7 Administrative Procedure Act https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a8 (EN)
SDS.5.a	Protection during SDP (Group 1)	Does the applicant have automatic legal admission while their claim for stateless status is assessed or is there a risk of expulsion?	UNHCR (2014) : An individual awaiting a decision is entitled, at a minimum, to all rights based on presence in the territory as well as 'lawfully in' rights (including identity papers, the right to self-employment, freedom of movement, protection against expulsion). It is recommended that individuals receive the same treatment as asylum-seekers. ENS (2013) : States should refrain from expelling or removing an individual pending the outcome of the determination process.	No, there is no automatic legal admission or status during the procedure. For that reason, expulsion is possible during the process. So far, there are no verified reports of such incidents.	
SDS.5.b		Do applicants for stateless status have permission to work and access to assistance to meet their basic needs?	UNHCR (2014) : Allowing individuals to engage in wage-earning employment can reduce pressure on State resources and contributes to dignity and self-sufficiency. The status of those awaiting statelessness determination must reflect applicable human rights such as, assistance to meet basic needs.	Applicants do not have permission to work, but even if they do not have a legal right to stay/status during the procedure the Constitution grants everyone, including applicants for stateless status, the right to basic minimum assistance and financial means required for a decent standard of living.	Article 12 Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a12 (EN)
SDS.5.c		Do applicants for stateless status face a risk of detention?	UNHCR (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Detention is 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.	Yes. As there is no automatic legal admission or status during the procedure there is the possibility that a person can be detained for illegal stay.	See also answer to question 6a.
SDS.6.a	Appeals (Group 1)	Is there an automatic right of appeal?	UNHCR (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP.	Yes, there is a right of appeal in case of a refusal. The decision of the SEM can be appealed to the Federal Administrative Court (FAC) and thereafter to the Federal Tribunal (FT). The FAC can review grounds of both law and fact. The FT can review grounds of law and grounds of fact in case of manifest errors	Federal Administrative Court: Article 49 Administrative Procedure Act: https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a49 (EN) Federal Tribunal: Article 95 ff Law on the Federal Tribunal:

				(offensichtlich unrichtige Sachverhaltsfeststellung).	https://www.admin.ch/opc/fr/classified-compilation/20010204/index.html (FR)
SDS.6.b		Is legal aid available for appeals?	UNHCR (2014) : The applicant should have access to legal counsel and, where free legal assistance is available, it should be offered to applicants without financial means. ENS (2013) : Applicants should have access to legal counsel both at first instance and on appeal.	Yes, legal aid is available for an appeal procedure, in case the applicant does not have sufficient means and the case has some prospect of success.	Article 29(3) Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a29 (EN) Article 65 Administrative Procedure Act https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a65 (EN)
SDS.6.c		Is there a fee for the appeal application?	UNHCR (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard.	No, there is no actual fee, but the applicant must bear the costs of the procedure in case of a negative decision. The costs can be waived if the person does not have sufficient means and the case has some prospect of success.	Article 63 ff Administrative Procedure Act https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a63 (EN)
SDS.6.d		Is there any evidence of significant errors in decision-making?		No systematic evaluation of the decisions of the SEM or the courts is available. SEM decisions are not publicly available. The decisions of the Federal Administrative Court and the Federal Tribunal are published. No civil society organisation or academic has systematically reviewed the decisions as there is very little academic research on statelessness.	
SDS.7.a	Stateless status (Group 1)	Does recognition of statelessness result immediately in automatic permission to stay/legal status? If not, please describe any additional requirements, admissibility criteria, grounds for refusal or other steps required to access protection.	UNHCR (2014) : The status granted to a stateless person in a State Party must reflect 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.	No, people recognised as stateless have the right to be granted a residence permit, but the status is not granted automatically upon recognition but upon application for a residence permit. This is also because the residence permit is issued by the cantonal authorities and not by the SEM. The application must be made with the authorities of the canton of residence. After ten years of legal residence (five years with a residence permit) stateless persons can acquire a permanent residence permit. According to the wording of Article 31(1) Foreign Nationals Act the person concerned must have legal residence to apply for a residence permit. There is a dispute in legal scholarship over how strictly the criteria should be interpreted, which has not yet been decided by the courts, but it does not seem to pose difficulties for stateless persons in practice. A stateless person is not granted a residence permit if they have been sentenced to a long-term custodial sentence, violated or represented a threat to public security, order or internal or external safety, or made their removal impossible due to their own conduct. In that case the person is only granted temporary admission which technically is not a residence status but still grants the right to remain (Article 31(2) FNA).	Article 31 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a31 (EN) Article 34 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a34 (EN) Once the revision of the Federal Act on Foreign Nationals enters into force (BBl 2015 7207), recognised stateless persons will no longer be entitled to a permanent residence permit after five years. Article 83(7) and (8) Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a83 (EN)
SDS.7.b		How long is initial status granted for and is it renewable?	UNHCR (2014) : It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable.	The residence permit is initially valid for one year and can be renewed. In subsequent years it is normally valid for two to five years. The permanent residence permit is of unlimited duration.	Article 33 ff Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a34 (EN) Article 63 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a63 (EN)
SDS.7.c		Is a travel document issued to people recognised as stateless?	UN Convention Relating to the Status of Stateless Persons, 1954 , Article 28.	Yes, individuals recognised as stateless have the right to be issued a travel document (Pass für eine ausländische Person), which is obtained upon application.	Article 59(2)(b) Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a59 (EN) Ordonnance on Travel Documents https://www.admin.ch/opc/fr/classified-compilation/20121548/index.html (FR)

SDS.7.d		Do people recognised as stateless have a right to family reunification?	UNHCR (2014) : Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunification of those with recognised stateless status in their territory with their spouses and dependents.	There are no specific family reunification provisions for recognised stateless persons, only those that apply to foreigners in general. Recognised stateless persons with a residence permit can apply but the decision is discretionary. The application has to be made within five years, within one year for children over 12 (Art. 47 FNA). Family reunification requires that the family lives together, has appropriate housing and does not receive social security. Stateless persons with a permanent residence permit have the right to family reunification (non-discretionary) if they plan on living together. Stateless persons that have only temporary admission can only apply for family reunification after three years if they live together, have appropriate housing and do not depend on social security, i.e. have sufficient income. Family reunification covers spouses and unmarried children under the age of 18.	Articles 43 and 44 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a43 (EN) For temporary admission Article 85(7) Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a85 (EN)
SDS.7.e		On what grounds (if any) may residence status granted to stateless people be revoked?	UNHCR (2014) : If an individual recognised as stateless subsequently acquires or reacquires the nationality of another State, they will cease to be stateless under the 1954 Convention. This may justify the cancellation of a residence permit on the basis of statelessness, although proportionality considerations under international human rights law, such as the right to a private and family life should be taken into account.	The grounds for revocation are listed in Article 31(2) Foreign Nationals Act. Grounds for revocation are a long-term custodial sentence or the violation or threat to public security, order or internal or external safety. It is disputed in legal scholarship whether the general grounds for revocation of a residence permit according to Articles 62 and 63 Foreign Nationals Act additionally apply. This would include e.g. revocation for non-compliance with an order or for depending on social security. The question has so far not been decided in court. If the (permanent) residence permit is revoked a stateless person is granted temporary admission.	Article 62 and 63 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a62 (EN) Article 31 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a31 (EN) Article 83(7) and (8) Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a83 (EN)
SDS.7.f		Do people granted stateless status have permission to work?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 17 UNHCR (2014) : The right to work must accompany a residence permit.	A person recognised as stateless and granted a residence permit has access to the labour market and freedom of movement.	Article 61 Asylum Act https://www.admin.ch/opc/en/classified-compilation/19995092/index.html#a61 (EN) in conjunction with Article 65 Ordonnance on Admission, Stay and Employment https://www.admin.ch/opc/de/classified-compilation/20070993/index.html#a65 (FR) No source for the practice of the cantonal authorities.
SDS.7.g		Do people granted stateless status have access to primary, secondary, and higher education?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 22	Yes, access to education is granted. Children up to the age of 16 have a constitutional right to free primary education, and access to secondary and higher education is granted for recognised stateless persons. Higher education should in principle be accessible on the same basis as for nationals (there may be some minor fees). Scholarships can also be provided.	Article 19 Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a19 (EN) Article 62 ff Swiss Constitution https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a62 (EN)
SDS.7.h		Do people granted stateless status have access to social security and healthcare?	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 23 & 24 UNHCR (2014) : The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.	Yes, stateless persons are granted access to social welfare and healthcare.	Article 1 (3) Federal Decision on the Ratification of the 1954 Convention https://www.admin.ch/opc/fr/classified-compilation/19720093/index.html (FR) in conjunction with Article 81 ff Asylum Act https://www.admin.ch/opc/en/classified-compilation/19995092/index.html#a81 (EN)
SDS.7.i		Are stateless people allowed to vote in local and/or national elections? If yes, are there any additional requirements for stateless people to vote (e.g. permanent residence, identification documents, etc.)?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 7, States shall accord to stateless persons at least the same treatment as is accorded to foreign nationals.	Stateless persons are not allowed to vote in national elections. However, stateless persons with a residence permit are allowed to vote at the cantonal level in the Cantons of Jura and Neuchâtel under certain conditions. At the local level voting rights for non-nationals are granted in the Cantons of Fribourg, Vaud, Neuchâtel and Jura. In the canton of Geneva, they have the active right to vote, but not the passive right to run for office. The cantons of Basel-City, Grisons and Appenzell Ausserrhoden allow their municipalities to allow non-national voting and some of the municipalities have implemented this option. The conditions required to have the right to vote vary from one Canton to the other, but generally it	https://www.bfs.admin.ch/bfs/en/home/statistics/population/migration-integration/integration-indicators/indicators/vote-eligibility-foreigners.html (EN)

				depends on residence status and a certain duration of stay, not on statelessness status.	
SDS.8.a	Access to nationality (Group 1)	In what timeframe do stateless people acquire the right to apply for naturalisation and how does this compare to others with a foreign nationality?	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 32 UNHCR (2016): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>Council of Europe Committee of Ministers (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p> <p>ENS (2013): The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.</p>	Stateless persons are able to naturalise by way of ordinary naturalisation (Article 9 ff Nationality Act). Simplified naturalisation is possible for stateless children as well as for stateless persons married to a Swiss national (Article 20 ff Nationality Act). The timeframe for an ordinary naturalisation on federal level is ten years of legal residence with a residence permit (Article 9(1)(b) and 33 Nationality Act). Temporary admission is only counted half. The time spent during an asylum procedure is not counted (Article 33 Nationality Act). Moreover, according to the new law adopted in 2014, only persons with a permanent residence permit can apply for naturalisation (Article 9(1)(a) Nationality Act). The Swiss ordinary naturalisation procedure is made even more complicated as the Cantons and Municipalities may introduce their own requirements relating to the required residence period and the level of integration required for a naturalisation (Articles 12(3), 15 and 18 Nationality Act). There is an accelerated (simplified) naturalisation procedure for stateless children (under 18), who may apply after a legal stay of five years (one of which must be the year preceding the application), if “integrated” (i.e. respect for public security and order and constitutional values, and able to communicate in daily life orally and written in one of the national languages, and not dependent on social security). There are no additional cantonal requirements. Other than required by Article 32 of the 1954 Convention there is no simplified naturalisation for adult stateless persons.	<p>Article 9 Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>Article 12(3) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>Article 18 Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>Article 33 Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>The Nationality Act sets out minimum requirements; Art. 38(2) Federal Constitution of the Swiss Confederation: “It [the Confederation] shall legislate on the minimum requirements for the naturalisation of foreign nationals by the Cantons and grant naturalisation permits.”</p> <p>Article 23 Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>Article 20 in conjunction with Article 12(1) and 12(2) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p>
SDS.8.b		Are there requirements relating to ‘good character’ or previous criminal convictions that could prevent some stateless people from accessing nationality? If yes, please describe.	Council of Europe Committee of Ministers (1999) : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.	Yes, naturalisation requires that the person concerned observes public order and security (Article 11 in conjunction with 12(1)(a) Nationality Act). Moreover, the applicant may not constitute a threat to the internal or external security of Switzerland (Article 11 Nationality Act). Naturalisation is thus excluded if the person has been sentenced to a custodial sentence for a felony or misdemeanours. In case of minor misdemeanours or contraventions the authority has discretion to allow the naturalisation. There is also a good character clause, requiring that the person respects the constitutional values of Switzerland, including fundamental principles of the rule of law, the democratic constitutional order and fundamental rights (Article 12(1)(b) Nationality Act).	<p>Criminal convictions: Article 12(1)(a) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) in conjunction with Article 4 Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf(FR)</p> <p>Good character: Article 12(1)(b) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) in conjunction with Article 5 Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)</p> <p>No violation of internal or external security: Article 11(c) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p>
SDS.8.c		Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements? Please describe the requirements and cost of the procedure for stateless people.	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 32 UNHCR (2016): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>Council of Europe Committee of Ministers (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p>	The examination of the naturalisation criteria is done by the cantonal authorities. They can conduct a nationality or integration test. Federal law requires language skills on level B1 orally and A2 written of one of the national languages (Article 12(1)(c) Nationality Act and Article 6 Ordonnance on Swiss Nationality). The cantons can set higher language requirements (Article 12(3) Nationality Act). Exemptions are only granted for persons who cannot fulfil the criteria due to a disability or illness or other grave personal circumstances (e.g. age, illiteracy) (Article 12(2) Nationality Act). There is no specific level of income required but the applicant must not be dependent on social security. This also applies to stateless persons. The costs for ordinary naturalisation are threefold. The fees at federal level are 100 CHF for an adult and 50 CHF for minors. In addition to the fees at federal level, applicants must pay fees at the cantonal and municipal levels which vary significantly.	<p>Article 2(2) Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)</p> <p>Article 12 Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)</p> <p>Article 6 Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)</p> <p>Article 9 Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)</p> <p>Income: Article 12(1)(d) Nationality Act (2014) https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) in conjunction with Article 7 Ordonnance on Swiss Nationality https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)</p> <p>Fees at federal level - Article 25 of the Ordonnance on Swiss Nationality: https://www.admin.ch/opc/de/classified-</p>

					compilation/20153117/index.html#a25 Costs at cantonal level: http://www.unine.ch/files/live/sites/sfm/files/listes_publicationsSFM/Etudes%20du%20SFM/SFM%20-%20Studies%2073d.pdf
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Detention

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
DET.1.a	Detention screening	Are immigration detention powers provided for in law? Please provide the legal source(s).	ICCPR Article 9(1) ECHR Article 5 (1)	Yes.	Articles 73-82 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#id-ni10-5 (EN) Detention under the airport procedure falls under Article 22-23 of the Federal Asylum Act: https://www.admin.ch/opc/en/classified-compilation/19995092/index.html#a22 (EN)
DET.1.b		Does domestic law allow immigration detention for purposes other than those listed under ECHR 5(1)(f)?	ECHR Article 5(1)(f)	The grounds for detention listed in Articles 73-78 FNA go beyond ECHR 5(1)(FR) and include grounds provided for in ECHR 5(1)(b), in particular coercive detention according to Article 78 FNA. The Federal Tribunal has held the coercive detention to be compatible with ECHR 5(1)(b) even though this is highly controversial in legal scholarship.	Articles 73-82 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#id-ni10-5 (EN) Case law of the Federal Tribunal on the compatibility of Article 78 FNA with ECHR 5(1)(b): 133 II 97, para. 2.2; 134 I 92, para. 2.3.1-2.3.2.
DET.1.c		Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.	ICCPR Article 7 : Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment. Auad v Bulgaria ECtHR (2011) : The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant. EU Returns Directive : Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.	No, not necessarily. Coercive detention, for example, can also be ordered in case the country of removal has not yet been determined. Equally, detention pending deportation can already be ordered while the authorities are establishing the identity of the person concerned and also a possible country of removal.	Article 76 and 78 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a76 (EN) https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a78 (EN) See e.g. Federal Tribunal 139 I 206, para. 2 (detention pending deportation) or 133 II 97 (coercive detention).
DET.1.d		Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention.	Auad v Bulgaria ECtHR (2011) Mikolenko v. Estonia ECtHR (2009) : Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Equal Rights Trust (2012) : 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 (2014) : The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.	Statelessness in principle is not a juridically relevant fact in the decision to detain for the authorities. However, statelessness can lead to detention being disproportionate and thus unlawful if a removal is not possible due to the person being stateless. The risk of statelessness is however not systematically identified. A referral to an SDP is possible if the person concerned lodges a claim for statelessness determination, but there is no formal referral mechanism (see question SDS.4.h).	
DET.1.e		Are stateless people detained in practice?		It is very likely that some stateless persons are placed in immigration detention for one of the grounds cited above, but no information is available.	
DET.1.f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives have been exhausted in each individual case?	UNHCR (2014) : Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. EU Returns Directive : Article 15(1)	Detention may only be used as a last resort. The law in principle foresees alternatives to detention, such as the obligation to refer to the authorities regularly, the payment of a bail, the restriction to a certain area and the deposition of travel documents (Article 64e Foreign Nationals Act). However, in practice there is no systematic consideration of alternatives to detention in the law and alternatives are rarely applied in practice. Article 76a(1)(c) on detention under the Dublin procedures explicitly requires that alternatives to detention have been exhausted.	Article 36 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a36 (EN) Article 64e Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a64e (EN) Article 76a Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a76a (EN) On alternatives to detention under the Dublin procedure see e.g. Federal Administrative Court, D-2484/2016, 27 April 2016; D-1626/2016, 22 March 2016 UNCAT Concluding Observations on Switzerland 2015, CAT/C/CHE/CO/7, para. 17: http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/CHE/CO/7&Lang=E

DET.1.g		Are individual vulnerability assessments carried out before a decision to detain (or soon after)? Please note whether statelessness is considered to be a factor increasing vulnerability.	<p>ENS (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.</p> <p>EU Returns Directive: Article 16(3)</p> <p>EU Returns Handbook (2017): Attention should be paid to the specific situation of stateless persons.</p> <p>Council of the European Union (2013): European entities should assess the situation of LGBTI persons in detention.</p>	Any decision to detain must be evaluated whether it is appropriate, necessary and reasonable with regard to the aim pursued. In the context of this examination the vulnerability of the individual concerned must be taken into consideration. The evaluation must take place prior to detention. For the context of immigration detention Article 81(3) FNA specifies that the needs of vulnerable persons must be taken into consideration with regard to detention conditions. Stateless persons are not highlighted in the law as a specific vulnerable group. There is no information publicly available how the vulnerability assessment is conducted in practice. Cantonal practices vary greatly. Cantonal practices concerning detention of children aged 15-18 also vary greatly.	<p>Article 36 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a36 (EN)</p> <p>Article 81(3) Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a81(EN)</p> <p>Federal Tribunal 135 II 105, E. 2.2.2.</p> <p>Terre des Hommes, Illegal detention of migrant children in Switzerland: a status report, 2016: https://www.tdh.ch/en/news/detention-migrant-children-switzerland</p>
DET.2.a	Alternatives to detention	Are alternatives to detention established in law and considered prior to any decision to detain?	<p>ICCPR Article 9</p> <p>FKAG v Australia HRC (2013): Any decision relating to detention must consider less invasive means of achieving the same ends.</p> <p>UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention.</p> <p>UNHCR (2014): Detention can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p>Human Rights Council (2012): The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p>EU Returns Directive: Article 15(1)</p> <p>Equal Rights Trust (2012): States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive.</p> <p>International Detention Coalition (2015): 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.</p>	The law in principle foresees alternatives to detention, such as the obligation to refer to the authorities regularly, the payment of a bail, and the deposition of travel documents (Article 64e Foreign Nationals Act). Article 74 FNA also introduces restriction and exclusion orders as an alternative to detention. However, in practice there is no systematic consideration of alternatives to detention in the law and alternatives are rarely applied in practice. Article 76a(1)(c) on detention under the Dublin procedures explicitly requires that alternatives to detention have been exhausted. The law does not explicitly foresee a statutory time limit to those alternatives to detention. The general principle of proportionality requires time limits and reviews of the necessity and proportionality. Judicial review of any measure of constraint, including alternatives to detention, is guaranteed.	<p>Article 36 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a36 (EN)</p> <p>Article 64e Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a64e (EN)</p> <p>Article 74 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a74 (EN)</p> <p>Article 76a Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a76a (EN)</p> <p>On alternatives to detention under the Dublin procedure see e.g. Federal Tribunal 119 Ib 193, E. 2; 133 I 27, E. 3; Federal Administrative Court, D-2484/2016, 27 April 2016; D-1626/2016, 22 March 2016</p> <p>UNCAT Concluding Observations on Switzerland 2015, CAT/C/CHE/CO/7, para. 17: http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/CHE/CO/7&Lang=E</p>
DET.2.b		Is there evidence that immigration detention is used in practice prior to all alternatives being considered?	As above.	Yes	<p>UNCAT Concluding Observations on Switzerland 2015, CAT/C/CHE/CO/7, para. 17: http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/CHE/CO/7&Lang=E</p> <p>Global Detention Project, Country Profile Switzerland: https://www.globaldetentionproject.org/countries/europe/switzerland</p> <p>AIDA, Country Profile Switzerland: http://www.asylumineurope.org/reports/country/switzerland/detention-asylum-seekers/legal-framework-detention/alternatives</p>
DET.3.a	Procedural safeguards	Is there a maximum time period for immigration detention set in law? What is it?	<p>UN Human Rights Council (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released.</p> <p>UNHCR (2012): To guard against arbitrariness, maximum periods of detention should be set in national law.</p> <p>EU Returns Directive: Article 15(5)</p> <p>Equal Rights Trust (2012): Detention should always be for the shortest time possible.</p>	Yes. Immigration detention of adults can be ordered for a maximum of 6 months and it can be extended for a further period of up to 12 months where the person does not cooperate with the authorities. The maximum period for detention under Articles 75 and 76 FNA is therefore 18 months as also foreseen in the EU Return Directive. For children age 15-18, the maximum period is 6 months and may be extended by up to 6 months for a total of 12 months. There are special rules concerning the length of detention under the Dublin procedure.	Articles 73-82 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#id-ni10-5
DET.3.b		Does law/policy provide that individuals must be informed in writing of the reasons for their immigration detention?	<p>UN General Assembly (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest.</p> <p>EU Returns Directive: Detention shall be ordered in writing with reasons being given in fact and in law.</p> <p>Equal Rights Trust (2012): Stateless detainees shall receive their order of</p>	Yes.	<p>Article 5(2) ECHR</p> <p>Article 80 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a80 (EN)</p>

			detention in writing and in a language they understand. International Commission of Jurists (2014) : The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.		
DET.3.c		Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?	Equal Rights Trust (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.	Yes, detainees are provided with information about their rights, including the right to challenge the legality of the detention and the conditions of detention. There is no information available on how detainees are provided with information about their rights in practice, but most likely statelessness and the procedure for statelessness determination are not subject of an information campaign.	Article 5(2) ECHR
DET.3.d		Are there regular periodic reviews of detention before a court or independent body, which can order release?	Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure. Equal Rights Trust (ERT) (2012) : 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.	An initial review of the detention order by a judicial authority must take place within 96 hours after it has been ordered. After the initial review a request for release can be submitted every month. Yes, if removal or expulsion proves to be unenforceable the person must be released (Article 80 FNA).	Article 80 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a80
DET.3.e		What remedies are available to challenge detention? Please mention any obstacles to accessing effective remedies in practice.	ICCPR Article 9(4) ECHR: Article 5(4) Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure. Alimuradov v. Russia ECtHR (2019) : The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.	A detention order must be reviewed by a judicial authority at the latest 96 hours after it has been ordered. In principle, there has to be an oral hearing. After the initial review a request for release can be submitted every month. An appeal against the decision can be lodged with the cantonal administrative court and then with the Federal Court.	Article 80 Foreign Nationals Act: https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a80 Article 83 Law on the Federal Court (e contrario): https://www.admin.ch/opc/de/classified-compilation/20010204/index.html#a83
DET.3.f		Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?	Equal Rights Trust (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS (2015) : The detaining state should have rules in place that govern the process of re-documentation and/or ascertaining entitlement to nationality.	Yes, there is a legal basis in the Ordonnance on the enforcement of the removal, expulsion or deportation order on identification and documentation with a view to removal and there is an instruction by the SEM on the identification and documentation for persons with a removal order, including refused asylum seekers. In principle the individual within the asylum procedure has a duty to cooperate in obtaining valid travel documents in case of a removal order (Article 8(4) Asylum Act). If the individual does not cooperate the State can initiate its own efforts and collaborate e.g. with the authorities of the presumed state of origin. There is no time limit for that clearly set out. However, detention in any case ceases to be proportionate if there is no reasonable prospect of receiving documentation. The identification and documentation procedure is not related to the statelessness determination procedure and, in principle, the information is not used or considered in a statelessness determination procedure.	Article 8 Asylum Act: https://www.admin.ch/opc/en/classified-compilation/19995092/index.html#a8 (EN) Article 3 ff Ordonnance on the Enforcement of the removal, expulsion or deportation order: https://www.admin.ch/opc/fr/classified-compilation/19994789/index.html#a3 (FR) SEM Instruction on identification and documentation: https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/g/hb-g1-f.pdf (FR)
DET.3.g		Is free legal aid available to challenge detention? Please describe any barriers to accessing legal aid in practice.	UNHCR (2014) : 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 : Article 13(3)	Yes, free legal aid in principle is guaranteed. It requires that the person concerned does not have sufficient means. Free legal representation requires that a case presents particular legal or factual difficulties and has some prospect of success. The right to free legal assistance in detention procedures is regulated by cantonal procedural law and can thus vary from one canton to the other. NGOs report that migrants in immigration detention sometimes face difficulties in accessing legal aid.	Cantonal procedural legislation. On this database you can find all cantonal legislation searchable by issue or canton: http://www.lexfind.ch/ AIDA reports that migrants in administrative detention have difficulties accessing lawyers, interpreters, social services etc: http://www.asylumineurope.org/reports/country/switzerland/legal-assistance
DET.4.a	Protections on release	Are people released from detention issued with identification documents (including	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 27	Little information is available on practice. If the removal cannot be implemented the person is released from detention but not granted status. The person will then be	Article 12 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/

		confirmation of their stateless status) and protected from re-detention?	<p>UNHCR (2014) : Being undocumented cannot be used as a general justification for detention.</p> <p>ENS (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention.</p> <p>Equal Rights Trust (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p>	undocumented/irregular. Regularisation is only possible if that person can apply for a legal status through some other way, e.g. by marrying someone with a residence permit. However, persons released from detention still have the removal order and proof that they have been detained and that removal was not possible, so combined with the maximum period of detention (DET 4c) this provides some protection from re-detention.	compilation/19995395/index.html#a12(EN)
DET.4.b		If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law?	<p>Saïd Shamilovich Kadzoev v Direktsia Migratsia' pri Ministerstvo na vatreshnite raboti ECJ (2009): After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release.</p> <p>Equal Rights Trust (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p>	If the removal cannot be implemented the person is released from detention but not granted status and will then be undocumented/irregular. Regularisation is only possible if they can apply for a legal status through some other way, e.g. by marrying someone with a residence permit. Undocumented migrants have only very limited access to social services. They only have access to minimum assistance and care and to the financial means required for a decent standard of living (Article 12 Constitution) but not to social welfare benefits. Also, they have no possibility to get a work permit. In principle they would have to pay contributions to public healthcare insurance and would therefore have healthcare coverage. The right to education for children is guaranteed.	Article 12 Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a12(EN)
DET.4.c		If re-detention occurs, is the cumulative time spent in detention counted towards any maximum time limits?	Equal Rights Trust (2012) : 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.	In principle, depending on the ground for detention, detention is limited to a maximum period. In case of re-detention it is decisive whether it is considered to be the same case/detention order as the first detention. In that situation the cumulative time is counted. In case it is considered a new case, i.e. the person in the meantime has left the country and re-entered irregularly and is now confronted with a new removal order, there is also a new maximum time limit.	Article 79 Foreign Nationals Act https://www.admin.ch/opc/en/classified-compilation/20020232/index.html#a79(EN) Federal Tribunal, 143 II 113, E. 3.2 https://www.bger.ch/ext/eurospider/live/de/php/clir/http/index.php?highlight_docid=atf%3A%2F%2F143-II-113%3Ade&lang=de&zoom=&type=show_document
DET.5.a	Return and readmission agreements	Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?	UNHCR (2014) : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.	Yes. Some of the bilateral readmission agreements Switzerland concluded with other states explicitly encompass the readmission of stateless persons, e.g. the readmission agreements with Azerbaijan, Bosnia-Herzegovina, Bulgaria, Denmark, Estonia, Kazakhstan, Kosovo, Kuwait, Poland, Romania, Serbia, & Sweden. Generally, such clauses are found in readmission agreements that have been concluded during the last ten years, even though some date back to the 1990's. The readmission of stateless persons does not require an SDP prior to readmission. Readmission is also possible if the person concerned has a visa or a travel document of the other state or was in possession of a residence permit. Some of the readmission agreements refer to the definition of a stateless person under the 1954 Convention whereas others merely state that a stateless person is a person 'without nationality' (e.g. the Readmission Agreement with Bosnia-Herzegovina or with Serbia).	The texts of the agreements can be found in the classified compilation of Swiss federal legislation, e.g. the Agreement with Bosnia-Herzegovina (https://www.admin.ch/opc/de/classified-compilation/20082419/index.html(DE)), with Serbia (https://www.admin.ch/opc/de/classified-compilation/20091277/index.html(DE)), with Denmark (https://www.admin.ch/opc/de/classified-compilation/20103355/index.html(DE)) or with Kazakhstan (https://www.admin.ch/opc/de/classified-compilation/20100061/index.html(DE)).
DET.5.b		Are you aware of cases of cases of stateless people being returned under such agreements?		No.	

Prevention and Reduction

Item	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? [If yes, continue to PRS1b. If no, proceed to PRS1h]	UN Convention on the Reduction of Statelessness, 1961 : Article 1 European Convention on Nationality, 1997 : Article 2 Convention on the Rights of the Child 1989 : Article 7 Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. European Parliament (2018) : The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.	There is a provision in law allowing for simplified naturalisation of stateless children in Switzerland. However, it does not depend on the child being born in Switzerland but on the requirement of five years of residence, among others (see also answer to SDS.8.a). Thus, there is no specific safeguard for children born stateless in Switzerland.	Article 38(3) Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a38 (EN) Article 23 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.1.b		Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)?	UNHCR (2012) : The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. ENS (2015) : The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.	It is non-automatic. There is a possibility of access to nationality by application through so-called simplified naturalisation. For simplified naturalisation the child must have five years' legal residence, one year of which must be immediately prior to the application. Moreover, the child must be integrated in Switzerland (Article 23 in conjunction with Article 20 in conjunction with Article 12 Nationality Act). According to Article 12 Nationality Act and the Nationality Ordonnance, a person is successfully integrated if they respect public security and order, and constitutional values, can communicate in daily life orally and in writing in one of the official national languages, and participate in the labour market or in education (i.e. does not depend on social security). The requirements for simplified naturalisation are reduced vis-à-vis ordinary naturalisation. Nevertheless, the authorities maintain discretion when deciding whether the criteria are fulfilled. The legal residence requirement is contrary to Switzerland's international obligations and can result in children born stateless in Switzerland not being able to acquire Swiss nationality because their parents are irregular migrants. The possibility of simplified naturalisation expires once the stateless child turns eighteen.	Article 38(3) Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a38 (EN) Article 23 in conjunction with Article 20 in conjunction with Article 12 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) Articles 2 ff Ordonnance on Swiss Nationality: https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR)
PRS.1.c		Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality?	UNHCR (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on.	No.	Article 23 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.1.d		Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice.	UNHCR (2012) : A Contracting State 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. The burden of proof must be shared between the claimant and the authorities. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected.	They must be recognised by Switzerland as stateless. For the requirements and questions of proof see above in the section on Statelessness Determination and Status. Additionally, the child must prove that they fulfil the criteria for a simplified naturalisation according to Article 20 in conjunction with Article 12 Nationality Act. The standard of proof and the burden of proof are the same as in the statelessness determination procedure.	Article 20 in conjunction with Article 12 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) Articles 12 ff. Administrative Procedure Act APA: https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a12 (EN)

PRS.1.e		Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence.	UN Convention on the Reduction of Statelessness, 1961 : Article 1(2) UNHCR (2012) : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. Convention on the Rights of the Child, 1989 : Articles 3 & 7 Committee on the Rights of the Child (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. European Convention on Nationality, 1997 : Article 6(2)(b)	Yes. The requirement is five years of legal residence, one year of which must be immediately before the application for naturalisation is made.	Article 23 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) For an explanation of „Aufenthalt in Übereinstimmung mit den ausländerrechtlichen Vorschriften“ see: Bundesrat, Botschaft zur Totalrevision des Bundesgesetzes über das Schweizer Bürgerrecht (Bürgerrechtsgesetz, BüG) vom 4. März 2011, p. 2857: https://www.admin.ch/opc/de/federal-gazette/2011/2825.pdf ; Art. 33 Nationality Act (2014).
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, please specify length and if this must be legal residence.	Committee on the Rights of the Child (2011) : The outcome of an application 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. ENS (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.	No, but it is necessary for the child – see above.	
PRS.1.g		What are the age limits (if any) for making an application for nationality for a stateless person born on the territory?	UN Convention on the Reduction of Statelessness, 1961 : Article 1(2) UNHCR (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. ENS (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.	18 years of age is the limit for applying for simplified naturalisation.	Article 38(3) Swiss Constitution: https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a38 (EN) Article 23 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) Article 14 Swiss Civil Code: https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#a14 (EN)
PRS.1.h		Are there specific provisions to protect the right to a nationality of children born to refugees?	UNHCR (2012) : 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.	No	
PRS.2.a	Foundlings	Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure.	UN Convention on the Reduction of Statelessness, 1961 : Article 2 European Convention on Nationality, 1997 : Article 6(1)(b)	Yes, foundlings acquire Swiss nationality automatically.	Article 3 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.2.b		Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality?	UNHCR (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth.	Yes – only minor children, i.e. children under the age of 18 acquire nationality automatically if found.	Article 3 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.2.c		Can nationality be withdrawn from foundlings if this leads to statelessness?	UNHCR (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.	Nationality can be withdrawn if it is later established who the parents are, if such action would not result in the child becoming stateless. Nationality cannot be withdrawn if it would result in the child becoming stateless or in the case of an individual who has already reached the age of 18.	Article 3 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
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 acquired?	UN Convention on the Reduction of Statelessness, 1961 : Article 5 ENS (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin.	A Swiss child adopted by foreign nationals loses Swiss nationality once the adoption enters into legal force, but only if the child thereby acquires the nationality of the adopting parent or already has this nationality.	Article 6 Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) Article 267a Civil Code: https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#a267a (EN)
PRS.3.b		Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process.	European Convention on Nationality, 1997 : Article 6(4)(d) Committee on the Rights of the Child (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption.	A foreign child adopted by Swiss parents acquires Swiss nationality. However, the adoption only becomes formally effective after a waiting period of one year during which the adoptive parents already cared for the child. During the waiting period the child has a residence permit.	Article 4, Nationality Act: https://www.admin.ch/opc/de/classified-compilation/20092990/index.html#a4 (DE) Article 264, Civil Code: https://www.admin.ch/opc/de/classified-compilation/20092990/index.html#a4 (DE)

				The age limit for adoption (and acquisition of nationality by adoption) is 18. The Committee on the Rights of the Child has criticised this practice.	https://www.admin.ch/opc/de/classified-compilation/19070042/index.html#a264 (DE) Article 8, Adoption Ordinance: https://www.admin.ch/opc/de/classified-compilation/20091244/index.html#a8 (DE) Committee on the Rights of the Child, Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04, 2015: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskw6ZHISjLEtdRql6Pfo3d19G0fwi7ZPzdEOVKAQgeqWKogX2iXEvcG5O%2bzGktEo1nvnVtG%2fXYEnmWa47plmDxnXlhPMHh5Fz%2fKc%2fL6gvzos
PRS.4.a	Ius sanguinis	Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless?	UN Convention on the Reduction of Statelessness, 1961 : Article 4 UNHCR (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child.	Yes if a child is born outside the country to a national, they automatically acquire Swiss nationality. In principle the child must be registered with the Swiss authorities before their 25 th birthday, otherwise the nationality is forfeited. Forfeiture however is only possible if the child does not become stateless. If the child would otherwise be stateless, nationality cannot be lost.	Article 1 and 7, Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.4.b		Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)?	Genovese v. Malta ECtHR (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW Gen. rec. No. 32, 2014 : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR (2014) : Action 4	Yes, in the case of unmarried parents where only the father is Swiss, additional evidence of paternity may be required.	Article 1 and 7, Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)
PRS.5.a	Birth registration	Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents?	Convention on the Rights of the Child, 1989 : Article 7 International Covenant on Civil and Political Rights, 1966 : Article 24(2) Council of Europe (2009) : Member states should 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 the parents are unknown. UNHCR (2012) : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR (2014) : Action 7 UN Sustainable Development Goal 16.9	Any child born in Switzerland must be registered at the civil registry office of the district in which the child is born within three days of the birth. Usually the hospital where the child is born will register the child. If the child is born at home/outside a medical facility the birth can be reported by the mother or any other witness to the birth. Late registration is possible. If the parents are undocumented the child's birth must still be registered. Reportedly, some undocumented parents have encountered delays or barriers when trying to register births.	Article 40, Civil Code: https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#a40 (EN) Article 15a, Civil Registry Ordinance: https://www.admin.ch/opc/fr/classified-compilation/20040234/index.html#a15a (FR) Article 34, Civil Registry Ordinance: https://www.admin.ch/opc/fr/classified-compilation/20040234/index.html#a34 (FR) Instruction to the Civil Registry Ordinance on the registration of non-nationals (October 2008): https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-08-10-01-d.pdf (DE) Instruction to the Civil Registry Ordinance on the registration of non-nationals with regard to legal stay in the country (January 2011): https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-11-01-02-d.pdf (DE)
PRS.5.b		Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued.	UN Human Rights Council, Resolution A/HRC/RES/20/4 : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents.	Yes, all children registered after birth are issued a birth certificate as well as a family certificate ("Familienausweis") listing the parents and possible siblings. The documents are issued by the cantonal civil registries. The practice may vary from one Canton to another.	Guidance of the Federal Office for the Civil Registry on the registration of foreign nationals in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-08-10-01-d.pdf (DE). Circular of the Federal Office for the Civil Registry on the registration of the birth of a child of foreign nationals whose information is not recorded in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/ks-07/20-08-10-01-d.pdf (DE) See also the report of the Federal Council on the registration of births of

					non-Swiss children of 20 December 2006: https://www.bj.admin.ch/dam/data/bj/gesellschaft/zivilstand/dokumentation/berichte/ber-br-beurkundung-d.pdf (DE)
PRS.5.c		Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.)	Convention on the Rights of the Child, 1989 : Articles 3 & 7	Yes, the child's nationality is recorded on the birth certificate. The nationality is determined by the cantonal civil registrar on the basis of the parents' documents, if available. Information on the parents is also recorded if available. If the information is not available or the parents' documentation not deemed to be credible, the relevant information is not recorded i.e. if the parents' nationality is unknown, the child's nationality will not be recorded on the birth certificate. If the parents are registered as stateless this information will be registered accordingly. There is no explicit legal basis. The Federal Office for the Civil Registration has issued guidance on the question. The precise procedure may, however, vary from one canton to another.	Guidance of the Federal Office for the Civil Registry on the registration of foreign nationals in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-08-10-01-d.pdf (DE). Circular of the Federal Office for the Civil Registry on the registration of the birth of a child of foreign nationals whose information is not recorded in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/ks-07/20-08-10-01-d.pdf (DE)
PRS.5.d		If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	Convention on the Rights of the Child, 1989 : Articles 3 & 7 UN Convention on the Reduction of Statelessness, 1961 : Articles 1 & 4 UNHCR (2012) : States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years.	If the relevant information becomes available at a later stage, it can still be recorded. The information must be submitted to the civil registry of the place of birth. There are no deadlines for the registration. The procedure is not formalised in law but based on administrative guidance from the Federal Office for the Civil Registry. There are, however, no safeguards in place to ensure that authorities check <i>ex officio</i> whether nationality can be established at a later stage if it has not been recorded upon birth.	Guidance of the Federal Office for the Civil Registry on the registration of foreign nationals in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-08-10-01-d.pdf (DE). Circular of the Federal Office for the Civil Registry on the registration of the birth of a child of foreign nationals whose information is not recorded in the civil registry: https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/ks-07/20-08-10-01-d.pdf (DE)
PRS.5.e		Are there credible reports to suggest that children are prevented from registering in practice because of parents' legal status or other reasons (please specify)?	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration : States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2019) : Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.	Problems with birth registration and delays have been reported. The fact that birth registration is handled at the cantonal level makes it difficult to find accurate and up to date information. A report by the Federal Council of 2009 reports that at a set date in 2007, 813 births were not yet registered because of missing information about the identity of the mother or the father of the child. 90 % of these cases were resolved within 6 months after the birth of the child. The Committee on the Rights of the Child in its 2015 Concluding Observations on the 2-4 th periodic report of Switzerland recommended that Switzerland ensures that birth registration is available as soon as possible for all children, regardless of their parents' legal status and/or origin.	Federal Council Report on the Registration of the Birth of non-national children of 2009: https://www.bj.admin.ch/dam/data/bj/gesellschaft/zivilstand/dokumentation/berichte/ber-br-beurkundung-d.pdf (DE) Committee on the Rights of the Child Concluding Observations: Switzerland, 2015: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskw6ZHISjLETdRql6Pfo3d19G0fwi7ZPZdEOVKAQgeqWKogX2iXEvcG5O%2bzGktEo1nvnVtG%2fXYEnmWa47plmDxnXlhpMHh5Fz%2fKc%2fL6gvzOS
PRS.5.f		Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)?	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child, JGC No. 4 (2017) and JGC No. 3 (2017) : Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes.	No. Guidance to the Civil Registry Ordinance of January 2011 on the registration of non-nationals explicitly prohibits illegal stays from being reported to the migration authorities. The same applies to medical authorities or schools. A problem can arise if the health insurance of an undocumented person states a false address and this address is reported to the civil registry.	Instruction to the Civil Registry Ordinance on the registration of non-nationals with regard to legal stay in the country (January 2011): https://www.bj.admin.ch/content/dam/data/bj/gesellschaft/zivilstand/weisungen/weisungen-07/10-11-01-02-d.pdf (DE) Reports about problems relating to health insurance are informal/anecdotal.

			Council of Europe: ECRI General Policy Recommendation No. 16(2016) on safeguarding irregularly present migrants from discrimination : States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector.		
PRS.5.g		Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice.	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late 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.	The birth must be registered immediately or at least within three days. Late registration is possible.	Article 35, Civil Registry Ordinance: https://www.admin.ch/opc/de/classified-compilation/20040234/index.html#a35 Article 35, Civil Registry Ordinance: https://www.admin.ch/opc/fr/classified-compilation/20040234/index.html#a35 (FR) Federal Council Report on the Registration of the Birth of non-national children of 2009: https://www.bj.admin.ch/dam/data/bj/gesellschaft/zivilstand/dokumentation/berichte/ber-br-beurkundung-d.pdf (DE)
PRS.5.h		Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines.	As above	No.	
PRS.6.a	Reduction	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	UNHCR (2014) : Action 7	No.	
PRS.6.b		Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information.	UN Convention on the Reduction of Statelessness, 1961 : Article 9 UNHCR (2014) : Action 4 UN Human Rights Council (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.	Yes. Undocumented migrants.	SEM, Illegale/Irreguläre Migration: https://www.sem.admin.ch/sem/de/home/internationales/illegale-migration.html (DE)
PRS.6.c		Has the Government implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.)	UN Convention on the Reduction of Statelessness, 1961 UNHCR (2014) : Actions 1 & 8 UNHCR (2015) : States parties to the 1954 Convention are required to help stateless persons become naturalised nationals.	No.	
PRS.7.a	Deprivation of nationality	Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.).	UN Convention on the Reduction of Statelessness, 1961 : Article 8 & 9 European Convention on Nationality, 1997 : Article 7(3) Universal Declaration of Human Rights : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 UNHCR Guidelines on Statelessness No.5 (2020) : the prohibition of arbitrary deprivation of nationality also includes situations where there is no	Yes. An individual can be deprived of their nationality if it was acquired fraudulently even if they may be rendered stateless as a result (unless they are a child) (Swiss Nationality Act, Art. 36; 'annulment'). There are safeguards to prevent statelessness in all other cases where deprivation of nationality is permitted. Under Article 36, a naturalisation decision may be declared null and void if it has been obtained through false information or by concealing material facts. 'Annulment' is possible within two years of the authorities becoming aware of the legally relevant circumstances, but at the latest within eight years after acquisition of nationality. In principle the measure extends to everyone included in the naturalisation decision, including children. However, children are not included if the child would become stateless as a result. A person whose	Article 36, 37, 5 & 42, Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR)

			formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification).	nationality has been ‘annulled’ is prohibited from naturalisation for a period of two years.	
PRS.7.b		Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, judicial oversight, appeal, time limit, subject to prior sentencing)?	UN Convention on the Reduction of Statelessness, 1961 : Article 8(4) European Convention on Nationality, 1997 : Article 11 Principles on Deprivation of Nationality : Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation.	The SEM is the competent authority. In principle, deprivation is subject to prior sentencing except for cases where a criminal procedure seems futile as the State where the criminal acts occurred is not willing or able to pursue a criminal procedure or to provide judicial assistance. The decision of the SEM can be appealed at the Federal Administrative Tribunal and ultimately at the Federal Tribunal. Free legal aid and representation is available both at first instance and appeals stage. However, this is conditional on the person having insufficient means and the case having some prospect of success.	Article 42, Nationality Act (2014): https://www.admin.ch/opc/fr/official-compilation/2016/2561.pdf (FR) Article 30, Ordonnance on Swiss Nationality: https://www.admin.ch/opc/fr/official-compilation/2016/2577.pdf (FR) Article 65, Administrative Procedure Act (appeals procedure and first instance procedures): https://www.admin.ch/opc/en/classified-compilation/19680294/index.html#a65 (EN)
PRS.7.c		Are provisions on deprivation of nationality that may render a person stateless applied in practice?		Yes. ‘Annulment’ of naturalisation is relatively frequent. There are roughly 150 procedures per year, of which 50 result in the actual ‘annulment’ of naturalisation and deprivation of nationality with the possible consequence of statelessness. Most cases are facilitated naturalisations based on marriage with a Swiss national where the marriage/relationship was found to be merely for the purposes of naturalisation. Another case of application are criminal procedures, mainly abroad, which are not reported by the person concerned.	SEM, Handbook Nationality, p. 16: https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/buergerrecht/hb-bueg-kap2-d.pdf (DE) The official numbers of ‘annulments’ of naturalisation are not published.
PRS.7.d		Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness?	UN Convention on the Reduction of Statelessness, 1961 : Article 7 European Convention on Nationality, 1997 : Articles 7 and 8	Yes, renunciation of nationality requires that the person concerned holds or is at least assured of another nationality.	Article 37 Nationality Act (2014): https://www.admin.ch/opc/en/classified-compilation/20092990/index.html#a37
PRS.7.e		Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice.	Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards.	Yes, Article 42 of the Nationality Act allows for deprivation of nationality if the person has acted seriously detrimentally to the interests or the reputation of Switzerland (and does not become stateless). There are recent cases of this provision being applied in practice. On 11 September 2019, the SEM announced that for the first time it had ordered a Turkish-Swiss dual national convicted of terrorism-related offences to be deprived of his Swiss nationality on the basis of Article 42 of the Nationality Act. This decision has been appealed to the Federal Administrative Court. A second deprivation order was issued on 31 December 2019 against a French-Swiss dual national. The woman, who is currently residing in Syria, has been suspected of supporting terrorist activities but not convicted. As she has not appealed the decision, it entered into force. Neither of these cases resulted in statelessness.	SEM, Handbook Nationality, p. 16: https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/buergerrecht/hb-bueg-kap2-d.pdf (DE) News report about ongoing deprivation procedures, Neue Zürcher Zeitung, 6.4.2018: https://www.nzz.ch/schweiz/derbund-will-ijihadisten-den-pass-entziehen-ld.1374831 (DE)
PRS.7.f		Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice.	ICCPR : Article 26 UN Convention on the Reduction of Statelessness, 1961 : Article 9 European Convention on Nationality, 1997 : Article 5 Principles on Deprivation of Nationality : Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals.	The provisions on deprivation of nationality risk discriminating on the basis of nationality status if they are only applied to dual nationals. Moreover, they risk discriminating on the basis of ethnic or national origin, race, or religion since they tend to disproportionately affect people with a migrant background or members of minority groups, specifically Muslims in the two recent cases of deprivation on national security grounds. Moreover, deprivation of nationality of women risks discriminating on the basis of gender.	

Resources

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
RES.1.a	Published judgments	Number of published judgments adjudicating statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		<p>Federal Court:</p> <ul style="list-style-type: none"> - Leading cases (published judgment): 0 - Other published judgments (since 2000): 9 (1 in 2019) <p>Federal Administrative Court:</p> <ul style="list-style-type: none"> - Leading cases (published judgment): 2 - Other published judgments: 38 (6 in 2019) <p>Cantonal Courts normally do not deal with questions concerning statelessness as this is primarily a Federal competence.</p>	Numbers based on the cases indicated on the respective databases of the two federal courts, the Federal Tribunal: http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht.htm ; and the Federal Administrative Court: http://www.bvger.ch/publiws/pub/search.jsf (Keyword search: "Anerkennung der Staatenlosigkeit")
RES.1.b		Number of published judgments mentioning statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		<p>Federal Court:</p> <ul style="list-style-type: none"> - Leading cases (published judgment): 7 - Other published judgments: 33 <p>Federal Administrative Court:</p> <ul style="list-style-type: none"> - Leading cases (published judgment): 4 - Other published judgments: 248 <p>In 2019, one decision of the Federal Administrative Court concerned the revocation of refugee status of a stateless person.</p>	Numbers based on the cases indicated on the respective databases of the two federal courts, the Federal Tribunal: http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht.htm ; and the Federal Administrative Court: http://www.bvger.ch/publiws/pub/search.jsf (Keyword search: "Staatenlosigkeit")
RES.2.a	Pro Bono	Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe.	UNHCR (2014) : Applicants must have access to legal counsel.	There is no specialised dedicated law firm or organisation providing free advice to stateless persons or those at risk of statelessness. Several organisations provide free legal advice for migrants on general migration law issues, e.g. for undocumented migrants or for asylum seekers. Legal advisory services for refugees and asylum seekers are also approached by persons seeking statelessness recognition. A couple of lawyers have assisted a number of persons with their applications for statelessness status.	List of legal advisory services for asylum seekers and refugees (not specialised on statelessness issues) https://www.refugeecouncil.ch/assets/hilfe/170530-rbsadr-extern.pdf
RES.3.a	Literature	Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available).		<p>So far there is little academic literature on statelessness in particular, namely:</p> <ul style="list-style-type: none"> - Pablo Arnaiz, Staatenlose im internationalen und schweizerischen Recht, in: <i>Actualité du droit des étrangers</i>, pp. 57-154 - Véronique Boillet, „Généralités“ (pp. 1-19); and "Le statut de l'apatride" (pp. 21-29), in: <i>Actualité du droit des étrangers</i>. - Olivia Brunner, De iure Staatenlose in der Schweizer Rechtsordnung, in: Achermann et al. (ed.), <i>Jahrbuch für Migrationsrecht 2014/2015</i>, Bern 2015, pp. 61-92 - Karen Hamann, Statelessness Determination: The Swiss Experience, in: <i>Forced Migration Review 54</i>(2017), pp. 96-98 - Daniel Moeckli, "Auf unehrliche Weise in unseren Staatsverband eingeschlichen" : die Nichtigerklärung der Einbürgerung, in: <i>Zeitschrift für schweizerisches Recht ZSR</i>, Vol 138 No. 4 (2019), pp. 381-399. - Nina Murray/Barbara von Rütte, Civil society asks the Human Rights Council to hold Switzerland to account on statelessness, ENS Blog Post, http://www.statelessness.eu/blog/civil-society-asks-human-rights-council-hold-switzerland-account-statelessness - Minh Son Nguyen, La procédure de détermination de l'apatridie, in: <i>Actualité du droit des étrangers</i>, pp. 31-56 - Brigitte Studer (translated by Kate Sturge), Nationality as Contingent National Belonging: Married Women and Foreigners in Twentieth-Century Switzerland, in: <i>Gender & History: Special Issue: Gender, Nationalities and Subjectivities</i> (2001), pp. 622-654 - Véronique Boillet and Hajime Akiyama, Statelessness and International Surrogacy from the International and European Legal Perspectives, in: <i>Swiss Review of International and European Law</i>, 27 (2017) 4, p. 513-534 	