

COUNTRY BRIEFING
AUGUST 2024

Switzerland



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of over 180 organisations and individuals in 41 countries working to promote the right to a nationality and ensure that stateless people in Europe access their rights.

ENS worked with the Swiss Refugee Council² and individual members³ to research and compile comparative information on statelessness in [Switzerland](#).⁴ This briefing summarises the findings on how Swiss law, policy, and practice performs against international norms and good practice on the protection of stateless people and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Swiss Government for reform in priority areas.

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

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness.

Switzerland is a State Party to the 1954 Convention Relating to the Status of Stateless Persons, but it has not acceded to the 1961 Convention on the Reduction of Statelessness (despite receiving recommendations to do so in 2023 under the Universal Periodic Review) nor is it Party to the 1997 European Convention on Nationality or the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession. Although it is party to most other relevant human rights treaties, Switzerland retains a number of reservations that could impact on statelessness, for example in relation to freedom of movement, access to the labour market, and family reunion.

Switzerland should accede to the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality, and the Convention on the Avoidance of Statelessness in relation to State Succession.

Switzerland should consider withdrawing its reservations to relevant international human rights treaties, such as the Convention on the Rights of the Child, the International Covenant on Civil and Political

[Rights, and the Convention on the Elimination of all Forms of Racial Discrimination.](#)



STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.⁵ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist.

Switzerland collects and publishes disaggregated data on statelessness and estimates for the size of the stateless population are available. However, government departments use different categories and definitions, which are not publicly available, so the reliability of official figures on statelessness is questionable.

In December 2023, the State Secretariat for Migration (SEM) reported 1,181 stateless people (disaggregated by gender, type of residence permit, and Canton), 275 people with 'no nationality', and 1,112 with 'unknown nationality'. The Federal Statistical Office (FSO) reported 717 stateless people and 1,678 people under the category 'no indications' in December 2022. UNHCR reports 1,074 stateless people as of mid-2023. SEM also publishes data on stateless people applying for naturalisation and international protection. UNHCR published a mapping of

statelessness in Switzerland in 2018. Statistics on immigration detention are gathered at cantonal level, but data on the number of stateless people in detention is not publicly available.

The Swiss Government should take concrete steps to improve the recording of statelessness, including by harmonising and defining the statistical categories used by the different government agencies and at different administrative levels (Federal and Cantonal). It should ensure that registration officials are trained to accurately identify and record statelessness. It should consider carrying out a comprehensive exercise to accurately map the stateless population in Switzerland.

The Swiss Government should publish disaggregated data on stateless people and those at risk of statelessness in immigration detention and in removal procedures.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure (SDP).⁶

Switzerland has an administrative procedure to determine statelessness under the authority of the State Secretariat for Migration (SEM), but it is not formalised in law. There are significant gaps, including a restrictive definition of a stateless person, which is not in line with the 1954 Convention. The SDP has strict requirements, which are difficult to meet without the assistance of a lawyer and interpreter. For example, an application under the procedure must be submitted in writing, be reasoned, and include reliable evidence. In practice, the burden of proof is on the applicant (who must provide documents to demonstrate that they are stateless), and the authorities apply an inconsistent standard of proof. There is very limited public information or guidance about the procedure to facilitate access. Positively, there is no fee, time limit, or lawful stay requirement for the procedure and authorities must examine all claims. However, free legal aid is in principle not granted at first instance and there is not normally an oral interview. Decisions can be appealed to the administrative court, and applicants may access minimal subsistence assistance. There is no formal identification of statelessness in the asylum procedure, nor any obligation to formally refer someone in the asylum procedure to the statelessness procedure, but it may happen informally. There is no automatic legal admission or residence status granted during the procedure. The strict requirements for statelessness determination result in very few people being recognised as stateless in Switzerland.

Recognised stateless people can apply for a residence permit and travel document, and are permitted access to healthcare, social security, and employment. After 10 years of lawful residence a permanent residence permit may be granted at the discretion of the authorities.

Stateless people fleeing the war in Ukraine may apply for 'Protection Status S' in Switzerland, a temporary protection status that resembles the protection granted under the EU Temporary Protection Directive. Applicants must prove that they had a residence permit in Ukraine, which may be a barrier.

The Swiss Government should establish in law a dedicated statelessness determination procedure and protection status in line with UNHCR Guidelines and good practice.

The Swiss Government should apply the definition of a stateless person enshrined in Article 1 of the 1954 Convention.

The Swiss Government should ensure access to adequate protection for all those fleeing the war in Ukraine.



DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁷

Protections against the arbitrary detention of stateless people are limited in Switzerland. Statelessness is not considered a juridically relevant fact in decisions to detain, a country of removal does not need to be identified prior to detention, and detention can be ordered while the authorities are establishing a person's identity. A referral to the statelessness determination procedure is possible if the person lodges a claim of statelessness, but there is no formal referral mechanism.

The law provides for alternatives to detention, but these are not systematically considered prior to detention. Some procedural safeguards are in place, such as a time limit, judicial oversight within 96 hours of the detention order, access to free legal aid, and access to remedies to challenge the detention, but there are reports of barriers to accessing legal assistance. If removal cannot take place, people can be released and will be undocumented with very few rights unless they have another route to regularisation.

The Swiss Government should take further steps to protect stateless people from arbitrary detention by introducing a statelessness determination procedure in law, embedding consideration of statelessness as a juridically relevant fact in all decisions to detain, ensuring clear referral routes from detention and returns proceedings to the statelessness determination procedure, and improving access to legal assistance. It should also strengthen the protection of people released from detention.



PREVENTION AND REDUCTION

International law enshrines the obligation to prevent and reduce statelessness.

The naturalisation procedure in Switzerland is facilitated only for stateless people married to Swiss nationals and for stateless children (under the age of 18) with five years' lawful stay preceding the application, who are 'integrated' and are in work or education.

Swiss law contains safeguards to prevent statelessness in the case of foundlings, adopted children, and children born to Swiss nationals abroad. However, there is no safeguard in law for children born in Switzerland who would otherwise be stateless. The only route to Swiss nationality for children born stateless in the country is a naturalisation

procedure based on five years' lawful residence and other integration criteria, which is discretionary and expires once the child turns 18. In 2021, the Committee on the Rights of the Child criticised the five-year residence requirement and called on Switzerland to ensure that all children born on Swiss territory are entitled to a nationality at birth, or subject to a significantly reduced residence requirement, if otherwise stateless.

Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.⁸ Birth registration must be free and take place immediately after birth without delay. Although Swiss law provides that all children must be registered immediately even where parents are undocumented, there are reports of barriers and delays in such cases. However, late registration is possible in law and practice, there are no fees or other barriers, and civil registry officials are prohibited from reporting unregistered people to the immigration authorities when registering births.

There is a safeguard to prevent statelessness in all cases of deprivation of nationality except where nationality was acquired by fraud. Deprivation of Swiss nationality is permitted on national security grounds, but not where this would render a person stateless.

The Swiss Government should ensure that all stateless people have access to a facilitated route to naturalisation in line with Article 32 of the 1954 Convention.

The Swiss Government should amend the law to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth.

The Swiss Government should facilitate and guarantee the immediate birth registration of all children born on its territory regardless of the residence or documentation status or identity of their parents.

SUMMARY OF RECOMMENDATIONS

The Swiss Government should:

- Accede to the 1961 Convention on the Reduction of Statelessness.
- Accede to the 1997 European Convention on Nationality.
- Accede to the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.
- Withdraw its reservations to relevant international human rights treaties, such as the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of all Forms of Racial Discrimination.
- Take concrete steps to improve the recording of statelessness, including by harmonising and defining the statistical categories used by the different government agencies and at different administrative levels (Federal and Cantonal).
- Ensure that registration officials are trained to accurately identify and record statelessness.
- Consider carrying out a comprehensive exercise to accurately map the stateless population in Switzerland.
- Publish data on stateless people and those at risk of statelessness in immigration detention and in removal procedures.
- Establish in law a dedicated, formalised statelessness determination procedure and protection status in line with UNHCR Guidelines and good practice.
- Apply the definition of a stateless person enshrined in Article 1 of the 1954 Convention.
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- Take further steps to protect stateless people from arbitrary detention by introducing a statelessness determination procedure in law, embedding consideration of statelessness as a juridically relevant fact in all decisions to detain, ensuring clear referral routes from detention and returns proceedings to the statelessness determination procedure, and improving access to legal assistance.
- Strengthen the protection of people released from detention.
- Ensure that all stateless people have access to facilitated naturalisation.
- Amend the law to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth.
- Facilitate and guarantee the immediate birth registration of all children born on its territory regardless of the residence or documentation status or identity of their parents.

ENDNOTES

¹ <https://www.statelessness.eu>

² The Swiss Refugee Council is a non-profit umbrella organisation for Swiss NGOs active in the field of asylum. The organisation provides legal and country-of-origin advice, critically monitors the work of the authorities, and raises public awareness and provides information to the public. It also acts as a point of contact for politicians and experts.

³ Barbara von Rütte and Jyothi Kanics.

⁴ <https://index.statelessness.eu/country/switzerland>

⁵ Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

⁶ UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

⁷ ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

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