

Joint Submission to the  
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## SWITZERLAND

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European Network on Statelessness

Institute on Statelessness and Inclusion

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Joint Submission  
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## Introduction

1. humanrights.ch, the Institute on Statelessness and Inclusion (ISI), and the European Network on Statelessness (ENS) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Switzerland. The co-submitters have developed the submission in close collaboration with Maureen Grossman, Jyothi Kanics and Barbara von Rütte. Additional input has been provided by Aleksejs Ivashuk.
2. This submission focuses on:
  - I. The Lack of a Formal Statelessness Determination Procedure
  - II. The Right of Every Child to Acquire a Nationality
  - III. Deprivation of citizenship
  - IV. Protection for stateless persons and people at risk of statelessness fleeing the war in Ukraine
3. [humanrights.ch](https://www.humanrights.ch) is a Swiss non-profit organisation established in 1999 with the main aim of gathering and providing information, raising public awareness, monitoring state action and counselling on human rights issues and the human rights situation in Switzerland. humanrights.ch has particular expertise in coordinating and publishing reports and opinions on the human rights situation in Switzerland and has contributed to a number of reports to UN and Council of Europe monitoring bodies.<sup>1</sup>
4. The [Institute on Statelessness and Inclusion](https://www.institut-on-statelessness.org/) (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 90 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges

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<sup>1</sup> For more information, see: <https://www.humanrights.ch/de/>.

related to statelessness in all countries under review under the 23rd to the 40<sup>th</sup> UPR Sessions.<sup>2</sup>

5. The [European Network on Statelessness](#) (ENS)<sup>3</sup> 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 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 Switzerland.<sup>4</sup>

## Previous UPR of Switzerland under the First, Second, and Third Cycles

6. Switzerland was previously reviewed during the first, second, and third sessions of the UPR, in 2008, 2012, and 2017 respectively. During the first cycle, Switzerland received one recommendation by Canada to “*maintain judiciary recourse on the granting of citizenship process*” and further that “*the revocation of the resident permit of married women who are victims of domestic violence be subject to a review after a full evaluation of impact on those women and their children,*”<sup>5</sup> which Switzerland accepted. During the second cycle, Switzerland received one recommendation by Slovakia to ratify the 1961 Convention on the Reduction of Statelessness, which it noted.<sup>6</sup>
7. During the third cycle, Switzerland received three recommendations. Hungary recommended that Switzerland “*formalize the statelessness determination procedure and ensure the procedure is fair, effective and accessible to all persons in Switzerland regardless of their legal status; ensure that the definition of ‘statelessness person’ is fully consistent with the definition provided in the 1954 Convention relating to the Status of Stateless Persons*”,<sup>7</sup> which it accepted. Côte d’Ivoire recommended that Switzerland ratify the 1961 Convention the Reduction of Statelessness,<sup>8</sup> which it noted. Panama similarly recommended that Switzerland ratify the 1961 Convention on the Reduction of Statelessness and “*establish safeguards to guarantee birth registration to all children born in the country who would otherwise be stateless*”,<sup>9</sup> which Switzerland also noted.

## Switzerland’s International Obligations

8. Switzerland has acceded to the 1954 Convention on the Status of Stateless Persons in 1972, but is not a signatory to the 1961 Convention on the Reduction of Statelessness. Switzerland has international obligations to protect the right to a nationality and protect

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<sup>2</sup> For more information, see: <https://www.institutesi.org/>.

<sup>3</sup> For more information, see: <https://www.statelessness.eu>.

<sup>4</sup> ENS, Statelessness Index: Switzerland, available at: <https://index.statelessness.eu/country/switzerland>.

<sup>5</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Switzerland’, A/HRC/8/41, (28 May 2008), para. 16, para. 57.8 and para. 57.9.

<sup>6</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Switzerland’, A/HRC/22/11, (7 December 2012), para. 123.5.

<sup>7</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Switzerland’, A/HRC/37/12, (29 December 2017), para. 146.121.

<sup>8</sup> *Ibid.* para. 148.13.

<sup>9</sup> *Ibid.* para. 148.14.

the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others:<sup>10</sup>

- International Covenant on Civil and Political Rights (see article 24.3)
- International Covenant on Economic, Social and Cultural Rights (see articles. 2.2 and article 3)
- Convention of the Rights of the Child (see articles 2, 3, 7 and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (see article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (see article 18)
- International Convention for the Protection of All persons from Enforced Disappearance (see article 25.4).

Switzerland has also ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

9. Under the Council of Europe, Switzerland is also a party to the European Convention on Human Rights (see article 8).
10. In 2008, the Committee on the Elimination of Racial Discrimination noted with concern *“the fact that the cantons and communes may introduce stricter conditions than the Confederation on naturalization matters, may infringe upon the right to private life, and that the lack of definition of integration criteria in the naturalization process could lead municipal assemblies to adopt inconsistent standards and decisions.”*<sup>11</sup> On the basis of article 5(d)(iii) under the International Convention on the Elimination of Racial Discrimination, the Committee recommended that Switzerland *“adopt standards on integration for the naturalization process, in conformity with the Convention, and to take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party.”*<sup>12</sup>
11. In 2014, the Committee expressed concern *“at initiatives calling for stricter criteria for naturalization”* including criteria which stipulate that *“recipients of welfare benefits cannot become naturalized citizens.”*<sup>13</sup> The Committee noted its concern that the political climate *“may lead to a more discriminatory system of naturalization.”*<sup>14</sup> Accordingly, on the basis of articles 1 and 5 of the ICERD, the Committee recommended Switzerland *“ensure that any revision of the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups.”*<sup>15</sup> It also reiterated its prior recommendation that Switzerland *“adopt uniform standards on integration for the naturalization process, in conformity with the Convention, and take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds,”* including by *“establishing an independent and uniform appeals*

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<sup>10</sup> For more information, see: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

<sup>11</sup> Committee on the Elimination of Racial Discrimination, ‘Concluding observations of the Committee on the Elimination of Racial Discrimination’, CERD/C/CHR/CO/6, (23 September 2008), para. 18.

<sup>12</sup> Ibid.

<sup>13</sup> Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined seventh to ninth periodic reports of Switzerland’, CERD/C/CHE/CO/7-9, (13 March 2014), para. 13.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

procedure in all cantons.”<sup>16</sup> Bearing in mind the indivisibility of all human rights, the Committee also encouraged Switzerland to ratify the 1961 Convention on the Reduction of Statelessness.<sup>17</sup>

## Snapshot of Statelessness in Switzerland

12. Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone “*who is not considered as a national by any state under the operation of its law.*” According to the numbers provided by the Swiss State Secretariat for Migration (SEM) for May 2022, 751 persons were registered as stateless, 280 as ‘without nationality’ and 1,144 as ‘state unknown’ in that year.<sup>18</sup> In May 2021, the numbers were similar with 677 persons registered as stateless, 241 as ‘without nationality’ and 1,125 as ‘state unknown’.<sup>19</sup> These numbers include stateless persons or persons of unknown origin who have been recognised as refugees and granted asylum.<sup>20</sup> The Federal Statistical Office released different statistics for 2020 with 540 persons recognised as stateless and 1,924 as ‘no indication’.<sup>21</sup> There is no data on the number of applications for recognition of statelessness nor on the approval rates.
13. The category defined by the SEM in the statistics as ‘stateless’ only includes persons who have officially been recognised by the Swiss authorities as stateless.<sup>22</sup> The Swiss authorities also use the categories ‘without nationality’ and ‘state unknown’, the precise definitions of which are not known, but which may include stateless persons who have not had their statelessness recognised or who face barriers in doing so, as well as persons who are at risk of statelessness.
14. The various statistical data provided by different Federal authorities, as well as the vagueness of the categories used, illustrate that the real scale of statelessness in Switzerland is unclear. According to a 2018 UNHCR mapping of statelessness in Switzerland, the actual number of stateless persons or persons at risk of statelessness is likely to be higher than indicated by the data provided by the Federal authorities.<sup>23</sup> Stateless persons living in Switzerland with irregular residence status are not reflected in the official statistics.<sup>24</sup>

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid. para. 19.

<sup>18</sup> State Secretariat for Migration, ‘Statistics May 2022’, available at: <https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/auslaenderstatistik/2022/05/2-10-Best-Tot-Kat-d-2022-05.xlsx.download.xlsx/2-10-Best-Tot-Kat-d-2022-05.xlsx>.

<sup>19</sup> State Secretariat for Migration, ‘Statistics May 2021’, available at: <https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/auslaenderstatistik/2021/05/2-10-Best-Tot-Kat-d-2021-05.xlsx.download.xlsx/2-10-Best-Tot-Kat-d-2021-05.xlsx>.

<sup>20</sup> Ibid; State Secretariat for Migration, ‘Statistics May 2022’, available at: <https://www.sem.admin.ch/dam/sem/de/data/publiservice/statistik/auslaenderstatistik/2022/05/2-30-Best-Flue-Kat-d-2022-05.xlsx.download.xlsx/2-30-Best-Flue-Kat-d-2022-05.xlsx>.

<sup>21</sup> Federal Statistical Office, ‘Statistics on Foreign permanent resident population by citizenship’, (1980-2020), available at: <https://www.bfs.admin.ch/bfs/de/home/statistiken/bevoelkerung/migration-integration/auslaendische-bevoelkerung.assetdetail.18344247.html>. According to the SEM, the difference can be explained by the fact that two authorities use different sources as well as different definitions.

<sup>22</sup> The SEM does not publish the definitions on which the categorizations and the statistics are based. Neither does the Federal Statistical Office.

<sup>23</sup> UNHCR, ‘Summary and recommendations: Statelessness in Switzerland’, (November 2018), available at: [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/04/CH\\_UNHCR-Statelessness\\_in\\_Switz-Summary-ENG-screen.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/04/CH_UNHCR-Statelessness_in_Switz-Summary-ENG-screen.pdf).

<sup>24</sup> There is no data on the number of stateless persons or persons at risk of statelessness among migrants who are undocumented or have irregular residence status in Switzerland. However, it must be assumed that there are stateless persons as well as persons at risk of statelessness among the roughly 76,000 migrants with irregular residence status in Switzerland. The most recent comprehensive study on ‘sans papiers’ in Switzerland is silent on the issue of statelessness, see Michael Morlok

15. Switzerland has a long practice of applying the definition of Article 1(1) of the 1954 Convention more restrictively than recommended by UNHCR.<sup>25</sup> Contrary to the criteria set out in the 1954 Convention, persons were only recognised as stateless if they had lost their nationality through no fault of their own and have no means of reinstating it.<sup>26</sup> Recently, there have been slight changes to this practice. A Federal Court decision states that persons registered with UNRWA do not fall under the exclusion clause of Article 1(2) I of the Convention.<sup>27</sup> Another decision clarifies that a person's status must be evaluated at the moment of the application.<sup>28</sup> The fact that someone is stateless is therefore not a question of the past or future. This follows UNHCR guidance.<sup>29</sup> While these changes are positive for persons concerned, it would be crucial to formalise the statelessness determination procedure in law to ensure that the definition of a stateless person applied in Switzerland is formally in line with the 1954 Convention. Moreover, persons applying for statelessness determination must still establish that they lost their nationality through no fault of their own.<sup>30</sup> Therefore, Swiss practice is not yet compliant with the 1954 Convention. This is in contradiction to recommendation 146.121 to apply the definition in full accordance with Article 1(1) as accepted by Switzerland in the previous UPR cycle.<sup>31</sup>
16. If a person is recognised as stateless by Switzerland, they are granted a residence permit in the Canton in which they are lawfully residing.<sup>32</sup> Normally, a residence permit is valid for five years and can be renewed.<sup>33</sup> Stateless persons with a residence permit have the same rights as refugees granted asylum, including the right to work, to family reunification, to social security, and to be granted travel documents.<sup>34</sup> If a person recognised as stateless has been sentenced to a long-term custodial sentence or seriously or repeatedly violated or threatened public order and security, they will only be granted temporary admission, which leaves them with a restricted right to work, social security, and family reunification.<sup>35</sup> After ten years, stateless persons can apply for a permanent residence permit.<sup>36</sup>
17. Facilitated access to citizenship is only provided for legally resident stateless children. Contrary to Article 32 of the 1954 Convention, there is no facilitated mode of naturalisation for stateless persons above the age of 18. Adult stateless persons wishing to apply for naturalisation as Swiss citizens have to fulfil the requirements for ordinary naturalisation, including a ten-year residence requirement, possession of a permanent residence permit and restrictive integration requirements including good language skills and socio-economic criteria. Because of the federal threefold structure of Swiss

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and others, *Les sans-papiers en Suisse, Étude de B,S,S Volkswirtschaftliche Beratung*, (December 2015), available at: [https://www.sem.admin.ch/dam/data/sem/internationales/illegale-migration/sans\\_papiers/ber-sanspapiers-2015-f.pdf](https://www.sem.admin.ch/dam/data/sem/internationales/illegale-migration/sans_papiers/ber-sanspapiers-2015-f.pdf).

<sup>25</sup> The Swiss courts even admit that they apply a more restrictive definition, see judgement of the Federal Court in case 2C\_415/2020 of 30 April 2021, judgements of the Federal Administrative Court in case F-6008/2019 of 7 October 2021 and in case F-1297/2017 of 14 December 2021; UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 50 and note 13, para. 51, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>26</sup> See information provided by SEM, available at: <https://www.sem.admin.ch/sem/en/home/asyl/staatenlosigkeit.html>.

<sup>27</sup> Judgement of the Federal Court in case 2C\_330/2020 of 6 August 2021.

<sup>28</sup> Judgement of the Federal Court in case 2C\_415/2020 of 30 April 2021.

<sup>29</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 50, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>30</sup> Ibid. note 13, para. 51; Judgement of the Federal Court in case 2C\_415/2020 of 30 April 2021.

<sup>31</sup> UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Switzerland', A/HRC/37/12, (29 December 2017), para. 146.121.

<sup>32</sup> Article 31(1) Federal Act on Foreign Nationals of 16 December 2005 (FNA; SR 142.20).

<sup>33</sup> Article 33 FNA.

<sup>34</sup> Article 38(2), 44 and 59 FNA.

<sup>35</sup> Article 31 (2) in conjunction with Article 83 FNA.

<sup>36</sup> Article 34(2) FNA.

citizenship, applicants for naturalisation furthermore have to fulfil additional requirements regarding integration and prior residence imposed by cantonal and municipal legislation. In sum, the process of ordinary naturalisation in Switzerland is lengthy, complicated, burdensome, costly and based on difficult material conditions. This leaves stateless persons in Switzerland without effective access to a nationality within reasonable time and is contrary to the obligation to reduce facilitate the naturalisation of stateless persons.

## Issue I - The Lack of a Formal Statelessness Determination Procedure

18. There is an administrative procedure to determine statelessness in Switzerland, but it is not formalised in law and there are significant gaps.<sup>37</sup> Although Switzerland supported recommendation 146.121 in the previous UPR cycle to formalise the statelessness determination procedure and ensure that the application process is fair, effective and accessible to all persons, no tangible efforts for legal reform are apparent.<sup>38</sup> The identification of stateless persons is presently still governed by the general legislative framework for administrative acts, namely the Federal Act on Administrative Procedure, and the relevant practice of the SEM and the Federal courts.<sup>39</sup> The procedure is centralised at the federal level with the SEM being responsible for the determination of statelessness.<sup>40</sup> Technically, the authorities have the possibility to initiate the procedure *ex officio*.<sup>41</sup> However, this is rarely done in practice. Normally, the procedure is initiated if a person lodges a written and reasoned application for recognition of statelessness, including evidence. In principle, the standard of proof in the general administrative procedure is 'full proof'. Whereas UNHCR Guidelines call for a reduced standard of proof in determining statelessness, the practice in statelessness proceedings in Switzerland is inconsistent. In some cases, the courts accepted that a claim substantiated with a reduced standard of proof has been made credible,<sup>42</sup> whereas they explicitly rejected a reduced standard of proof in other cases.<sup>43</sup> In compliance with UNHCR guidance, the Swiss statelessness determination procedure should provide for a shared burden of proof and the standard of proof should be reduced.<sup>44</sup> Legally, the burden of proof is shared between the applicant and the state according to Article 12 in relation to Article 13(1) a. APA.<sup>45</sup> However, in practice, the burden of proof lies mostly with the applicant, as the authorities often relinquish their responsibilities to gather evidence and pass them on to the applicants. It is therefore important to establish rules to give the applicant a certain foreseeability and clarity about what the process entails.

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<sup>37</sup> For more information, see: <https://index.statelessness.eu/country/switzerland>.

<sup>38</sup> UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Switzerland', A/HRC/37/12, (29 December 2017), para. 146.121.

<sup>39</sup> Federal Act on Administrative Procedure of 20 December 1968 (APA; SR 172.021).

<sup>40</sup> Article 14 Organization Ordinance of the Federal Department of Justice and Police of 17 November 1999 (SR 172.213.1).

<sup>41</sup> Article 25(1) APA.

<sup>42</sup> Federal Administrative Court in case D-1770/2014 of February 2015; D-1912/2014 of 8 April 2015; F-1672/2015 of 22 September 2016; F-2453/2017 of 4 October 2019 and F-6478/2018 of 30 September 2020 or Federal Court in case 2C\_271/2018 of 23 March 2018.

<sup>43</sup> Federal Administrative Court in case E-1658/2013 of 14 April 2015 and E-1708/2015 of 15 April 2015. In one case the Federal Administrative Court referred both to the ordinary standard of proof as well as to the standard of credibility, case F-5127/2014 of 8 September 2016.

<sup>44</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 71 and para. 89-93, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>45</sup> Federal Administrative Court in case F-2594/2017 of 21 March 2019.

19. In order for an application to be considered, long-standing practice was that the applicant had to demonstrate a legitimate interest in determining their statelessness.<sup>46</sup> This had the consequence that authorities denied a legitimate interest where a person had already been recognised as stateless by another State Party of the 1954 Convention, had a right remain in another state while not having a particular connection to Switzerland, or if the person concerned would not receive more favourable rights by being recognised as stateless.<sup>47</sup> In practice, this requirement meant that persons recognised as refugees or in possession of a residence permit were unable to apply for statelessness determination. In a new judgment of December 2021, the Federal Administrative Court recognised that the recognition of statelessness is a legitimate interest in itself as it is part of a person's social identity and hence protected by the right to private life as guaranteed in Article 8 ECHR and Article 13 of the Swiss Constitution.<sup>48</sup> However, it is not yet clear whether the new practice is already consistently applied by the SEM and the Swiss judiciary.<sup>49</sup>
20. The decision taken by the SEM can be appealed at the Federal Administrative Court and in second instance to the Federal Court.<sup>50</sup> The procedure is written in one of the official languages. Parties have the right to be heard and to an interpreter if necessary. The procedure is free of charge. Free legal aid can be granted if a person lacks the necessary means, legal representation is necessary to secure that person's rights and if a request or appeal is not futile. Finally, there is very little accessible information about the procedure for individuals concerned.<sup>51</sup>
21. The identification of stateless persons is of utmost importance in guaranteeing the rights of stateless persons living in the country. While the 1954 Convention to which Switzerland is a party does not explicitly prescribe how stateless persons should be identified, it implicitly requires states to 'identify stateless persons in order to accord them appropriate standards of treatment under the Convention'.<sup>52</sup> A formal statelessness determination procedure offers the most effective means to protect the rights of stateless persons,<sup>53</sup> including rights such as liberty and security of the person. Such a procedure also allows the state to gain a better understanding of the extent of statelessness and to better monitor the status and treatment of stateless persons in Switzerland.<sup>54</sup> The co-submitting organisations therefore recommend that Switzerland put in place a dedicated, formal statelessness determination procedure that meets the standards set out in relevant UNHCR guidance.<sup>55</sup>

<sup>46</sup> Article 25(2) APA.

<sup>47</sup> State Secretariat for Migration, 'Manuel Aisle et retour, F5 – Demande de reconnaissance du statut d'apatridie', available at <https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/f/hb-f5-f.pdf>.

<sup>48</sup> Federal Administrative Court in case F-1297/2017 of 14 December 2021.

<sup>49</sup> In a more recent case, the Federal Court applies the legitimate interest requirement without reference to the change in practice, see case 2C\_587/2021 of 16 February 2022.

<sup>50</sup> Federal Act on the Federal Administrative Court of 17 June 2005 (SR 173.32) and Federal Act on the Federal Court of 17 June 2005 (SR 173.110).

<sup>51</sup> Recently, the SEM published general information about the procedure on its website, available at: <https://www.sem.admin.ch/sem/en/home/asyl/staatenlosigkeit.html>.

<sup>52</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 144, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>53</sup> UNHCR, 'Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons', (July 2016), p. 2, available at: <http://www.refworld.org/docid/57836cff4.html>.

<sup>54</sup> UNHCR, 'Global Action Plan to End Statelessness, Action 6', (4 November 2014), available at: <http://www.refworld.org/docid/545b47d64.html>; UNHCR, 'Mapping Statelessness in Austria', (January 2017), para 215., available at: <http://www.refworld.org/docid/58b6e5b14.html>.

<sup>55</sup> See also Council of Europe, Parliamentary Assembly (PACE), Resolution 1980 (2014) on access to nationality and the effective implementation of the European Convention on Nationality, (9 April 2014), para. 5.2.2; Parliamentary Assembly (PACE), Resolution 2099 (2016) on the need to eradicate statelessness of children, (4 March 2016), para. 12.2.3.

22. In order to determine statelessness in full accordance with the 1954 Convention, a statelessness determination procedure should be accessible to everyone within the Swiss territory, and it should be fair and efficient.<sup>56</sup> The procedure should be formalised in law and observe due process guarantees.<sup>57</sup> The procedure under the APA is mainly written. Oral hearings or court proceedings are only approved in exceptional circumstances. People who submit an application for recognition of statelessness in Switzerland often have a migration background, face language barriers, difficulties evidencing their statelessness, and are unfamiliar with the country's legal system, so a written procedure puts them at a disadvantage. Switzerland should follow good practice and UNHCR guidance and ensure that the procedure can be initiated either orally or in writing, that provisions for ex officio initiation of the procedure are applied in practice, and that the individual circumstances of all applicants are carefully considered in line with UNHCR guidance.<sup>58</sup>
23. Currently, the statelessness determination procedure does not include access to adequate legal aid and provision of interpreting and translation services. Legal aid is rarely granted during the application process, even though applicants have a right to legal aid at all stages of the procedure if they meet certain requirements.<sup>59</sup> Translation and interpreting services are not provided, despite being difficult to arrange and costly for the applicant. In the absence of procedural guarantees and safeguards set out in law, this lack of support for applicants is particularly problematic in what is a very complex procedure.
24. Information and counselling about the procedure should be widely disseminated in order to facilitate access to the procedure.<sup>60</sup> Additional procedural and evidentiary safeguards for child applicants should be put in place, including 'priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State.'<sup>61</sup> Government officials who may come in contact with stateless persons through their regular work (for example, social services or immigration control) should be trained to identify potential applicants and should refer them to the determination procedure.<sup>62</sup> Finally, authorities involved in the identification of stateless persons should be provided with training on statelessness and the rights of stateless persons.
25. According to Article 31(1) of the Federal Act on Foreign Nationals (FNA) persons recognised as stateless in Switzerland have the right to be granted a residence permit in the canton in which they are legally residing. So far, courts have not decided whether this requirement to reside legally in a canton entails a 'lawful stay' requirement based on which persons recognised as stateless could be refused residence status if they had no prior right to stay. However, legal doctrine and practice have interpreted Article 31(1)

<sup>56</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 63, para. 68 and para. 69, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>57</sup> Ibid. note 12, para. 71.

<sup>58</sup> Ibid. note 12, para. 71, para. 87, para. 94 and para. 101.

<sup>59</sup> Federal Administrative Court in case E-5581/2013 of 28 November 2013.

<sup>60</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 68, available at: <https://www.refworld.org/docid/53b676aa4.html>; UNHCR, 'Global Action Plan to End Statelessness', (November 2014), available at: <http://www.refworld.org/docid/545b47d64.html>; UNHCR, 'Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect stateless Persons', (July 2016), p. 5, available at: <http://www.refworld.org/docid/57836cff4.html>.

<sup>61</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 119, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>62</sup> UNHCR, 'Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect stateless Persons', (July 2016), p. 4, available at: <http://www.refworld.org/docid/57836cff4.html>.

FNA as not requiring a person applying for statelessness status to have entered the country legally or to have some form of residence permit.<sup>63</sup> If a person is recognised as stateless, that person is granted a right to remain and has the right to freedom of movement within the entire Swiss territory. This practice is consistent with UNHCR's interpretation of the 1954 Convention according to which 'there is no basis in the Convention for requiring that applicants for statelessness determination be lawfully within a State'.<sup>64</sup> If a person is recognised as stateless, that person should be granted a residence permit in order to fulfil the object and purpose of the 1954 Convention.<sup>65</sup>

26. The failure to recognise statelessness as a protection issue and the lack of a dedicated statelessness determination procedure also has the consequence that applicants are not granted any residence status or rights during the procedure. This gap in the legal framework exposes stateless persons to particular risks, including the risk of arbitrary detention, destitution and attempted removal while waiting for a decision on the recognition of statelessness.<sup>66</sup> In order to avoid violations of the rights of stateless persons, applicants should not be removed during a determination procedure and instead be granted a temporary legal status and rights, in line with UNHCR guidance and good practice.<sup>67</sup> At a minimum, persons applying for statelessness recognition should be issued with identity documents and be granted assistance to meet basic needs, as well as the right to work, freedom of movement and protection against expulsion and arbitrary detention. It is recommended that applicants are offered the same standard of treatment as asylum-seekers.<sup>68</sup>

## Issue II - The Right of Every Child to Acquire a Nationality

27. Swiss nationality law does not prevent statelessness at birth. In accordance with the principle of *ius sanguinis*, Swiss nationality is acquired at birth if the parents are Swiss nationals. If a child is born to stateless parents or if the parents cannot pass on their nationality to their children, the child is also born stateless. Under Swiss nationality law, a stateless child can only acquire Swiss nationality by means of a 'simplified' naturalisation if they have five years of legal residence, one year of which must be immediately before the application for naturalisation is made.<sup>69</sup> Provision is made for simplified naturalisation in certain cases, but the authorities retain discretion when deciding whether the child is integrated, respects the Swiss legal order and does not pose a threat to Switzerland's internal or external security.<sup>70</sup> The legal residence requirement is contrary to Switzerland's international obligations and can have the result that children born stateless in Switzerland are unable to acquire Swiss nationality, simply because their parents are have irregular residence status.<sup>71</sup> Simplified

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<sup>63</sup> Karen Hamann, *Statelessness determination; the Swiss experience*, Forced Migration Review 54, (February 2017), p. 97, available at: <http://www.fmreview.org/resettlement/hamann.html>.

<sup>64</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 69, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>65</sup> *Ibid.* para. 147.

<sup>66</sup> For more information, see Karen Hamann, *Statelessness determination; the Swiss experience*, Forced Migration Review 54, (February 2017), p. 98, available at: <http://www.fmreview.org/resettlement/hamann.html>.

<sup>67</sup> UNHCR, 'Handbook on protection of stateless persons', (2014), note 12, para. 72, para. 145 and para. 146, available at: <https://www.refworld.org/docid/53b676aa4.html>.

<sup>68</sup> *Ibid.* para. 145 and para. 146.

<sup>69</sup> Article Federal Act on Swiss Citizenship of 20 June 2014 (Swiss Citizenship Act, SCA; SR 141.0).

<sup>70</sup> The general requirements for a facilitated naturalisation are enshrined in Article 20 SCA and have to be fulfilled in case of a simplified naturalisation for stateless children (Article 23 SCA).

<sup>71</sup> Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, (26 February 2015), CRC/C/CHE/CO/2-4, para 31.

naturalisation does not require that the child is born in Switzerland; however, the possibility expires once the stateless child turns eighteen. Foundlings acquire Swiss nationality automatically.<sup>72</sup>

28. Current Swiss practice with regard to the child's right to a nationality is at variance with its obligations under international law.<sup>73</sup> The Parliamentary Assembly of the Council of Europe has pointed out that the relevant legislation in Switzerland *"contains insufficient or no safeguards against childhood statelessness, in breach of regional and international obligations."*<sup>74</sup>
29. In 2015, the Committee on the Rights of the Child noted its concern *"at reports about delays in registering children of foreign nationals"* and, moreover, that children born in Switzerland who would otherwise be stateless *"are not guaranteed the right to acquire Swiss nationality."*<sup>75</sup> Accordingly, on the basis of articles 7, 8, and 13-17 of the Convention on the Rights of the Child, the Committee recommended that Switzerland *"ensure that birth registration is available as soon as possible for all children, regardless of their parents' legal status and/or origin."*<sup>76</sup> The Committee also recommended Switzerland *"ensure that all children born in its territory acquire Swiss nationality irrespective of the legal status of their parents, if they would otherwise be stateless, and ratify the 1961 Convention on the Reduction of Statelessness, the 1997 European Convention on Nationality and the 2009 Council of Europe Convention the avoidance of Statelessness in relation to State Succession."*<sup>77</sup> With regard to the uncertainty of the legal status of children during a one-year period of assessment for possible adoption, the Committee further recommended that Switzerland *"accelerate the assessment procedure and ensure that the child is not stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption."*<sup>78</sup>
30. In 2021, on the basis of articles 7-8 and 13-17 of the CRC, the Committee recommended that Switzerland: *"(a) Ensure that all children born in the State party, irrespective of their parents' legal status, have access to birth registration and are entitled to a nationality at birth, or subject to a significantly reduced residence requirement if otherwise stateless, and that parents without regular residence status who register their children are not reported to migration authorities; (b) Consider acceding to the Convention on the Reduction of Statelessness, the European Convention on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession."*<sup>79</sup>

### Issue III - Deprivation of citizenship

31. According to the UDHR, *"[n]o one shall be arbitrarily deprived of [their] nationality"*, which is a fundamental principle of international law closely linked with the right to a nationality. At a minimum, deprivation of nationality is arbitrary if it is not prescribed by law, is not the least intrusive means and proportionate to achieving a legitimate aim, or

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<sup>72</sup> Article 3 SCA.

<sup>73</sup> For more information, see: <https://index.statelessness.eu/country/switzerland>.

<sup>74</sup> Council of Europe, Parliamentary Assembly (PACE), Resolution 2099 (2016) on the need to eradicate statelessness of children, (4 March 2016), para. 8.

<sup>75</sup> Committee on the Rights of the Child, 'Concluding observations on the combined second to fourth periodic reports of Switzerland', CRC/C/CHE/CO/2-4, (26 February 2015), para. 30.

<sup>76</sup> Ibid. para. 31.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid. para. 47 (a) and 51(c).

<sup>79</sup> Ibid. para. 21 (a)-(b).

if it takes place without due process.<sup>80</sup> According to the European Court of Human Rights (ECtHR), “[i]n determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly.”<sup>81</sup> The decision should also consider the consequences of deprivation of nationality for the applicant. Furthermore, “deprivation of nationality must be the least intrusive means and effective means of achieving the stated legitimate purpose.”<sup>82</sup>

32. Article 42 of the Swiss Citizenship Act provides that Swiss nationality may be revoked if a person’s conduct is seriously detrimental to the interests or the reputation of Switzerland, provided that the person concerned does not become stateless. The ordinance to the SCA specifies which crimes amount to a serious damage to Switzerland’s interests or reputation and that a criminal conviction is necessary, except when a state is not willing or able to pursue a criminal procedure. The deprivation procedure itself is not established in law. In recent years, Switzerland has deprived two persons of their Swiss nationality, including a woman who was left in a Kurdish detention camp with her three minor daughters all of whom had Swiss nationality. Several cases are currently pending.
33. Given that the deprivation procedure can be held in absentia and without a criminal conviction in the case of alleged ‘foreign fighters’ resident abroad, the practice of deprivation of Swiss nationality bears a very high risk of being arbitrary and hence in violation of international legal standards. Moreover, the fact that Article 42 SCA can only be invoked against dual nationals creates a difference in treatment as compared to nationals who only hold Swiss nationality. This leads to indirect discrimination against Swiss nationals from particular minority groups, mainly members of religious or ethnic minorities. Maintaining such a system also has a stigmatising effect on these communities and can negatively impact on social cohesion.
34. Thousands of children of alleged ‘foreign fighters’ are currently detained in Syria and Iraq and live in dire conditions, unable to access basic rights and services, which impacts on their right to a nationality, legal identity, and immediate birth registration.<sup>83</sup> Research has found that there is a risk of statelessness among children associated with alleged ‘foreign fighters’, particularly related with three key factors: the lack of documentation or lack of recognition of documents issued by non-State actors, barriers to establishing nationality through family links, and derivative deprivation of nationality.<sup>84</sup> These risks

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<sup>80</sup> UNHCR, ‘Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness’, (May 2020), HCR/GS/20/05, para. 91 and para. 94.

<sup>81</sup> ECtHR, *Usmanov v. Russia*, Application no. 43936/18, (22 December 2020), para. 63.

<sup>82</sup> Communication by UN Mandate Holders and Experts to the Netherlands on the case of Fatima Habitat, (8 December 2021), Ref UA NLD 4/2021, p. 7, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26814>; Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, (2020), Principles 7.5.2 and 7.5.3, available at: <https://files.institutesi.org/PRINCIPLES.pdf>; Human Rights Committee, ‘CCPR General Comment No. 27: Article 12 ICCPR (Freedom of Movement)’, (1999), CCPR/C/21/Rev.1/Add.9, para 14; UNHCR, ‘Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness’, (May 2020), HCR/GS/20/05, para. 91 and para. 94.

<sup>83</sup> UN Office of the High Commissioner for Human Rights, ‘Syria: UN experts urge 57 States to repatriate women and children from squalid camps’, (8 February 2021), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730>.

<sup>84</sup> Dr Rachel Pougnet and the European Network on Statelessness, ‘Risks of childhood statelessness for the children associated with alleged ‘foreign fighters’ detained in Syria and Iraq’ (October 2021), available at: [http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol\\_Report67\\_Pougnet\\_childhood-statelessness-risks.pdf](http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol_Report67_Pougnet_childhood-statelessness-risks.pdf);

are exacerbated by the fact that children's right to a nationality, the primacy of the best interests of the child, and the principle of non-discrimination are not adequately considered in States' policies and practices of deprivation of nationality in relation to children associated with alleged 'foreign fighters'.

35. Under international law, States are required to introduce legal safeguards to ensure that deprivation of nationality does not impact on family members or dependents. States must also ensure that deprivation of nationality does not lead to statelessness, and should therefore conduct a full determination of whether deprivation would result in statelessness prior to depriving a person of their nationality.<sup>85</sup> In this assessment, States should also take into consideration the impact on the individual's right to respect for private and family life and the best interests of their children.<sup>86</sup> Any children born subsequent to a deprivation order against their parents taking effect may therefore be at risk of statelessness.<sup>87</sup>

## Issue IV - Protection for stateless persons and people at risk of statelessness fleeing the war in Ukraine

36. Given the large number of persons fleeing the war in Ukraine since February 2022, particular attention has to be paid to stateless persons and people at risk of statelessness within this group. They are particularly at risk of facing barriers to access protection in Switzerland. To ensure access to a durable protection status, prevent discrimination and facilitate eventual safe return to Ukraine, it is imperative that national authorities grant protection, including temporary protection, to all people fleeing the war in Ukraine.<sup>88</sup>
37. Following the Russian invasion of Ukraine, the Swiss Government activated 'Protection Status S' in March 2022, a temporary protection status intended to respond to a 'sudden influx of larger groups of displaced persons'.<sup>89</sup> However, 'Protection Status S' only applies to stateless persons from Ukraine who held international or national protection status in Ukraine before 24 February 2022 (and their family members) or a valid short-term residence permit or residence permit in Ukraine and cannot return to their home countries safely and permanently. This excludes most stateless people and those at risk of statelessness from Ukraine, the majority of whom are stateless 'in situ' and unable to

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See also Professor René DeGroot and others, 'Expert opinion: How the Netherlands, France and the UK are leaving children stranded at risk of statelessness in Iraq and Syria', (October 2021), available at: <https://www.statelessness.eu/updates/blog/expert-opinion-how-netherlands-france-and-uk-are-leaving-children-stranded-risk>.

<sup>85</sup> Institute on Statelessness and Inclusion, 'Principles on Deprivation of Nationality as a National Security Measure', (2020), Principle 5, available at: <https://files.institutesi.org/PRINCIPLES.pdf>.

<sup>86</sup> Ibid, Principles 9.6 and 9.7.

<sup>87</sup> Dr Rachel Pougnet and the European Network on Statelessness, 'Risks of childhood statelessness for the children associated with alleged 'foreign fighters' detained in Syria and Iraq' (October 2021), available at: [http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol\\_Report67\\_Pougnet\\_childhood-statelessness-risks.pdf](http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol_Report67_Pougnet_childhood-statelessness-risks.pdf);

See also Professor René DeGroot and others, 'Expert opinion: How the Netherlands, France and the UK are leaving children stranded at risk of statelessness in Iraq and Syria', (October 2021), available at: <https://www.statelessness.eu/updates/blog/expert-opinion-how-netherlands-france-and-uk-are-leaving-children-stranded-risk>.

<sup>88</sup> ENS, 'Briefing no 3: Protection gaps for stateless refugees from Ukraine', (June 2022), available at: [https://www.statelessness.eu/sites/default/files/2022-06/ENS\\_BRIEFING\\_3-Protection-gaps-for-stateless\\_June-2022.pdf](https://www.statelessness.eu/sites/default/files/2022-06/ENS_BRIEFING_3-Protection-gaps-for-stateless_June-2022.pdf).

<sup>89</sup> Ukraine: Bundesrat aktiviert Schutzstatus S für Menschen aus der Ukraine, available at: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-87556.html>.

prove their links to Ukraine through documentation.<sup>90</sup>

38. Under 'Protection Status S', persons fleeing Ukraine may exercise many rights in Switzerland.<sup>91</sup> The persons who meet the criteria stated above receive an 'S permit'. This is limited to a maximum of one year, but can be extended. After five years, persons in need of protection may receive a 'B residence permit', which is valid until the temporary protection is lifted (Art. 74 AsylA). Persons who are granted 'Protection Status S' may travel abroad and return to Switzerland without a travel permit. They may engage in gainful employment (including self-employment) without having to wait a certain period.
39. If third-country nationals, who recently fled Ukraine and who do not fall under the abovementioned categories, apply for protection in Switzerland, normally an asylum procedure will be carried out. However, for stateless persons, it is crucial that they receive legal assistance and that they are ensured access to the stateless determination procedure. Identification and recognition as stateless will entitle them to more rights in Switzerland.

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<sup>90</sup> ENS, 'Briefing: Stateless people and people at risk of statelessness forcibly displaced from Ukraine', (March 2022), available at: <https://www.statelessness.eu/updates/publications/stateless-people-and-people-risk-statelessness-forcibly-displaced-ukraine>; ENS, 'Briefing: Update on access to protection for stateless refugees from Ukraine', (April 2022), available at: <https://www.statelessness.eu/updates/publications/update-access-protection-stateless-refugees-ukraine>.

<sup>91</sup> Questions and answers on the Ukraine Crisis, see SEM: <https://www.sem.admin.ch/sem/en/home/sem/aktuell/ukraine-krieg.html>.

## Recommendations

40. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Switzerland:

- I. Accede to and fully implement the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality.
- II. Establish the statelessness determination procedure in law and ensure that the procedure is fair, effective and accessible to all persons in Switzerland regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons. Switzerland should create a specific temporary residence status for applicants in line with the relevant UNHCR guidance.
- III. Ensure that the definition of 'stateless person' in national law is fully consistent with the definition provided in the 1954 Convention and that no stateless persons are excluded from this definition on extraneous criteria.
- IV. Put in place safeguards to ensure that all children born in Switzerland who would otherwise be stateless acquire Swiss nationality automatically at birth in accordance with Switzerland's obligations under Article 7 of the Convention of the Rights of the Child.
- V. Introduce a facilitated naturalisation procedure for all stateless persons in accordance with Switzerland's obligations under Article 32 of the 1954 Convention relating to the Status of Stateless Persons.
- VI. Refrain from depriving persons of nationality in any case where the effect would be discriminatory, could render the person stateless or at risk of statelessness, could result in refoulement, encroaches on prosecution interests, or when a less intrusive means is available.
- VII. Take steps to ensure that children are not arbitrarily deprived of their nationality, and respect private and family life and the best interests of children in decisions to deprive individuals of their nationality.
- VIII. Implement training and guidelines for authorities who are in contact with persons who could be recognised as stateless, to ensure that they have the necessary expertise and resources to effectively identify and determine statelessness and nationality issues. Facilitate the cooperation between authorities and establish protocol for cross-referral mechanisms. Provide information on the procedure for applicants which is easily accessible and translated in different languages.
- IX. Ensure that training, screening and registration leads to the identification and referral of persons fleeing Ukraine, who may be stateless, and enables them to access protection and the statelessness determination procedure, with the support of legal aid and interpreters as necessary.