

Joint Submission to the
Human Rights Council

Universal Periodic Review

38th Session

3rd Cycle

May, 2021

LATVIA

European Network on Statelessness

Institute on Statelessness and Inclusion

15 October 2020



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Introduction

1. 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 human rights challenges pertaining to statelessness and the right to a nationality in Latvia.
2. This submission focuses on:
 - I. Stateless population data and identification of statelessness
 - II. Prevention and reduction of statelessness
 - III. Statelessness determination and protection in the migratory context
 - IV. Immigration detention of stateless persons
3. The European Network on Statelessness (ENS)¹ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 150 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 draws on information and analysis from ENS’s Statelessness Index, which covers Latvia.²
4. The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made over 70 country specific UPR submissions on the human rights of stateless persons, of which over 20 have been submitted in collaboration with the European Network on Statelessness. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 36th UPR Sessions.³

¹ For more information, see: www.statelessness.eu

² For more information, see: <https://index.statelessness.eu/country/latvia>

³ For more information see: www.institutesi.org

Previous UPR of Latvia under the First and Second Cycle

5. Latvia was previously reviewed during the first and second cycles of the UPR, in 2011 and 2016, respectively.
6. During the first cycle, Latvia received 10 recommendations related to the right to nationality, statelessness, and the rights of 'non-citizens'. Ecuador recommended Latvia guarantee respect for the human rights of foreigners, regardless of their immigration status, especially those of vulnerable groups such as stateless persons, and step up efforts to improve the integration of ethnic and minority linguistic groups, including stateless persons. Latvia accepted both recommendations.⁴ Ecuador also recommended Latvia effectively comply with the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which Latvia noted.⁵
7. Latvia also received recommendations from Costa Rica⁶ and the Netherlands⁷ to facilitate naturalisation and acquisition of citizenship, which it accepted. It also received recommendations from Canada⁸ to revise its legislation to provide automatic acquisition of citizenship by children born to non-citizens after 21 August 1991, and from Norway⁹ to change the Citizenship Law to provide citizenship automatically to new-born children of non-citizen parents, which it partially noted, on the grounds that:

“Latvia reminds that the defined circle of citizens is an integral part of a sovereign state. Latvia would like to emphasize that, presently, all non-citizens, including the children of non-citizens, are guaranteed a practical and effective access to Latvian citizenship through registration and/or naturalisation, which has so far been used by more than 140,000 non-citizens. This number as such already demonstrates the effectiveness of the process of citizenship and naturalisation”.

However, as addressed in this submission, this does not cover stateless children born on the territory (see para. 31).

8. Russia recommended Latvia revise its legislation to provide for automatic acquisition of nationality by children of non-citizens on similar grounds.¹⁰ This recommendation was noted. Latvia also received a recommendation from Brazil to further facilitate the acquisition of citizenship and increase efforts to promote the registration of new-borns, which it accepted.¹¹ Australia also recommended Latvia seek to further decrease the number of non-citizens and to improve the social and political rights of non-citizens, which Latvia partially accepted.¹²

⁴ A/HRC/18/9/Add.1, Addendum to the Report of the Working Group on the Universal Periodic Review on Latvia, 1st cycle, 14 September 2011, Recommendations 91.51; 92.16.

⁵ Ibid., Recommendation 94.7

⁶ Ibid., Recommendation 91.47.

⁷ Ibid., Recommendation 91.48.

⁸ Ibid., Recommendation 93.42.

⁹ Ibid., Recommendation 93.43.

¹⁰ Ibid., Recommendation 94.6.

¹¹ Ibid., Recommendation 91.48.

¹² Ibid., Recommendation 93.44.

9. During the second cycle, Latvia received 14 relevant recommendations in total. Two recommendations from the Russian Federation,¹³ a recommendation from Ireland,¹⁴ Ecuador,¹⁵ Spain,¹⁶ Brazil,¹⁷ Germany,¹⁸ Kyrgyzstan¹⁹ and the USA²⁰ regarding the rights of non-citizens, granting of citizenship to children of non-citizens, and naturalisation of non-citizens; a recommendation from Kenya regarding bringing nationality legislation into compliance with the 1961 Statelessness Convention and 1989 Convention on the Rights of the Child; and a recommendation from Mexico²¹ regarding birth registration, all of which it accepted.
10. It also received three recommendations from Belarus,²² Australia²³ and Bulgaria²⁴ regarding non-citizens, which it partially accepted.
11. Latvia has responded to some of these recommendations and amendments have been made to the domestic legal framework. For example, some measures have been taken to amend procedures for naturalisation and the acquisition of Latvian nationality (see para. 29). This submission sets out remaining issues and makes recommendations for further action to address statelessness in Latvia and protect the right to nationality in line with international human rights standards.

Latvia's International Obligations

12. Latvia acceded to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) in 1999²⁵ and it has direct effect, but it retains reservations to Articles 24.1(b) (social security for stateless persons lawfully in the country) and 27 (issuing identity papers to stateless persons). Latvia also acceded to the 1961 Convention on the Reduction of Statelessness (1961 Convention) in 1992²⁶ with no reservations. It has signed, but not yet acceded to, the European Convention on Nationality²⁷ and it is not party to the European Convention on the Avoidance of Statelessness in Relation to State Succession.
13. Latvia also has international obligations to protect the right to a nationality and the rights of stateless persons under other UN and regional treaties to which it is a party. These include, among others the International Covenant on Civil and Political Rights (ICCPR - see Article 24.3)²⁸, the International Covenant on Economic, Social and Cultural Rights (ICESCR - see Articles 2.2 and 3), the Convention of the Rights of the Child²⁹ (CRC - see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms

¹³ A/HRC/32/15/Add.1, Addendum to the Report of the Working Group on the Universal Periodic Review on Latvia, 2nd cycle, 14 April 2016, Recommendation 120.77.

¹⁴ Ibid., Recommendation 120.78.

¹⁵ Ibid., Recommendation 120.38.

¹⁶ Ibid., Recommendation 120.79.

¹⁷ Ibid., Recommendation 120.82.

¹⁸ Ibid., Recommendation 120.84.

¹⁹ Ibid., Recommendation 118.55.

²⁰ Ibid., Recommendation 118.56.

²¹ Ibid., Recommendation 118.61.

²² Ibid., Recommendation 120.80.

²³ Ibid., Recommendation 120.83.

²⁴ Ibid., Recommendation 120.85.

²⁵ Accession on 05/11/1999.

²⁶ Accession on 14/04/1992.

²⁷ Signature on 30/05/2001.

²⁸ Accession on 14/04/1992.

²⁹ Accession on 14/04/1992.

of Discrimination against Women³⁰ (CEDAW - see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination³¹ (CERD - see Article 5(d)(iii)), and the Convention on the Rights of Persons with Disabilities³² (CRPD - see Article 18). Furthermore, the right to a nationality is protected in Article 15 of the Universal Declaration on Human Rights.

14. The Committee against Torture has also previously recommended Latvia: (i) enhance efforts to raise the awareness of parents whose children are eligible for naturalisation and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality, with a view to preventing statelessness; and (ii) consider offering language courses free of charge to all non-citizen residents and stateless persons who wish to apply for Latvian citizenship.³³

Overview of Statelessness in Latvia

15. In 2019, UNCHR estimated there to be over half a million stateless people in Europe.³⁴ In its Global Trends report, UNHCR provides two separate figures for the population under its statelessness mandate in Latvia at the end of 2019: 169 stateless persons under the Latvian Law on Stateless Persons of 17 February 2004 and 216,682 'non-citizens' under the 25 April 1995 Law on the Status of those Former USSR Citizens who are not Citizens of Latvia or Any Other State.³⁵ The latter, larger group, are defined in Latvian law as former USSR citizens and their descendants who have not received citizenship automatically, obtained citizenship through naturalisation or other means, or taken another country's citizenship since the restoration of Latvian independence.³⁶
16. Under domestic law, 'non-citizens' are excluded from the definition of a 'stateless person' as they are considered a separate legal category of persons who enjoy a significant set of rights.³⁷ People who fall under either category in Latvian law ('stateless person' or 'noncitizen') are stateless under international law (Article 1(1) of the 1954 Convention), and this submission addresses the human rights of both groups. Although 'non-citizens' are granted rights (and a route to naturalisation if they can meet certain conditions) that go beyond the minimum rights prescribed by the 1954 Convention, they are not entitled to 'equivalent rights' to Latvian nationals. There are important differences distinguishing non-citizens from citizens, including a lack of political rights and restrictions on employment and property ownership. Moreover, 'non-citizens' in Latvia clearly lack a nationality and therefore meet the definition of a stateless person under international law regardless of whether they should be

³⁰ Accession on 14/04/1992.

³¹ Accession on 14/04/1992.

³² Signature on 18/07/2008, ratification on 01/03/2010.

³³ CAT/C/LVA/CO/3-5, Concluding observations on the combined third to fifth periodic reports of Latvia, 23 December 2013, 16b, 16c.

³⁴ UNHCR (2020), Global Trends: Forced Displacement in 2019, <https://www.unhcr.org/statistics/unhcrstats/5ee200e37/unhcr-global-trends-2019.html>

³⁵ Ibid, footnote 27, p. 77.

³⁶ Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības (On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State) <https://likumi.lv/doc.php?id=77481>

³⁷ The Constitutional Court of the Republic of Latvia, Riga, March 7, 2005 JUDGMENT in the name of the Republic of Latvia in case No 2004-15-0106, Para 15.: http://www.satv.tiesa.gov.lv/wpcontent/uploads/2004/07/2004-15-0106_Spriedums_ENG.pdf; SKA – 472/2008, 3 October 2008 (Supreme Court Judgement): https://www.tiesas.lv/nolemumi/pdf/1_1451.pdf

excluded from protection under the 1954 Convention.³⁸

17. In the migration context, Latvia has established a statelessness determination procedure in national law, in line with good practice in many respects.³⁹ However, there are remaining gaps including limited guarantees to ensure access to the procedure, some missing procedural protections such as a guaranteed interview or referral from asylum procedures, a lack of protection and rights during the procedure, and a lack of a facilitated route to naturalisation for people recognised as stateless under the procedure.

Issue 1: Stateless population data and identification of statelessness

18. The Latvian Government counts and publishes population data on statelessness.⁴⁰ National statistics published by the Office for Citizenship and Migration Affairs contain a category 'stateless' (*bezvalstnieks*), disaggregated by ethnic origin. However, only people granted stateless status under the statelessness determination procedure are counted in this category. There is a separate category for 'non-citizens' (*nepilsonis*), whose legal status is defined separately under Latvian law (see para. 15-16). UNHCR reports government figures under both these categories separately as "persons under its statelessness mandate".⁴¹
19. There are other categories for which statistics are available that could include stateless people. For example, the Population Register on Latvia's residents by ethnic origin and nationality includes figures for Latvian citizen, Latvian non-citizen, Latvian alternative (subsidiary status), Latvian stateless, Latvian refugee, and Latvian temporary protection, Estonian non-citizens, Estonian stateless, Belarus stateless, Finland stateless, Uzbekistan stateless and 'not indicated' (*nav norādīta*).⁴²
20. No comprehensive mapping study of statelessness in Latvia is available, and the reliability of data on statelessness is questionable as numbers vary depending on the definitions employed by different actors (i.e. whether 'non-citizens' are counted as stateless or not).
21. Data on refugees and asylum seekers by country of origin, gender, age, and status is available upon request, but this is not routinely published by the Government.⁴³

³⁸ ENS Statelessness Index Survey 2019: Latvia, pp.16-17, available at:

https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Latvia-2019.pdf

³⁹ Law on Stateless Persons, 2007: <https://likumi.lv/ta/en/en/id/84393-law-on-stateless-persons>; see <https://index.statelessness.eu/country/latvia> for more details on good practice.

⁴⁰ Office of Citizenship and Migration Affairs, Latvijas iedzīvotāju sadalījums pēc valstiskās piederības, 1 Jan 2020: https://www.pmlp.gov.lv/lv/assets/ISVP_Latvija_pec_VPD_2020.pdf

⁴¹ UNHCR (2020), Global Trends: Forced Displacement in 2019, <https://www.unhcr.org/statistics/unhcrstats/See200e37/unhcr-global-trends-2019.html> (see footnote 27, p. 77)

⁴² Office of Citizenship and Migration Affairs, Latvijas iedzīvotāju sadalījums pēc nacionālā sastāva un valstiskās piederības, 1 January 2020 https://www.pmlp.gov.lv/lv/assets/ISVP_Latvija_pec_VPD_2020.pdf

⁴³ ENS Statelessness Index Country Survey 2019: Latvia, p.14, available at:

https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Latvia-2019.pdf

Issue 2: Prevention and reduction of statelessness (including the child's right to a nationality and rights of 'non-citizens')

22. The Latvian Government has taken some steps towards preventing and reducing statelessness, including recent legal reforms to address childhood statelessness.⁴⁴ The Government also provides information and support for 'non-citizens' to naturalise as Latvian citizens.⁴⁵ However, more than 200,000 people - 65% of whom identify as members of the ethnic Russian minority – remain stateless with 'non-citizen' status in the country.
23. Although 'non-citizens' are granted rights (and a route to naturalisation if they can meet certain conditions) that go beyond the minimum rights prescribed by the 1954 Convention, there are important differences distinguishing them from Latvian nationals and they are denied a series of rights they are entitled to under human rights law. As set out in the summary report on the eleventh session of the 2018 United Nations Forum on Minority Issues:

*“Latvian non-citizens, ... despite having access to many human rights, still face many restrictions on their minority rights, especially in the field of education and language”.*⁴⁶

Further, they do not have political rights and are excluded from certain professions; they face limitations to land ownership and do not benefit from EU citizenship. Moreover, 'non-citizens' are prohibited from working for the civil service and from holding any position of employment which relates directly to Latvian national security.⁴⁷

24. Ahead of its 2018 review before the CERD Committee, Latvia reported on both its simplification of naturalisation procedures and *“the organisation of campaigns with regard to naturalisation and targeted counselling for 'non-citizens'”*.⁴⁸ As reported by Latvia, measures taken to facilitate access to naturalisation have included:

*“The introduction of reductions and exemptions from naturalisation fees for certain vulnerable groups, the launch of a project by the Office of Citizenship and Migration Affairs in April 2019 to promote naturalisation through awareness-raising campaigns on citizenship procedures, and the introduction of self-testing measures to help applicants pass their naturalisation exams”.*⁴⁹

25. While the Committee noted these efforts, it expressed concern that 11% of the population of Latvia (at the time in 2018, 233,000 persons) had no nationality, they do not have a right to vote or participate in political life, they face discrimination in access

⁴⁴ <https://index.statelessness.eu/news/latvia-takes-decisive-step-towards-eliminating-childhood-statelessness>

⁴⁵ Office of Citizenship and Migration Affairs website, Naturalizācija (Naturalisation): <https://www.pmlp.gov.lv/sakums/pakalpojumi/pilsoniba/pilsonibas-registracija/naturalizacija/informacijas-diena.html>

⁴⁶ Statelessness: A Minority issue – Eleventh Session of the United Nations Forum on Minority Issues, November 2018, Summary by the Chairperson of the Forum, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session11/SummaryofChair.pdf>.

⁴⁷ The Constitutional Court of the Republic of Latvia, Riga, March 7, 2005 Judgment in the name of the Republic of Latvia in case No 2004-15-0106, para 15.: http://www.satv.tiesas.gov.lv/wpcontent/uploads/2004/07/2004-15-0106_Spriedums_ENG.pdf; SKA – 472/2008, 3 October 2008 (Supreme Court Judgement): https://www.tiesas.lv/nolemumi/pdf/1_1451.pdf

⁴⁸ Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia, CERD/C/LVA/CO/6-12, 25 September 2018, para. 5(c).

⁴⁹ Committee on the Elimination of Racial Discrimination, letter to the Permanent Representative of Latvia to the UN Office, 24 September 2020, CERD/101st session/FU/MJA/ks.

to public services, and naturalisation rates remained low.⁵⁰ As such, the Committee recommended that Latvia:

- “a) Step up measures to decrease the number of persons without nationality by continuing to facilitate access to naturalisation;*
- (b) Find ways and means to phase out the separate legal category of non-citizen;*
- (c) Consider allowing non-citizens who are long-time permanent residents to participate in local elections;*
- (d) Prevent discrimination of these individuals in access to public services;*
- (e) Continue to remove any remaining barriers to naturalisation and facilitate naturalisation for individuals wishing to partake in it”.*⁵¹

26. Having made these recommendations to Latvia in 2018, the Committee, reflecting on Latvia’s response to these recommendations in a 2020 letter to the Permanent Representative of Latvia to the UN, expressed concern that:

*“the number of those non-citizens who annually receive citizenship of Latvia or another country has remained stable. It is also concerned that the reported yearly decrease in the number of non-citizens is to a certain extent attributed to non-citizens passing away. The Committee considers the response to this recommendation partially satisfactory and encourages the State party to strengthen its efforts to facilitate access to naturalisation in order to further decrease the number of persons without nationality”.*⁵²

27. In addition to pursuing naturalisation for adult non-citizens, as signatory to the Convention on the Rights of the Child (CRC), Latvia must implement Article 7 to provide for the right of every child to be registered immediately after birth and acquire a nationality, and Article 8 to respect the right of the child to preserve their identity, including nationality. UNHCR has stated that the right to a nationality is a right that is “essential for the protection of every child”.⁵³ In addition, obligations deriving from the 1961 Convention require Latvia to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.⁵⁴ This includes the underlying principles of non-discrimination (Article 2 of the CRC), and that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3).

28. Addressing the acquisition of citizenship of the children on non-citizens, the CERD Committee recommended in 2018 that Latvia:

“Intensify efforts to ensure that all children have access to a nationality at birth, including by successfully amending the Citizenship Law to automatically

⁵⁰ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia, CERD/C/LVA/CO/6-12, 25 September 2018, para. 20.

⁵¹ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia, CERD/C/LVA/CO/6-12, 25 September 2018, para. 21.

⁵² Letter from the Chair of the Committee on the Elimination of Racial Discrimination to His Excellency the Permanent Representative of Latvia to the United Nations Office Geneva, CERD/101st session/FU/MJA/ks, 24 September 2020, available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LVA/INT_CERD_FUL_LVA_43389_E.pdf

⁵³ UNHCR (2018) Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/52206aa54.html>

⁵⁴ UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/50d460c72.html>

*grant citizenship to children born in Latvia who would otherwise be without a nationality”.*⁵⁵

29. Subsequent to this recommendation, a new law was adopted establishing that children born in Latvia after 1 January 2020 to ‘non-citizen’ parents automatically acquire Latvian nationality unless the child acquires, or the parents opt for the child to acquire, another nationality.⁵⁶ There is also a provision in law to grant nationality to children born in Latvia to parents with stateless status if one parent who has permanent residence expresses the wish for the child to acquire Latvian nationality at birth registration (or if the mother does so where the father has no entry in the civil registry; or if one parent does so where the other parent is deceased). One parent may apply for a child to acquire Latvian nationality until the child is 15 if (i) the child has been ‘stateless’ or ‘non-citizen’ their whole life, (ii) the child is a permanent resident, (iii) both parents have ‘stateless’ or ‘non-citizen’ status, and (iv) the parent with whom the child has lived has five years’ permanent residence in Latvia. A child born to parents with ‘stateless’ status may acquire nationality if a parent so chooses, or if they apply themselves between the ages of 15-18 (and can meet certain conditions).
30. The CERD Committee, has acknowledged these developments but also articulated its outstanding concerns as follows:

*“The Committee welcomes the adoption, in October 2019, of a law that enables children born in Latvia to two ‘non-citizen’ parents to automatically be entitled to Latvian citizenship by birth, which is deemed a positive step to prevent statelessness of such children and terminate the separate legal category of non-citizens in the State party. It also welcomes information on simplified acquisition of Latvian citizenship for older non-citizen children to encourage their citizenship registration. However, the Committee regrets that the State party has not taken any measures to extend automatic citizenship to all noncitizen children in Latvia who are currently under 15. The Committee considers that the response to this recommendation is partially satisfactory and requests that the State party provide, in its next periodic report, information on further measures taken to phase out the separate legal category of non-citizens, as well as on their impact”.*⁵⁷

31. As observed by the Committee, none of the legal options cover all children born stateless on the territory so these do not constitute a full safeguard to prevent children being born stateless in Latvia. The timeframe for a child to apply in their own right does not extend beyond the age of majority; and all legal options rely on the status (and in some cases also choices) of the parents, so the provisions are not fully consistent with the international standards in the 1961 Convention,⁵⁸ nor with the spirit of CRC Article 7, when read together with Articles 2 (non-discrimination) and 3 (best interests of the child).

32. Birth registration is key to preventing statelessness and securing the child’s right to a

⁵⁵ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia, CERD/C/LVA/CO/6-12, 25 September 2018, Para21 (f).

⁵⁶ Law on Terminating the Granting of Non-Citizen Status to Children [Par nepilsoņa statusa piešķiršanas izbeigšanu bērniem], adopted on 17 October 2019, OP 2019/224.1:

<https://likumi.lv/ta/id/310468-par-nepilsona-statusa-pieskirsanas-izbeigsanu-berniem>

⁵⁷ Committee on the Elimination of Racial Discrimination, letter to the Permanent Representative of Latvia to the UN Office, 24 September 2020, CERD/101 st session/FU/MJA/ks.

⁵⁸ ENS Statelessness Index: Latvia: <https://index.statelessness.eu/country/latvia>

nationality, due to the information it provides about a person's links to a State.⁵⁹ It is therefore key to implementing both the Convention on the Rights of the Child and the 1961 Convention. All births in Latvia must be registered within a month, but parents must submit documentation, so children of undocumented migrants or those with irregular residence status in the country are at risk of remaining unregistered. Although birth registration and statelessness are not synonymous, birth registration is often the first step in establishing a person's identity and nationality. Not being registered at birth and not obtaining a birth certificate can increase risks of statelessness.

33. The majority of children born to parents with 'non-citizen' status in 2014-17 were registered as Latvian nationals. As of 1 January 2020, there were 2,736 'non-citizen' children under 15. The number of children registered as 'non-citizens' since the easing of registration requirements of 'non-citizen' children as Latvian citizens in 2013, is 297.⁶⁰ There are no reports of significant numbers of children remaining unregistered due to parents' lack of documentation or legal status in Latvia, but there are discussions ongoing about how to ensure all births are registered where parents or medical personnel have failed to report a birth for more than six months. New procedures to facilitate registration are due to be in place by 2022.⁶¹

Issue 3: Statelessness determination and protection in the migratory context

34. To be able to provide the protection and rights enshrined in the 1954 Convention to stateless persons in a migratory context, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify and determine who on their territory requires protection under the Convention. UNHCR recommends that, in the case of stateless migrants and refugees, this is best fulfilled through a dedicated statelessness determination procedure.⁶²
35. There is a dedicated statelessness determination procedure (SDP) established in Latvian law, and the competent authority for the SDP is the Office of Citizenship and Migration (OCMA).⁶³ The Law on Stateless Persons states that someone may be recognised as a stateless person in the Republic of Latvia "if some other state has not recognised the person as a citizen thereof in accordance with the laws of such state." Additionally, a person who has lost the status of 'non-citizen' shall be recognised as a stateless person if they do not hold another nationality nor guarantee of being issued one.⁶⁴

⁵⁹ UNHCR and UNICEF (2017) Convention on the Rights of the Child Quick Reference Guide: Statelessness and Human Rights Treaties: <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-CRC-02-UNHCR-UNICEF.pdf>

⁶⁰ Latvijas iedzīvotāju sadalījums pēc dzimšanas gada un valstiskās piederības (Datums=01.01.2020), https://www.pmlp.gov.lv/lv/assets/ISVG_Latvija_pec_DZGada_VPD_2020.pdf

⁶¹ Informatīvais ziņojums par konceptuālu risinājumu informācijas par bērna dzimšanu apmaiņai starp ārstniecības iestādi un dzimtsarakstu nodaļu (Informative report on a conceptual solution for exchanging information on the birth of a child between a medical institution and a registry office), 2018: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40464318&mode=mk&date=2018-10-30>; Ministry of Health, Piedāvā risinājumu visu jaundzimušo reģistrēšanai, 30 Oct 2018: http://www.vm.gov.lv/lv/aktualitates/preses_relizes/5845_piedava_risinajumu_visu_jaundzimuso_registresanai

⁶² UNHCR (2014), Handbook on Protection of Stateless Persons, https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-onProtection-of-Stateless-Persons.pdf

⁶³ The information relating to the SDP and not to the procedure for the determination of 'non-citizen' status, for which OCMA is also the competent authority. By law, a person who has lost the status of 'non-citizen' shall be recognised as a stateless person if they do not hold another nationality nor guarantee of being issued one.

⁶⁴ Law on Stateless Persons, 2007, Articles 2.1 & 2.2: <https://likumi.lv/ta/en/en/id/84393-law-on-stateless-persons>

36. The Citizenship Law defines a stateless person as “someone who is not considered a citizen by any state in accordance with the laws thereof, except a person who is a subject of the Law On the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or that of any Other State”.⁶⁵ Aside from excluding ‘non-citizens’ from the definition of a stateless person, the formulation “in accordance with the laws thereof” is narrower than the 1954 Convention, which defines a stateless person as someone “not considered a national of any state *under the operation of its law*”.⁶⁶
37. Information about the Latvian procedure for the determination of statelessness is only available in Latvian for prospective applicants.⁶⁷ Applications can be made in writing and orally, and there is no application fee. However, applications cannot be initiated *ex officio* and can only be considered based on an application submitted to an official in Latvian accompanied by a personal identification document and proof of inability to acquire another nationality. Positively, the law permits a decision to be made based on the documentation available and there is no requirement for lawful stay nor a time limit on when applications can be made.⁶⁸
38. The Latvian legal system does not provide for legal assistance before administrative authorities in general (although there is an obligation on the institution to assess all circumstances of the case objectively and for the proportional benefit of the individual concerned).⁶⁹ Another gap in Latvian law is the lack of protection and rights for applicants during the statelessness determination procedure. Applicants for stateless status do not have automatic legal admission by law, and deportation orders are not suspended automatically. There is no ground in law for a person's claim to be decided if they are no longer in Latvia. During the procedure, applicants do not have a right to work, nor to social services and assistance and are only entitled to emergency (minimum state funded) healthcare. In practice, there have been isolated cases of applicants for stateless status being placed in municipal crisis centres where basic shelter and services are provided.⁷⁰
39. A person recognised as stateless under the SDP may apply for naturalisation after five years’ permanent residence; so they must have resided with a permit as a stateless person for five years and then acquired and held a permanent residence permit for five years (10 years’ total legal residence) before applying for naturalisation. There is no accelerated naturalisation procedure for a person recognised as stateless as the general provision is five years’ permanent residence.⁷¹
40. There are no exemptions for stateless people from the general naturalisation requirements, therefore to apply for a nationality they must be able to demonstrate: fluency in Latvian language, a legal source of income, knowledge of the constitution, national anthem and history and culture of Latvia. The only exemption is a general one from the written test for applicants over 65 years old.⁷² Previous criminal convictions

⁶⁵ Citizenship Law, 2013: <https://likumi.lv/ta/en/id/57512-citizenship-law>

⁶⁶ UN Convention Relating to the Status of Stateless Persons, 1954: Article 1(1)

⁶⁷ Office of Citizenship and Migration Affairs website, Bezvalstnieka statusa iegūšana (Obtaining stateless person status): https://www.pmlp.gov.lv/sakums/pa_kalpojumi/nepilsona-bezvalstniekastatuss/bezvalstnieka-statussiegusana.html

⁶⁸ *ibid*; Law on Stateless Persons, 2007, Art. 4: <https://likumi.lv/ta/en/en/id/84393-law-on-stateless-persons>

⁶⁹ Valsts nodrošinātās juridiskās palīdzības likums (State Ensured Legal Aid Law), Arts. 3(1)(3), 3(2), 3(1)(6): <https://likumi.lv/doc.php?id=104831>

⁷⁰ ENS Statelessness Index Country Survey 2019: Latvia, pp. 27-29, available at: https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Latvia-2019.pdf

⁷¹ Citizenship Law, 2013, Art 12(1)(1) & (5): <https://likumi.lv/ta/en/en/id/57512>

⁷² Citizenship Law, 2013, Section 12: <https://likumi.lv/ta/en/en/id/57512>

may be a bar to naturalisation, unless it is deemed that the trial was unfair or the punishment disproportionate.⁷³ There is a fee of 28.64 EUR for the naturalisation procedure. Exemptions are available for some groups including children in care, orphans, and severely disabled persons, and a reduced fee of 4.27 EUR is available for those in need, registered unemployed, large families, older people, some students and disabled persons. There are no exemptions for stateless people.⁷⁴

Issue 4: Immigration detention of stateless persons

41. 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.⁷⁵
42. There are some safeguards against the arbitrary detention of stateless migrants in Latvia, but significant gaps remain.⁷⁶ A proposed country of removal does not need to be identified prior to detaining someone for removal, and there is no clear legal provision guaranteeing that detention is only ever used as a last resort.⁷⁷ Statelessness is only considered juridically relevant in that someone may be referred to the SDP for determination of their statelessness, but if they have no legal right to stay or there is a risk of absconding, a stateless person may still be detained until their statelessness is determined under a procedure.⁷⁸ Vulnerability assessments are provided for in law, but statelessness is not considered a vulnerability factor.⁷⁹
43. Alternatives to detention are established in law and the wording implies that reporting to the authorities should be considered prior to ordering detention.⁸⁰ However, evidence from practice and available data suggests that alternatives may only be applied in a small proportion of return decisions.⁸¹ There are some procedural safeguards, but periodic reviews are undertaken by the authorities, rather than the courts, although decisions may be appealed to a judge.⁸² Legal aid is limited to challenging the return decision and not detention. People released from detention are not guaranteed access to basic rights or assistance and cumulative time spent in detention does not count towards the maximum time limit.⁸³

⁷³ Citizenship Law, 2013, Section 11: <https://likumi.lv/ta/en/en/id/57512>

⁷⁴ Cabinet of Ministers Regulations Nr. 849 Regulation on State Fee for the Submission of Naturalisation Application, 2013, Section 2-4 <https://likumi.lv/ta/id/259981>

⁷⁵ ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockelnLimbo_Detention_Agenda_online.pdf

⁷⁶ ENS Statelessness Index Latvia: <https://index.statelessness.eu/country/latvia>

⁷⁷ Imigrācijas likums (Immigration Law), 2017: <https://likumi.lv/ta/id/68522-imigracijas-likums>

⁷⁸ *ibid*

⁷⁹ Imigrācijas likums (Immigration Law), 2017, Art. 57 & 59: <https://likumi.lv/ta/id/68522-imigracijas-likums>

⁸⁰ Asylum Law, 2017, Section 13 & 14: <https://likumi.lv/ta/en/en/id/278986-asylum-law>; Imigrācijas likums (Immigration Law), 2017, Art. 51: <https://likumi.lv/ta/id/68522-imigracijas-likums>

⁸¹ Latvian Centre for Human Rights (2015) The return of Third Country Nationals: Standards and their Implementation in Latvia: http://cilvektiesibas.org.lv/media/attachments/01/12/2015/Latvian_report_korekturai_COR_NEWNEW.pdf

⁸² Imigrācijas likums (Immigration Law), 2017, Art. 52(2), 54, 56 & 59: <https://likumi.lv/ta/id/68522-imigracijas-likums>

⁸³ ENS Statelessness Index Country Survey 2019: Latvia, pp. 40-41, available at: https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Latvia-2019.pdf

Recommendations

44. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Latvia:
- I. Accede to the 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in relation to State Succession.
 - II. Remove all reservations to the 1954 Convention Relating to the Status of Stateless Persons.
 - III. Improve data collection on stateless persons and those at risk of statelessness in Latvia, harmonise data collection categories, and publish reliable disaggregated data on the stateless population.
 - IV. Undertake targeted outreach activities to ensure that interested ‘non-citizens’ are informed and encouraged to apply for naturalisation; remove disproportionate restrictions on the ability of ‘non-citizens’ to naturalise as Latvian nationals; and strengthen efforts to facilitate access to naturalisation in order to further decrease the number of persons without nationality.
 - V. Amend the Citizenship Law to introduce full legal safeguards to protect every child’s right to a nationality and prevent childhood statelessness in all cases in line with international obligations under the CRC and 1961 Convention on the Reduction of Statelessness.
 - VI. Ensure every child’s right to immediate, free birth registration and certification for all children, regardless of their parents’ identity, status, or documentation, in accordance with CRC Article 7.
 - VII. Ensure that individuals awaiting a determination of statelessness under the SDP (in a migratory context) are treated in accordance with UNHCR guidance and good practice, including by introducing a temporary residence permit for applicants for stateless status and thus ensuring access to minimum social rights and subsistence.
 - VIII. Take steps to improve the identification of statelessness prior to issuing a removal or detention order and consider statelessness as a juridically relevant fact in return and detention decisions, in order to prevent arbitrary (immigration) detention of stateless people.