

Joint Submission to the
Human Rights Council

Universal Periodic Review

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Romania

Jesuit Refugee Service Romania

European Network on Statelessness

Institute on Statelessness and Inclusion



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Introduction

1. The Jesuit Refugee Service – Romania (JRS), the European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Romania.
2. The [Jesuit Refugee Service \(JRS\) Romania](#)¹ was founded in February 2000 being officially registered as a foundation in Romania, as part of the JRS network. JRS currently works more than 50 countries, including Romania, and aims to help refugees and other displaced persons regain their dignity. JRS Romania accompanies refugees and stateless persons in building their lives in Romania, including through activities such as taking them to appointments, offering counselling, and referring them to needed services.
3. The [European Network on Statelessness](#) (ENS)² is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Established in 2012, it currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers Romania.³
4. The [Institute on Statelessness and Inclusion](#) (ISI)⁴ is the first and only human rights NGO dedicated to working on statelessness at the global level, established in 2014. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made over 90 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 41st UPR Sessions.
5. This submission focuses on:
 - I. Children’s right to a nationality
 - II. Statelessness determination and access to rights
 - III. The protection of stateless people previously living in Ukraine

¹ For more information, see <https://jrs.net/en/home/>.

² For more information, see <https://www.statelessness.eu>.

³ ENS, Statelessness Index: Romania, <https://index.statelessness.eu/country/romania>.

⁴ For more information, see <https://www.institutesi.org/>.

Previous UPR and UN Treaty bodies' recommendations to Romania

6. Romania was previously reviewed under the Universal Periodic Review during the 29th session in 2018 (Third Cycle) and accepted a recommendation from Norway to *'provide funding and human resources in rural areas to reduce and eliminate disparities, with particular focus on [...] access to birth registration'*.⁵ In the 23rd session in 2013 (Second Cycle), Romania accepted recommendations from Mexico to *'amend the Citizenship Law to ensure that all persons born in Romania obtain a nationality; otherwise they would be stateless, regardless of the status of the parents'*⁶; from Uruguay to *'implement comprehensive awareness raising strategies for hospital staff, administrators and other health professionals regarding their responsibilities to register births and facilitate the issuance of birth certificates, without any delay'*⁷; and from Slovakia to *'consider amending the Citizenship Law to include safeguards against statelessness, providing that children born in the Romanian territory, who would otherwise be stateless, acquire Romanian nationality'*.⁸
7. In 2017, the Committee on the Rights of the Child (CRC) recommended that Romania *'strengthen community-based services to ensure that all children, including those in rural communities, have access to birth registration without delay'* and reiterated its previous recommendation to ensure that children in street situations receive national identification documents.⁹
8. In 2017, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Romania *'[d]evelop measures to identify unregistered children and ensure that all children born in the territory of the State party, in particular Roma children, are registered at birth to ensure their access to education, social services, health care and citizenship, and allocate adequate funding for the implementation of the strategy for the inclusion of Romanian citizens belonging to the Roma minority, covering the period 2012-2020, and expedite the adoption of action plans with clear time bound targets'*.¹⁰
9. The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) recommended in 2015 that Romania *'consider establishing a statelessness determination procedure'*.¹¹

⁵ A/HRC/38/6 (5 April 2018), 114.79, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/084/74/PDF/G1808474.pdf?OpenElement>.

⁶ A/HRC/23/5 (21 Mar 2013), 109.105, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/124/42/PDF/G1312442.pdf?OpenElement>.

⁷ A/HRC/23/5 (21 Mar 2013), 109.113, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/124/42/PDF/G1312442.pdf?OpenElement>.

⁸ A/HRC/23/5 (21 Mar 2013), 109.149, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/124/42/PDF/G1312442.pdf?OpenElement>.

⁹ CRC/C/ROU/CO/5 (13 July 2017), 21 and 42, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/55/PDF/G1719055.pdf?OpenElement>.

¹⁰ CEDAW/C/ROU/CO/7-8 (24 July 2017), 37, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/227/97/PDF/N1722797.pdf?OpenElement>.

¹¹ CAT/C/ROU/CO/2 (5 June 2015), 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/115/39/PDF/G1511539.pdf?OpenElement>.

Romania's International Obligations

10. With a positive record of accession to human rights instruments, Romania has international obligations to protect the right to a nationality and protect the rights of stateless persons. Romania acceded to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) in 2006. The 1954 Convention has direct effect in Romanian law, but Romania retains a number of significant reservations, including that Romania reserves the right to provide public relief only to stateless *refugees* (Article 23), to grant identity papers only to stateless people with a residence permit (Article 27), and to expel a stateless person staying lawfully on the territory if they commit a criminal offence (Article 31). Romania has also been a State Party to the 1961 Convention on the Reduction of Statelessness (1961 Convention) since 2006, with no reservations.
11. Romania also has international obligations to protect the right to a nationality and the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others:¹²
 - International Covenant on Civil and Political Rights (ICCPR) (see article 24.3)
 - International Covenant on Economic, Social and Cultural Rights (ICESCR) (see articles 2.2 and article 3)
 - Convention of the Rights of the Child (CRC) (see articles 2, 3, 7 and 8)
 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (see article 9)
 - International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (see article 5(d)(iii))
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Convention on the Rights of Persons with Disabilities (see article 18)
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol)

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

12. At regional level, Romania is a State Party to the European Convention on Human Rights (ECHR) and a State Party to the European Convention on Nationality, but retains some reservations relating to the latter.¹³ Romania is bound by the EU Returns Directive and is party to all other relevant regional and international human rights treaties (with no relevant reservations), except the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and the International Convention on the Rights of All Migrant Workers and Members of their Families.
13. Romania did not make any pledges at the UNCHR High Level Segment on Statelessness.¹⁴

¹² UN Treaty Body Database, View the ratification status by country or by treaty:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=143&Lang=EN

¹³ Law no. 396 of 14 June 2002 on the ratification of the European Convention on Nationality, adopted in Strasbourg on 6 November 1997: <http://legislatie.just.ro/Public/DetaliuDocument/37144>.

¹⁴ UNHCR, #IBelong, Results of the High-Level Segment on Statelessness: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

Snapshot of Statelessness in Romania

14. It is difficult to portray an accurate picture of statelessness in Romania due to the lack of reliable qualitative and quantitative data. Some data on the stateless population in Romania is available in the national data collection system, which has a specific 'stateless' category based on the census. The General Inspectorate for Immigration also records figures for the number of stateless people holding residence permits, as well as some potentially overlapping categories, including 'unknown nationality'. However, statelessness has not been mapped in Romania, data on stateless people held in immigration detention is collected but not published, there is no official data on the population at risk of statelessness or on the number of stateless persons who do not have a residence permit, including the number of Roma people who are undocumented.
15. The lack of a statelessness determination procedure results in confusion about who is recorded as stateless and on what grounds, and there are reported issues with people being attributed a nationality in official records which may result in hidden statelessness. Statelessness may be identified during asylum procedures, returns, or border procedures, but this will offer little or no protection.
16. The last census in 2021 recorded 54 stateless people with permanent or temporary residence in the country. Based on figures provided by the General Inspectorate for Immigration, UNHCR estimated there were 316 stateless persons in Romania at the end of 2021.¹⁵ At the end of April 2021, the General Inspectorate for Immigration and UNHCR reported 287 stateless persons officially registered in Romania, disaggregated by State of former residence/birth: Romania (83), Syria (74), Greece (32), Lebanon (19), Kuwait (14), Palestine (13), Israel (10), Jordan (4), Saudi Arabia (4), EAU (4). Of the total number recorded, there were 113 women and 174 men; 127 had permanent residence, 94 a form of international protection, 12 were family members, 7 held a permit for study, 1 held a work visa, and 35 held a permit for other purposes.¹⁶ However, these numbers do not provide an accurate statistical overview of Romania's stateless population and estimates are likely an underrepresentation because stateless persons living without residence status in Romania are mainly invisible in the data.
17. Data relating to the number of stateless persons in detention in Romania are recorded but not published. Sometimes detainees are attributed the nationality of a country of destination for the purposes of removal. There were reports that 2 stateless persons were held in detention in 2021.¹⁷

The legal and policy framework in Romania has some positive aspects and some significant gaps. Romania is party to most relevant international and regional instruments, including three of the four core statelessness conventions (although, as noted, with some important reservations to the 1954 Convention). However, Romania does not have a dedicated statelessness determination procedure and there is no

¹⁵ UNHCR, Refugee Data Finder: <https://www.unhcr.org/refugee-statistics/download/?url=XmG0oh>.

¹⁶ National Institute of Statistics, 2021 National Census: <http://www.recensamantromania.ro/noutati/volumul/> (RO); 2002 National Census: <https://insse.ro/cms/files/RPL2002INS/vol1/tabele/t39.pdf> (RO). UNHCR, Global Trends in Forced Displacement 2020, Annex Table 5 Persons under UNHCR's statelessness mandate, 2020: <https://www.unhcr.org/refugee-statistics/download/?url=MZy2ku>. Detailed official statistics provided by the General Inspectorate for Immigration upon request to relevant national stakeholders.

¹⁷ Detailed official statistics provided by the General Inspectorate for Immigration upon request to relevant national stakeholders.

Government guidance for decision-makers on the identification of statelessness (see Issue 2).

Issue 1 – Children’s right to a nationality

The right to a nationality

18. Every child has a right to a legal identity and nationality. This is a core principle of international law, which if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.¹⁸ States should have a provision in law to grant nationality to anyone born on the territory who would otherwise be stateless.¹⁹ Conferral of nationality to otherwise stateless children born on the territory should ideally be automatic at birth. There should be no conditions on acquisition of nationality by a child relating to their or their parents' legal status, such as lawful residence.²⁰ If children are required to prove they cannot access another nationality, the burden of proof should be shared, an appropriate standard of proof adopted, and special procedural considerations given to the challenges faced by children in communicating basic facts about their nationality.²¹
19. There are few safeguards in place to prevent childhood statelessness in Romania, despite international obligations to do so. Acquisition of Romanian citizenship is governed by Act No. 21/1991 on Romanian Citizenship. As a general rule, children born to a parent who is a national of Romania are considered to be Romanian nationals, whether born in Romania or abroad.²² Generally, the only option for children without Romanian nationality is to apply for naturalisation alongside their parents, subject to the general criteria. Foundlings are granted nationality by law but may face practical obstacles, and there is a risk of statelessness if parentage is later established. Children born to Romanian nationals abroad are automatically Romanian by law, but births must be registered and there have been reports of discriminatory practice.
20. Additionally, there are difficulties relating to issuance of birth certificates and registration of birth of some children. Access to birth registration has improved in recent years, but there is no procedure to determine a child’s nationality, and certain children continue to face discriminatory barriers to registration, including refugees, Roma, and children in rainbow families (i.e., parents are lesbian, gay, bisexual, trans, intersex, or otherwise not heteronormative).

Birth registration

21. For children born in Romania, universal birth registration is guaranteed under the general legal framework. Before 2016, there were documentation requirements that prevented some parents from registering births. The new rules have addressed these

¹⁸ See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

¹⁹ UN Convention on the Reduction of Statelessness, 1961: Article 1. European Convention on Nationality, 1997: Articles 2 and 6(2)(b).

²⁰ Convention on the Rights of the Child, 1989: Articles 3 and 7.

²¹ Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return: States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless.

²² Act No. 21/1991 on Romanian Citizenship, Article 5: <http://legislatie.just.ro/Public/DetaliiDocument/121439> (RO) (ENG translation available at: <https://www.refworld.org/docid/3ae6b50218.html>).

issues by allowing statements from competent officials (police, guardianship authority etc.) to be presented to confirm identity and facilitate registration. However, registration may be delayed in the case of marriages concluded abroad without transcription/registration in the Romanian civil register. A birth can only be registered after the marriage has been transcribed in the Romanian civil register.²³

22. Children born in Romania to parents without Romanian nationality will automatically be registered as having the same nationality as their parents, without any determination as to whether they have or can acquire that nationality. There is no field for 'Nationality' on Romanian birth certificate, but there is a separate section for 'Mentiuni' ('Mentions', or annotations) where authorities will add information about the country of nationality or statelessness of the child. In practice, this is completed based on the parents' statements and identity documents.²⁴
23. For children born to Romanian parents outside Romania, the Law on Civil Status sets out a procedure for the issuance of birth certificates and registration of the birth. In practice, for children whose birth was registered abroad, their birth registration must transcribe their civil status documents into Romanian registries. This can be done through a request submitted to the consular authorities where the child was born or through a request for the transcription of foreign civil status certificates in Romania. There have been cases reported in the past of children in some countries facing difficulties to register their births and be recognised as nationals.
24. Romanian law does not include provisions relating to children of same-sex (or otherwise LGBTQI+) parents, and such children may be registered as a child of only one parent, which can increase risks of statelessness.²⁵
25. In the past, children of undocumented mothers/parents, migrants and/or stateless persons with irregular residence status were prevented from registering births in practice, for example due to being unable to provide a passport from their home country. The relevant legal provisions were modified in 2019 so that for parents seeking asylum or beneficiaries of international protection in Romania who do not hold a passport or identity card or stateless persons' travel document, the phrase "The identity of the parents/father/mother is declared" is recorded in lieu of an identity document. A small number of cases continue to be reported where delays in registration occur due to the interpretation of legal provisions or their lack of specific regulation of birth

²³ Act No. 119/1996 on Civil Status Documents: <http://legislatie.just.ro/Public/DetaliuDocument/8624> (RO); Methodological norms for the application of legislation on civil status, Official Gazette No. 151 of 2 March 2011, Arts. 34-37: <http://legislatie.just.ro/Public/DetaliuDocumentAfis/220201> (RO); Act No. 272/2004 on the Protection and promotion of the rights of the child, Article 9: <http://legislatie.just.ro/Public/DetaliuDocument/52909> (RO); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>.

²⁴ Government Decision no. 64/2001 on the Methodology for the unitary application of dispositions concerning civil status, Official Gazette No. 151 of 2 March 2011, Article 151 (corroborated with Article 24(D)): <http://legislatie.just.ro/Public/DetaliuDocumentAfis/220201> (RO); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>.

²⁵ Act No. 21/1991 on Romanian Citizenship, Article 5: <http://legislatie.just.ro/Public/DetaliuDocument/121439> (RO) (ENG translation available at: <https://www.refworld.org/docid/3ae6b50218.html>); Act No. 119/1996 on Civil Status Documents, Art. 40: <http://legislatie.just.ro/Public/DetaliuDocument/8624> (RO); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>; ElPais.com, 19 July 2019: Rumanía desbloquea la situación de los 200 niños sin papeles que tutela España: <http://cort.as/-RZh2> (SP).

registration for some parents (e.g. migrants, same-sex parents).²⁶

26. Births must be registered within 15 days, after which approval of the mayor is required. After one year, registration is only possible through a court procedure, which involves verification of the child's identity, age, and sex. Legal aid is not available for people who are unregistered, and a medico-legal assessment is required, which incurs a fee for adults. The age-assessment process is reportedly unpleasant and uncomfortable, which may deter people from accessing the procedure. The procedure is even more difficult (if not impossible) for people who were not born in medical facilities and do not have a medical certificate of birth.²⁷

Discrimination against Roma children

27. Roma people are one of the groups most at risk of children being stateless, due to a complex range of issues, including extreme poverty, social exclusion, and antigypsyism. There appear to be many Roma children and young adults who remain unregistered at birth and who would need to undergo the complex court procedure to register later in life. The risk is heightened for children born to parents who themselves are undocumented, thus perpetuating the lack of legal identity and risk of statelessness.²⁸
28. Although the Romanian Government introduced rules in 2016 to facilitate birth registration by undocumented parents, there have been no recent proactive action or campaigns by the Romanian authorities to reduce statelessness or promote birth registration by undocumented parents and among groups at risk of statelessness. Progress on this may have been hindered by the Covid-19 pandemic.

Safeguards to prevent statelessness at birth

29. There is no legal provision which provides for children born stateless on the territory to acquire Romanian nationality, which significantly hinders children's right to a nationality and exacerbates the risk of children growing up stateless in Romania. The only option for a stateless child born on the territory is to apply for naturalisation alongside their parent/s if they can meet the general conditions set out in the law. Non-Romanians living in Romania (including stateless persons) may be eligible to apply for naturalisation after eight years of *lawful* residence. The timeframe is reduced to four years for refugees and other categories, but there is no reduction for stateless people. There are no other exemptions for stateless people from general naturalisation requirements, which include having means of subsistence, knowledge of language and culture, and integration requirements. There are good character requirements for naturalisation, including proof of loyalty to the Romanian State, national security grounds, and 'good conduct', which may also result in additional barriers for some stateless people to access

²⁶ ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015, p.10: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>; Government Decision no. 64/2001 on the Methodology for the unitary application of dispositions concerning civil status., Official Gazette No. 151 of 2 March 2011, Art. 24 (2¹): <http://legislatie.just.ro/Public/DetaliiDocumentAfis/220201> (RO).

²⁷ Act No. 272/2004 on the Protection and promotion of the rights of the child, Article 14: <http://legislatie.just.ro/Public/DetaliiDocument/52909> (RO); Act No. 119/1996 on Civil Status Documents, Arts. 18: <http://legislatie.just.ro/Public/DetaliiDocument/8624> (RO); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>.

²⁸ ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>; European Union Agency for Fundamental Rights, Second European Union Minorities and Discrimination Survey Roma – Selected findings, 2016: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf.

their right to a nationality.²⁹

30. Foundlings are granted nationality automatically by law. However, certain administrative conditions must be met in practice to establish the identity of the child and issue a birth certificate. Any authority, institution, or person who cares for a pregnant woman or finds a new-born or an older child whose identity is unknown or cannot be established has an obligation to inform the competent authorities within 24 hours ('immediately'). Within 3 days, a report signed by a competent authority and a doctor must be completed, and the birth certificate is issued within 30 days based on that information. To establish the identity of a child found or abandoned in a hospital, the authorities designate one or more persons to carry out the necessary steps for birth registration, including forensic expertise, and the mayor issues a decision determining the name and surname. This law does not contain any age limit for the foundling child, and thus applies until age 18.³⁰ Romanian law provides that a foundling who has been granted Romanian nationality loses this nationality if parentage is established to one or both parents before the child is 18 and the parent/s are foreign nationals. If the parent(s) is/are later identified, the birth certificate is annulled through a court decision and a new one is issued. There is no explicit safeguard to prevent statelessness in such cases and no jurisprudence on this matter. The authorities state that they consider potential situations of statelessness but, in the absence of a legal safeguard, there is a risk of statelessness.³¹
31. A foreign child adopted by national parents acquires nationality if both parents are Romanian. If only one parent is Romanian, both must agree on the child's nationality. If they cannot agree, the court will decide, taking into consideration the child's best interests and their opinion if they are over age 14. A risk of statelessness may occur for children residing abroad (or who leave the country for permanent residence abroad) if their adoption is annulled or cancelled while they are under 18, they would be considered never to have been a Romanian national.

Issue 2 – Statelessness determination and access to rights

32. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although the 1954 Convention does not specifically provide for how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure (SDP) with the necessary safeguards and procedural guarantees. It should be fair, efficient, and easily accessible.³² The lack of an SDP results

²⁹ Act No. 21/1991 on Romanian Citizenship, Article 8: <http://legislatie.just.ro/Public/DetaliuDocument/121439> (RO) (ENG translation available at: <https://www.refworld.org/docid/3ae6b50218.html>); Ordinance 65/2017 for the amendment and completion of the Act on Romanian Citizenship (amending Article 9 of the Act on Citizenship):

<https://www.universuljuridic.ro/legii-cetateniei-romane-21-1991-modificari-oug-65-2017> (RO); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>.

³⁰ Act No. 21/1991 on Romanian Citizenship, Article 5(3): <http://legislatie.just.ro/Public/DetaliuDocument/121439> (RO) (ENG translation available at: <https://www.refworld.org/docid/3ae6b50218.html>); Methodological norms for the application of legislation on civil status, Official Gazette No. 151 of 2 March 2011, Arts. 34-37: <http://legislatie.just.ro/Public/DetaliuDocumentAfis/220201> (RO).

³¹ Act No. 21/1991 on Romanian Citizenship, Article 30: <http://legislatie.just.ro/Public/DetaliuDocument/121439> (RO) (ENG translation available at: <https://www.refworld.org/docid/3ae6b50218.html>); ENS, Ending Childhood Statelessness: A Study on Romania, Working Paper 01/15, 2015: <https://www.statelessness.eu/updates/publication/ending-childhood-statelessness-study-romania>.

³² UNHCR, Handbook on Protection of Stateless Persons, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

in a failure to uphold the rights of stateless people, leaving many facing years of uncertainty, social exclusion, risks of arbitrary immigration detention, and other human rights violations.³³

33. Moreover, according to international norms and standards, statelessness status should include a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements stateless people cannot meet because they are stateless, and other rights protected by international law. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.³⁴
34. Positively, Law 362/2005 transposes the 1954 Convention,³⁵ therefore the definition of a stateless person and exclusion provisions are in accordance with the 1954 Convention and the courts apply them in practice.
35. However, Romania does not currently have a dedicated SDP to identify stateless persons on its territory, determine their statelessness, and facilitate their access to rights. While there are some procedures in which statelessness may be acknowledged (e.g. during asylum procedures, returns, or border procedures), there is no clear procedure set in law, nor any Government guidance nor training on statelessness for decision-makers.³⁶ In general, no rights are granted to stateless people on the basis of their statelessness, and the rights they can access depend on the respective status as asylum-seekers, persons with irregular residence status (at the border or in detention), persons with a tolerated stay permit, or persons granted another form of protection or residence. Generally, no distinction is made between people with or without a nationality in these contexts.
36. Stateless people who qualify for a residence permit, international protection or tolerated stay will be issued with identity documents. Stateless persons are specifically mentioned as beneficiaries of health insurance, the public pensions system, minimum inclusion income, social assistance, insurance for accidents at work and occupational health, preventing and combating social marginalisation, labour rights, protection of maternity in the workplace, apprenticeships, family support, and access to education. However, apart from emergency medical services, these benefits are accessible only to stateless persons who have a valid residence permit. Stateless persons are not mentioned among the priority categories for housing, and access to legal aid is limited to people who have a residence permit or the right to stay.³⁷ Stateless persons granted tolerated stay are issued with documentation but have limited access to certain rights.
37. Statelessness may be acknowledged during asylum, return, or border procedures. In the asylum procedure, statelessness is considered based on statements provided when submitting an application, it may be further assessed during the substantive interview, and the authorities may require evidence of statelessness. For example, some

³³ Statelessness Index, Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks, 2021: https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021_0.pdf.

³⁴ *ibid.*

³⁵ With the reservations made to Articles 23, 27 and 31 of the 1954 Convention.

³⁶ Law no. 362 of 13 December 2005, Official Gazette No. 1146 of 19 December 2005: <http://legislatie.just.ro/Public/DetaliiDocument/66980> (RO); Emergency Ordinance No. 194/2002 on the legal regime of foreigners in Romania, Article 2(b): <http://legislatie.just.ro/Public/DetaliiDocument/93712> (RO) (ENG translation available at: <https://www.legislationline.org/documents/id/5082>).

³⁷ ENS, Statelessness Index, Romania: <https://index.statelessness.eu/country/romania>.

Palestinians have been required to provide a certificate from UNRWA, stateless persons of Palestinian or Syrian origin with travel documents issued by other countries have been required to show that it is impossible for them to return to a country of former residence, Bedoons from Kuwait or Algeria have been required to show they are recognised as stateless persons in a country of former residence, and people who have been presumed to have the nationality of their country of origin have been required to provide evidence that they are not recognised as nationals.

38. Stateless persons may be granted a tolerated stay permit in the context of return proceedings, for example in the case of refused asylum-seekers who declared themselves to be stateless at the beginning of the asylum procedure (and this wasn't disputed during the procedure) and in cases where the countries of origin/residence have failed to recognise the person's nationality (although this practice has not been encountered recently). In border procedures, statelessness can be considered if a person declares their statelessness.³⁸ In practice, this is accepted until proven otherwise.
39. Although statelessness may come up as a legally relevant fact in procedures requiring the determination of nationality, such as asylum, tolerated stay or return procedures, none of them are tailored to make a determination of statelessness nor lead to protection on the grounds of statelessness. This significantly hinders stateless people's access to and enjoyment of the full range of rights afforded to them by the 1954 Convention.

Issue 3 – The protection of stateless people previously living in Ukraine

General background to stateless people fleeing Ukraine

40. Stateless people and people at risk of statelessness previously living in Ukraine may face violations of their human rights in Romania if not adequately protected.³⁹ To prevent discrimination related to race, ethnicity, or sex, and to protect against human trafficking and other exploitation, it is imperative that national authorities identify all stateless persons fleeing the war in Ukraine and grant them protection, including Temporary Protection.⁴⁰ If it does not take additional measures to identify and protect stateless persons arriving in Romania from Ukraine, Romania will not be able to fulfil its obligations under international treaties, including the Trafficking Protocol, CERD, CEDAW, or under the ECHR (Articles 3 and 8).
41. In 2021, UNHCR estimated that 35,875 people in Ukraine were stateless or had 'undetermined nationality'. However, only 6,047 stateless people were legally residing in Ukraine at the end of 2021, partly due to the fact that Ukraine only has an operational statelessness determination procedure since May 2021.⁴¹ The World Bank recently estimated that almost a million Ukrainians are without a national identity card and proof of citizenship. Populations affected by or at risk of statelessness in Ukraine include (but

³⁸ Articles 82-87 of Law 122/2006.

³⁹ See ENS, *Country briefing on Romania, Information for stateless people and those at risk of statelessness fleeing Ukraine*, May 2022, available at: <https://www.statelessness.eu/statelessness-ukraine-crisis>.

⁴⁰ ENS, *Briefing no 3: Protection gaps for stateless refugees from Ukraine*, June 2022: https://www.statelessness.eu/sites/default/files/2022-06/ENS_BRIEFING_3-Protection-gaps-for-stateless_June-2022.pdf; and La Strada International and The Freedom Fund, *Preventing human trafficking of refugees from Ukraine: A rapid assessment of risks and gaps in the anti-trafficking response*, May 2022: https://freedomfund.org/wp-content/uploads/UkraineAntiTraffickingReport_2022_05_10.pdf.

⁴¹ Ibid.

are not limited to):

- Romani people who lack civil documentation to acquire/confirm their Ukrainian nationality;
- Former citizens of the USSR who were unable to acquire Ukrainian nationality in 1991 and have remained stateless;
- People from non-Government-controlled areas and Crimea and those internally displaced prior to the current conflict who have been unable to obtain or renew personal documents since 2014, including children whose births have not been registered (approximately 55% of children born in Donetsk and Luhansk and 88% of children born in Crimea were reported to lack Ukrainian birth certificates or personal documents); and
- Asylum seekers, refugees, and migrants (and their children) residing in Ukraine who were stateless prior to leaving their countries of origin or have since become stateless due to displacement, discrimination, State succession, or deprivation of nationality.

42. There is a discriminatory impact on these people as they seek safety and protection outside Ukraine if they are not eligible for Temporary Protection or other forms of protection due to their lack of nationality and/or documentation. This discriminatory impact is related to race or ethnicity for some, including Romani people, and there is also a gender element, as the majority of people fleeing Ukraine are women and girls, who face a heightened risk of human trafficking and other exploitation.

Border crossings and access to the territory

43. Positively, people fleeing Ukraine are allowed to enter Romania, even without documents, to seek protection under the TPD, for transit (up to 90 days) if they have identity/travel documents, or by applying for asylum at the border. There are currently no reported difficulties put in place by the Romanian border authorities for stateless people, those at risk of statelessness, or undocumented people. Stateless and undocumented people fleeing Ukraine are at heightened risk of human trafficking; women and girls are also at heightened risk.⁴² To date, one stateless person has been officially recorded as entering Romania from Ukraine since 24 February 2022.⁴³

Access to temporary or international protection

44. Once people have access to the territory, they must apply for a form of protection. The European Union has adopted the Council Decision⁴⁴ implementing the Temporary Protection Directive (TPD)⁴⁵ to grant temporary protection to eligible people displaced from Ukraine. However, there are significant protection gaps for stateless people and people at risk of statelessness, because the TPD applies only to stateless persons if:

⁴² United Nations Office on Drugs and Crime, *Conflict in Ukraine: Key evidence on risks of trafficking in persons and smuggling of Migrants*, July 2022: https://www.unodc.org/documents/data-and-analysis/tip/Conflict_Ukraine_TIP_2022.pdf; and La Strada International and The Freedom Fund, *Preventing human trafficking of refugees from Ukraine: A rapid assessment of risks and gaps in the anti-trafficking response*, May 2022: https://freedomfund.org/wp-content/uploads/UkraineAntiTraffickingReport_2022_05_10.pdf (May 2022).

⁴³ ENS, *Country briefing on Romania, Information for stateless people and those at risk of statelessness fleeing Ukraine*, May 2022, available at: <https://www.statelessness.eu/statelessness-ukraine-crisis>.

⁴⁴ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having effect of introducing temporary protection.

⁴⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

- 1) They had been granted refugee status or a similar status in Ukraine before the war;
- 2) They are family members of Ukrainian nationals or family members of persons who had been granted international protection in Ukraine before the war; or
- 3) They were legally residing in Ukraine before the war and had a permanent residence permit and cannot return to their country of origin.

Under current EU guidelines, EU Member States may extend Temporary Protection to other stateless persons displaced from Ukraine if they wish, but this is optional.⁴⁶ UNHCR has recommended that European States take an inclusive approach and grant temporary protection to stateless people, including those who did not have permanent residence status in Ukraine.⁴⁷

45. Romania is implementing the EU Temporary Protection Directive and Council Decision,⁴⁸ and stateless people are eligible to apply for Temporary Protection in Romania if they meet the TPD criteria set out in para. 44.⁴⁹ However, Romania has not extended Temporary Protection to stateless persons who had temporary residence or undocumented status in Ukraine. Many stateless people are thus excluded from Temporary Protection in Romania, including stateless people and people of 'undetermined' nationality who were present in Ukraine before the war without having acquired refugee status or other international protection or permanent residence and who are not family members of relevant persons.
46. Stateless people from Ukraine who are ineligible for Temporary Protection may be eligible to apply for international protection in Romania, under normal procedures for claiming asylum or subsidiary protection. They will be assisted during the duration of the asylum process in the same way as other people seeking asylum. Stateless people from Ukraine who are ineligible for Temporary Protection may also be able to access short-term humanitarian assistance for people fleeing Ukraine, including e.g. temporary accommodation in camps, food, clothing, personal hygiene items, healthcare, and inclusion in national public health programmes (including for COVID-19). This assistance is provided for up to 60 days.⁵⁰
47. Because Romania does not have a statelessness determination procedure, stateless persons fleeing Ukraine will generally not have a possibility to be recognised as *stateless* in Romania, unless this occurs through one of the other procedures mentioned.

⁴⁶ [Council Implementing Decision \(EU\) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having effect of introducing temporary protection](#), paras 11-14.

⁴⁷ UNHCR, [News Comment: UNHCR welcomes EU decision to offer Temporary Protection to Refugees fleeing Ukraine](#) (March 2022).

⁴⁸ European Commission, 'Romania: New act grants temporary protection to those fleeing Ukraine' (18 March 2022): https://ec.europa.eu/migrant-integration/library-document/romania-new-act-grants-temporary-protection-those-fleeing-ukraine_en

⁴⁹ See also: <https://igi.mai.gov.ro/wp-content/uploads/2022/05/Text-protectie-temporara-EN-pdf.pdf> and <https://ecre.org/wp-content/uploads/2022/06/ECRE-Update-30-May-2022-Implementation-of-the-TPD.pdf>.

⁵⁰ ENS, *Country briefing on Romania, Information for stateless people and those at risk of statelessness fleeing Ukraine*, May 2022, available at: <https://www.statelessness.eu/statelessness-ukraine-crisis>.

Recommendations

Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Romania, to be undertaken during the current UPR cycle:

- I. Put in place safeguards in law and practice to ensure that all children born in Romania who would otherwise be stateless acquire Romanian nationality automatically at birth, in accordance with the Convention of the Rights of the Child.
- II. Introduce, a full safeguard in nationality law, policy, and practice to ensure that children born in Romania have their nationality determined, irrespective of the status of their parents, to guarantee the child's right to a nationality.
- III. Implement effective awareness-raising campaigns and training programmes to ensure that parents of stateless children are informed of their rights to birth registration and nationality; and birth registration officials register births in a non-discriminatory manner, in line with the CRC.
- IV. Ensure that policies and practices relating to birth registration take into account UNHCR guidelines and good practice and remove all practical barriers to birth registration, with a particular focus on minority groups including Roma communities, so that all children are registered immediately regardless of their parents' documentation or residence status.
- V. Establish a fair, accessible statelessness determination procedure in law that guarantees procedural rights and safeguards during the procedure (such as the right to remain on the territory, identification of applicants, access to healthcare, work permits, the right to an effective remedy) and leads to a statelessness status and rights in line with the 1954 Convention and UNHCR Guidelines.
- VI. Provide recognised stateless persons with a right to residence and a route to facilitated naturalisation, along with a full range of rights in line with the 1954 Convention and UNHCR guidance.
- VII. Extend Temporary Protection to include all stateless persons fleeing Ukraine and ensure that stateless people and people at risk of statelessness who have fled Ukraine can access Temporary Protection and other international protection in Romania without direct discrimination or indirect discriminatory impacts related to race, ethnicity, sex, or lack of nationality.