

**Written evidence to Just Fair for the Civil Society Shadow Report of England and Wales
to the UN Committee on Economic, Social and Cultural Rights
in view of the United Kingdom's 2023 Pre-Sessional Working Group Report**

Introduction

The [European Network on Statelessness](#) (ENS) is a civil society alliance of over 170 non-governmental organisations, academics and individual experts in 41 countries, committed to addressing statelessness in Europe. Everyone has the right to a nationality. We believe this must be respected and those who lack nationality - stateless people - are entitled to full protection. We are dedicated to working with stateless people in Europe to advocate for respect of their human rights. We aim to reach our goals through law and policy development, awareness-raising, and capacity-building.

ENS welcomes the opportunity to submit this written evidence in preparation for the civil society shadow report of England and Wales to the UN CESCR. In this contribution, ENS presents information gathered from the [Statelessness Index on the United Kingdom](#),¹ an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice, as well as other contributions from ENS members.

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

Statelessness in the United Kingdom

The United Kingdom² has acceded to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, but it maintains several reservations to these treaties. Neither convention has been fully incorporated into domestic law, and the UK is not a party to core regional instruments on statelessness. There are relatively few sources of accurate data on the stateless population in the UK, but all data indicates that statelessness occurs predominantly in a migratory context. UNHCR reported 5,177 stateless persons in the UK at the end of 2021.

Statelessness Determination and Protection

Identifying and determining statelessness is the first step to providing adequate protection and rights enshrined in the 1954 Convention and the International Covenant on Economic, Social and Cultural Rights. The best way to achieve this is through a dedicated statelessness determination procedure (SDP).³ According to international norms and standards, the rights afforded to a person recognised as stateless should include a residence permit and access to economic, social, civil, and political rights. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.⁴ The Committee previously recommended States to establish an SDP and clear procedures to regularise status,⁵ facilitate access to naturalisation,⁶ and adopt legislative and policy frameworks to provide protection for stateless persons.⁷

In 2013, the UK introduced a procedure through which some persons may be granted a residence permit on the

¹ Statelessness Index – United Kingdom, available at: <https://index.statelessness.eu/country/united-kingdom>.

² For a more detailed overview and references, see Asylum Aid, Liverpool Law Clinic, European Network on Statelessness & Institute on Statelessness and Inclusion, [Joint Submission to the Human Rights Council at the 41st Session of the Universal Periodic Review – United Kingdom](#) (2021); Statelessness Index – United Kingdom, available at: <https://index.statelessness.eu/country/united-kingdom>.

³ UNHCR, [Handbook on Protection of Stateless Persons](#) (2014).

⁴ Statelessness Index, [Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks](#) (2021).

⁵ Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, 2 April 2020, para 32(c); CESCR, Concluding observations on the second periodic report of the Sudan, E/C.12/SDN/CO/2, 27 October 2015, para 28.

⁶ CESCR, Concluding observations on the second periodic report of Latvia, E/C.12/LVA/CO/, 30 March 2021, para 17.

⁷ CESCR, Concluding observations on the initial report of Pakistan, E/C.12/PAK/CO/1, 20 July 2017, para 26.

grounds of statelessness. Despite the introduction of the SDP, there remain significant gaps in law, policy and practice that result in the failure to respect, protect and fulfil the rights of all stateless persons. The definition of a stateless person in the UK Immigration Rules contains exclusion criteria that go beyond the definition under the 1954 Convention. UNHCR has reported concerns about the assessment of applications and decision-making, and there are shortcomings in the procedural safeguards afforded to applicants, particularly with respect to access to legal aid and to social and economic rights. There is no automatic right for an applicant to remain in the UK during the procedure. Stateless persons usually do not have permission to work and applicants who have been refused asylum and are destitute (or imminently so) are potentially eligible for very basic shelter and support, subject to stringent requirements.⁸ People recognised as stateless are not guaranteed permission to remain in the UK, nor access to travel documents. There is no facilitated pathway to naturalisation for stateless persons, who may face barriers including extremely high fees to acquire British citizenship.⁹

Children's right to a nationality and birth registration

Every child has a right to a legal identity and nationality. This is a core principle of international law, which if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.¹⁰ States should have a provision in law to grant nationality to anyone born on the territory who would otherwise be stateless.¹¹ Conferral of nationality to otherwise stateless children born on the territory should ideally be automatic at birth. There should be no conditions on acquisition of nationality by a child relating to their or their parents' legal status, such as lawful residence.¹² Moreover, every child has the right to be registered immediately after birth.¹³ There should be no mandatory requirements for authorities to report undocumented individuals to immigration authorities.¹⁴

The Committee previously recommended States to prevent statelessness at birth, including by granting nationality to stateless children born in the State party territory regardless of their parents' legal status,¹⁵ and to facilitate birth registration.¹⁶ It also recommended to issue identity documents to all Roma,¹⁷ to raise awareness among Roma about procedures to obtain identity documents,¹⁸ and to ensure non-discriminatory access to economic, social and cultural rights.¹⁹

Nationality status is not recorded on birth registration documents in the UK (neither of the parents nor the child) and there is no formal, standalone procedure for determining nationality or statelessness. Although some safeguards are in place in British nationality law to prevent statelessness, there are significant barriers in accessing nationality, including prohibitively high fees and limited access to legal aid. In 2022, the UK Parliament

⁸ More information at: <https://index.statelessness.eu/country/united-kingdom>.

⁹ British nationality application fees are currently set at £1,330 for adults and £1,012 for children.

¹⁰ See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

¹¹ UN Convention on the Reduction of Statelessness, 1961: Article 1. European Convention on Nationality, 1997: Articles 2 and 6(2)(b).

¹² Convention on the Rights of the Child, 1989: Articles 3 and 7.

¹³ UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7; UN Sustainable Development Goal 16.9.

¹⁴ Committee on Migrant Workers (CMW), Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration and Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return; Council of Europe: ECRI General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016).

¹⁵ CESCR, Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, 2 April 2020, para 32(c);

CESCR, Concluding observations on the third periodic report of Estonia, E/C.12/EST/CO/3, 27 March 2019, para 15(b).

¹⁶ See e.g. CESCR, Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, 2 April 2020, para 32(a); CESCR, Concluding observations on the initial report of Guinea, E/C.12/GIN/CO/1, 30 March 2020, para 32(a); CESCR, Concluding observations on the third periodic report of Senegal, E/C.12/SEN/CO/3, 13 November 2019.

¹⁷ CESCR, Concluding observations on the combined second to fourth periodic reports of the former Yugoslav Republic of Macedonia, E/C.12/MKD/CO/2-4, 15 July 2016, para 24.

¹⁸ CESCR, Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, 2 April 2020, para 15.

¹⁹ CESCR, Concluding observations on the second periodic report of Latvia, E/C.12/LVA/CO/, 30 March 2021, para 17; CESCR, Concluding observations on the third periodic report of Kuwait, E/C.12/KWT/CO/3, 3 November 2021, paras 33, 35(a).

passed the Nationality and Borders Act (NBA), which restricts existing safeguards aimed at preventing statelessness. It requires that the Government be ‘satisfied that the person is unable to acquire another nationality’ for a child born in the UK who would otherwise be stateless to acquire British citizenship. ENS is seriously concerned that this amendment will risk increasing statelessness in the UK, and will unnecessarily leave more children in limbo by hindering stateless children’s ability to register as British citizens. As a result, they will be exposed to the detrimental impacts of growing up without a nationality, including limited or lack of access to economic, social and cultural rights.

While all births in the UK must be registered by law even if parents are undocumented or do not have any residence status, public health services are required to report certain immigration matters to the immigration authorities and some undocumented migrants are subject to charging for healthcare. This can cause people to delay accessing services or deter them altogether,²⁰ and could discourage birth registration. Failure to register the birth of a child may result in a fine.

ENS research has identified a nexus between (risk of) statelessness and children affected by domestic abuse, trafficking, and other forms of exploitation, as well as Romani children, due to the inability to access proof of identity and/or nationality.²¹ Many Romani children in the UK do not have identity documents.²² There is also a lack of targeted and accessible information reaching the Romani community in the UK to explain relevant laws, policies, and procedures.

Proposed recommendations:

- i. Fully incorporate and comply with the 1954 Convention and the International Covenant on Economic, Social and Cultural Rights, including recognising ‘statelessness status’ as a protection status, ensuring that its definition of ‘stateless person’ is fully consistent with the 1954 Convention, and eliminating provisions that exclude stateless persons from being recognised as stateless.
- ii. Introduce adequate procedural safeguards and protection during the statelessness determination procedure, including ensuring access to legal aid and to economic and social rights.
- iii. Protect the right to acquire British citizenship of all children born in the UK who would otherwise be stateless, ensuring they acquire British citizenship as soon as possible after birth, and ensure the birth of all children is registered.
- iv. Ensure that stateless persons have access to adequate legal advice and (free) legal aid in British nationality applications in all UK jurisdictions.
- v. Protect everyone’s right to a nationality without discrimination, and ensure that law, policy and practice is in line with the UK’s international obligations, including the duty to avoid statelessness, to take steps to achieve the full realisation of economic, social and cultural rights, and adherence to adequate procedural safeguards.
- vi. Repeal clause 10 of the Nationality and Borders Act to implement a full safeguard to prevent statelessness at birth in line with the 1961 Convention on the Reduction of Statelessness, and prevent children born in the UK from growing up stateless.
- vii. Undertake information and awareness-raising campaigns to ensure that all stateless people, including members of Roma communities, are informed about their nationality at citizenship rights and access adequate advice.

²⁰ Joint Council for the Welfare of Immigrants, [Migrants deterred from healthcare during the COVID-19 pandemic](#) (2021).

²¹ European Network on Statelessness, [Invisible Kids: Childhood statelessness in the UK](#) (2021).

²² More information at: <https://index.statelessness.eu/country/united-kingdom>.