

# Consiglio Italiano per i Rifugiati, Institute on Statelessness and Inclusion, and European Network on Statelessness

## Joint Submission to the Human Rights Council at the 34<sup>th</sup> Session of the Universal Periodic Review

### Italy

#### Introduction

1. Consiglio Italiano per i Rifugiati (CIR), the Institute on Statelessness and Inclusion (ISI), and 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 Italy.
2. This submission focuses on various issues relating to the right to a nationality, the protection of stateless people, prevention and reduction of statelessness in Italy. It draws heavily on information and resources presented in ENS's Statelessness Index<sup>1</sup> country profile on Italy,<sup>2</sup> with relevant text being reproduced verbatim, and other sections being paraphrased or summarised from the Index material.
3. Consiglio Italiano per i Rifugiati<sup>3</sup> is an independent, humanitarian and non-profit organisation, founded in 1990 under the patronage of the United Nations High Commissioner for Refugees (UNHCR) to coordinate actions in defence of refugees and asylum seekers in Italy. Among CIR's members and founding organizations we find the most important humanitarian organisations and the main trade union confederations. CIR activities include direct legal assistance, social and psychological counselling to refugees, stateless people and asylum seekers. CIR has developed a specific know-how in supporting vulnerable groups such as victims of torture, SGBV, women and unaccompanied minors. CIR is a member of the European Council on Refugees and Exiles (ECRE), as well as of the Euro-Mediterranean Human Rights Network (EMHRN) and of the International Rehabilitation Council for Torture Victims (IRCT). CIR is also member of the European Network on Statelessness (ENS). CIR's headquarters is in Rome and it operates in other 8 Italian regions. It has been working in Northern Africa since 2009.
4. The Institute on Statelessness and Inclusion<sup>4</sup> is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global

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<sup>1</sup>See: <https://index.statelessness.eu>

<sup>2</sup>See: <https://index.statelessness.eu/country/italy>

<sup>3</sup>For more information about Consiglio Italiano per i Rifugiati (CIR), see: [www.cir-onlus.org](http://www.cir-onlus.org)

<sup>4</sup>For more information about the Institute on Statelessness and Inclusion, see: [www.institutesi.org](http://www.institutesi.org)

centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 38 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 33<sup>rd</sup> UPR Sessions.

5. The European Network on Statelessness (ENS)<sup>5</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 140 members in 40 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.

## Previous UPR of ITALY under the First and Second Cycle

6. Italy was previously reviewed during the 7<sup>th</sup> and 20<sup>th</sup> UPR sessions, in 2010 and 2014. During both cycles, it received and accepted one recommendation related to nationality and statelessness. In 2010, it accepted the recommendation by Chile to implement existing Law 91/1992 on Italian citizenship in a manner that preserves the rights of all children born in Italy. In 2014, it accepted the recommendation by Hungary to accede to the 1961 Convention on the Reduction of Statelessness and streamline the administrative process in order to reduce the number of stateless persons.

## Italy's International obligations

7. Italy is party to the United Nations 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), which it ratified in 1962,<sup>6</sup> and to the 1961 Convention on the Reduction of Statelessness, to which it acceded in 2015 following Hungary's recommendation.<sup>7</sup> It should be noted that when acceding to the 1961 Convention, Italy declared that *"at the time of the deposit of the instrument of accession, the [Italian] Government avails itself of the right provided for under article 8, paragraph 3, of the Convention"*,<sup>8</sup> in relation to the deprivation of citizenship of Italian nationals.
8. Italy has a good record of accession to core human rights treaties relevant to preventing statelessness and protecting stateless persons. These include the Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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<sup>5</sup>For more information about the European Network on Statelessness, see: [www.statelessness.eu](http://www.statelessness.eu)

<sup>6</sup>LEGGE 1 febbraio 1962, n. 306, Ratifica ed esecuzione della Convenzione relativa allo status degli apolidi, adottata a New York il 28 settembre 1954:

[http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1962-06-07&atto.codiceRedazionale=062U0306&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1962-06-07&atto.codiceRedazionale=062U0306&elenco30giorni=false)

<sup>7</sup>Accession to the 1961 Convention on the Reduction of Statelessness, approved in New York on August 30th, 1961 (2802): <http://www.gazzettaufficiale.it/eli/id/2015/10/12/15G00176/sg>

<sup>8</sup>[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-4&chapter=5&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en#EndDec)

and Convention on the Rights of Persons with Disabilities (CRPD).

9. Italy has many obligations under these treaties, including protecting the right to a nationality for all, preventing and reducing statelessness, prohibiting discrimination against minorities and stateless persons, and registering the birth of every child. For example, Article 7 of the CRC obligates states to register every child immediately after birth and to ensure that no child is left stateless. In this light, during Italy's most recent review by the Committee on the Rights of the Child, it was recommended in 2019 to address statelessness.<sup>9</sup> Similarly, Article 5(d)(iii) of the CERD prohibits racial and ethnic discrimination in relation to the right to nationality. The Committee on the Elimination of Racial Discrimination made a recommendation on statelessness among Roma, Sinti and Camminanti in 2017, as follows:

*“Ensure that the national strategy for the inclusion of Roma, Sinti and Camminanti communities for the period 2012-2020 leads to concrete and tangible improvement of the enjoyment of their rights by Roma, Sinti and Camminanti, including by eliminating statelessness, and ensuring that (a) Roma, Sinti and Camminanti communities are able to participate effectively in the development and implementation of the strategy; (b) the impact of the strategy is monitored and evaluated regularly, based on comprehensive data; (c) there are adequate human and financial resources to implement the strategy effectively”;*<sup>10</sup>

Consequently, these treaty bodies are relevant mechanisms in ensuring that Italy upholds its obligations to protect the right to a nationality and protect the rights of stateless persons under international law.

10. Further, since 1955, Italy has been party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, Italy is not party to the 1997 European Convention on Nationality (ECN) - though it signed the Convention in 1997 - nor to the 2006 Convention of the Council of Europe on the Avoidance of Statelessness in Relation to State Succession.
11. Under the Italian legal framework, the ratification of international treaties enactment gives automatic legal effect at national level, even without the adoption of implementing legislation. Therefore, all of the above international treaties are considered part of national law. Consequently, several important international legal safeguards against statelessness are subject to direct application in the country.

## **Definition of a Stateless Person in Italian Law**

12. Italian national law does not provide a definition of a stateless person, but since Italy has ratified the 1954 Convention and this has direct effect, the definition in Article 1(1) of the Convention is applied.<sup>11</sup>

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<sup>9</sup>Committee on the Rights of the Child, Concluding observations (2019) CRC/C/ITA/CO/5-6.

<sup>10</sup>Committee on the Elimination of Racial Discrimination, Concluding observations (2017) CERD/C/ITA/CO/19-20.

<sup>11</sup>LEGGE 1 febbraio 1962, n. 306, Ratifica ed esecuzione della Convenzione relativa allo status degli apolidi, adottata a New York il 28 settembre 1954:

13. Accordingly, a stateless person as someone 'who is not considered as a national by any State under operation of its law'.<sup>12</sup> As elaborated in UNHCR guidance, this means that a person who is not recognised as a citizen of the states with which he or she has relevant ties – either because the legal framework explicitly excludes the person, or because the competent authorities of the state implement (or fail to implement) the law so as to deny nationality – is stateless. Identifying statelessness is therefore a mixed question of both fact and law.<sup>13</sup>

## Stateless Population Data

14. As the Council of the European Union has elaborated, states should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.<sup>14</sup> The Italian national census form provides for capturing data on statelessness. However, this only records those who have been granted stateless status, residing legally in Italy (732 people - 377 men and 355 women - as of 1 January 2018). Further, there are other census categories that may overlap with stateless people, meaning that the existing data does not provide a full picture.<sup>15</sup> Statelessness has not been comprehensively mapped in Italy although some studies have attempted to document statelessness among the Roma population only. These studies provide estimates ranging between 3000-15000 Roma people who are either stateless or at risk of statelessness in Italy.<sup>16</sup>
15. Figures for stateless refugees and asylum seekers, and stateless people held in immigration detention, are not published by the Government, although an aggregate category of '*other - including stateless and nationality unknown etc.*' is reported by the Ministry of Interior.<sup>17</sup> For all of these reasons, data on the stateless population in Italy is very likely underreported as the authorities count only people who have been recognised as stateless in a dedicated determination procedure.

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[http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1962-06-07&atto.codiceRedazionale=062U0306&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1962-06-07&atto.codiceRedazionale=062U0306&elenco30giorni=false)

<sup>12</sup>Article 1, United Nations Conventions Relating to the Status of Stateless Persons.

<sup>13</sup>UN High Commissioner for Refugees (UNHCR), Handbook on Protection of Stateless Persons, 30 June 2014, Para 23

<sup>14</sup>Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

<sup>15</sup>STAT data on stateless people by sex and region of residence including trends in recent years:

<https://www.tuttitalia.it/statistiche/cittadini-stranieri/apolidi/>

<sup>16</sup>CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013:

[http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun\\_CIR\\_last-review\\_final.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf)

<sup>17</sup><http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo>

## Statelessness Determination and Status

16. To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation; as well as in more general terms, to protect the human rights of all stateless persons in Italy, it is important to be able to identify stateless people in the country. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.<sup>18</sup>
17. The Italian system provides two possibilities for determining statelessness: an administrative procedure and a judicial one.<sup>19</sup> However, access is limited by the fact that applications must be in writing in Italian and cannot be initiated ex officio.<sup>20</sup> Moreover, in the administrative procedure, the applicant must provide a birth certificate, documentation certifying residence in Italy and demonstrating statelessness or a declaration from their state of origin or former residence certifying they are not a national.<sup>21</sup> The Ministry of Interior may ask for additional documentation and will only determine statelessness based on the documentation provided, so the application may be refused without an interview if required documentation is not provided. Consequently, under the administrative procedure the burden of proof lies exclusively with the applicant,<sup>22</sup> despite there being clear UNHCR guidance that in such procedures, the burden of proof should be shared between the state and the applicant.<sup>23</sup> In the judicial procedure, specific documents to access the procedure are not required, but the applicant must be assisted by a lawyer, who must lodge the application on their behalf.<sup>24</sup>

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<sup>18</sup>UNHCR (2014), Handbook on Protection of Stateless Persons,

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

<sup>19</sup>DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17:

<http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg>; DECRETO-LEGGE 17 febbraio 2017, n. 13

Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13>. As converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017 ), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale:

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46>

<sup>20</sup>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17:

<http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg>

<sup>21</sup>Ibid..

<sup>22</sup>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17:

<http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg>

<sup>23</sup>UN High Commissioner for Refugees (UNHCR), Handbook on Protection of Stateless Persons, 30 June 2014.

<sup>24</sup>The judicial procedure has been ruled by law 13/17 as converted into law 46/17. DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale:

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13> as converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46> .

See also: Art. 702 bis of the cpc, Civil procedural law (<https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-iii/sezione-v/art702bis.html>) rules the specific procedure for statelessness litigations.

18. The standard of proof in the determination of statelessness is the same as in the asylum procedure.<sup>25</sup> There are procedural protections in the judicial procedure such as (conditional) free legal aid and a hearing; whereas in the administrative procedure there is no legal aid and no right to an interview.<sup>26</sup> Protection during the procedure is also limited as the practice of granting temporary residence to applicants is inconsistent.<sup>27</sup> Negative decisions can be appealed, and those granted stateless status have a right to a residence permit, travel document, work, social security, healthcare and education, as well as a reduced residency requirement for naturalisation.<sup>28</sup>

## Risk of Arbitrary Detention of Stateless Persons

19. Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>29</sup> Such arbitrary detention would be in violation of Article 9 of the ICCPR. Italy is bound by the EU Returns Directive,<sup>30</sup> which requires particular attention to be paid to the situation of vulnerable persons; and the revised EU Returns Handbook requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal prior to detaining or prolonging a person's detention.<sup>31</sup> There are gaps in Italian law with regard to safeguards against the arbitrary detention of stateless people. There is no requirement for a country of removal to be identified prior to detention and people at risk of statelessness, or whose statelessness has not been formally recognised in law, may be subject to detention and considered irregular migrants.<sup>32</sup> In practice, detention is used prior to the consideration or

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<sup>25</sup>Corte Cassazione, Sentenza 4262/2015: <http://www.apolidia.org/index.php/giurisprudenza/44-corte-di-cassazione/100-cassazione-civile-sentenza-n-4262-del-03-03-2015>

<sup>26</sup>Bianchini K., *Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe* (Brill 2018), pp. 171-172

<sup>27</sup>CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013: [http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun\\_CIR\\_last-review\\_final.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf); ASGI Project, *Out of Limbo: Promoting the right of undocumented and stateless Roma migrants to a legal status in Italy*: <http://www.asgi.it/progetti/out-of-limbo-english-version/>

<sup>28</sup>Bianchini K., *Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe* (Brill 2018), p. 241

<sup>29</sup>ENS (2017) *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf)

<sup>30</sup><https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

<sup>31</sup>European Commission (2017) ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927\\_recommendation\\_on\\_establishing\\_a\\_common\\_return\\_handbook\\_annex\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf)

<sup>32</sup>Decreto Legislativo 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero, Art. 14: <http://www.cir-onlus.org/2018/12/17/decreto-legislativo-25-luglio-1998-n-286-testo-unico-delle-disposizioni-concernenti-la-disciplina-dellimmigrazione-e-norme-sulla-condizione-dello-straniero/>; LEGGE 1 dicembre 2018, n. 132, Conversione in legge, con modificazioni, del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, ...etc. (18G00161) (GU Serie Generale n.281 del 03-12-2018):

<http://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg>

implementation of alternatives<sup>33</sup> and there is no formal mechanism of referral from detention to a procedure to determine statelessness. There are relatively strong procedural safeguards including time limits, information provided to detainees, remedies and periodic judicial reviews.<sup>34</sup> However, protections on release for those without status are minimal, with only very basic rights and no guarantee against re-detention.<sup>35</sup>

## The Right to a Nationality, Prevention and Reduction of Statelessness

20. Italian law provides that a child born in Italy to parents who are stateless or cannot confer their nationality, acquires citizenship at birth.<sup>36</sup> However, in practice, the implementation of the provision is often not automatic, and parents must provide relevant supporting documentation to have the child's Italian nationality recognised.<sup>37</sup> Foundlings acquire Italian nationality but may need to prove they do not possess another;<sup>38</sup> and there is no risk of statelessness during adoption procedures.<sup>39</sup> Children born to Italian nationals abroad are Italian by law, but registration is required in practice and the father is considered to be the person married to the mother if born in wedlock. If born out of wedlock, paternity must be declared.<sup>40</sup>
21. 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.<sup>41</sup> In Italy, birth registration is assured in law and practice, though late registration may require a court procedure.<sup>42</sup> Despite the good practice of children explicitly being allowed to be registered regardless of the legal status of their parents in Italy, there is concern that children born outside

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<sup>33</sup>Senato della Repubblica, Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, Rapporto Sui Centri di Identificazione ed Espulsione in Italia, Jan 2017: [https://www.senato.it/application/xmanager/projects/leg17/file/Cie%20rapporto%20aggiornato%20\(2%20gennaio%202017\).pdf](https://www.senato.it/application/xmanager/projects/leg17/file/Cie%20rapporto%20aggiornato%20(2%20gennaio%202017).pdf)

<sup>34</sup><https://index.statelessness.eu/country/italy>

<sup>35</sup>Decreto Legislativo 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero: <http://www.cir-onlus.org/2018/12/17/decreto-legislativo-25-luglio-1998-n-286-testo-unico-delle-disposizioni-concernenti-la-disciplina-dellimmigrazione-e-norme-sulla-condizione-dello-straniero/>

<sup>36</sup>LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Arts. 1(1)(b) & (2): [http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91\\_92-modificata-legge-132\\_18.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91_92-modificata-legge-132_18.pdf)

<sup>37</sup>CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, June 2015:

<https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy>

<sup>38</sup>LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(2):

[http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91\\_92-modificata-legge-132\\_18.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91_92-modificata-legge-132_18.pdf)

<sup>39</sup>LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 11:

[http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91\\_92-modificata-legge-132\\_18.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91_92-modificata-legge-132_18.pdf)

<sup>40</sup>Civil Code, Art. 231 & 250: <https://www.altalex.com/documents/news/2014/08/22/della-filiazione>

<sup>41</sup>See Article 7 of the UN Convention on the Rights of the Child, when read with Articles 2 and 3 of the Convention.

<sup>42</sup>DECRETO DEL PRESIDENTE DELLA REPUBBLICA 3 novembre 2000, n. 396, Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 127. (GU Serie Generale n.303 del 30-12-2000-Suppl. Ordinario n. 223):

<http://dait.interno.gov.it/servizi-demografici/circolari/circolare-n19-del-7-agosto-2009>

health institutions may remain unregistered because parents do not register their births.<sup>43</sup>

22. Reports have highlighted the disproportionate impact of risk of statelessness in Italy on Roma communities. Exact information is hard to come by, but it has been estimated that between 3000 and 15,000 people may be affected.<sup>44</sup> Many are from countries of former Yugoslavia and former USSR and their descendants, but have lived in Italy for many years (the largest populations of people at risk of statelessness have been recorded in Rome, Turin and Naples). Estimates include a number of people who were born in Italy but have been unable to acquire Italian or another nationality due to barriers or difficulties to birth registration with the authorities of their country of origin, inability of parents to provide relevant supporting documentation to have the child's Italian nationality recognised, and barriers to acquiring proof of nationality (or lack of nationality) from the consular authorities of parents' countries of origin. Some initiatives have been established to address the significant risk of statelessness among Roma populations in Italy, including a national strategy for the inclusion of Roma, Sinti and Camminanti communities for the period 2012-2020, and a working group involving civil society, but it is unclear what concrete action has been taken by the Government to address statelessness and risk of statelessness among Roma communities to date.<sup>45</sup>

## Deprivation of nationality under the new legislation on national security and immigration

23. On 27 November 2018, the Italian Parliament passed Law No 132 of 1 December 2018, thus converting into law Law-Decree No 113, that was adopted by the Italian Government on 4 October 2018.<sup>46</sup> The new Italian law grants the Italian government the power to strip of their Italian citizenship those individuals who had been found guilty of criminal offences tainted with terrorist purposes, and has been criticised by thirteen UN Special Rapporteurs and Independent Experts, as targeting minorities and those of migrant backgrounds in the country.<sup>47</sup>

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<sup>43</sup>Canetta, T. & Pruneddu, P., Neonati 'clandestini' invisibili per lo Stato, Linkiesta, 20 december 2013:

<http://www.linkiesta.it/immigrati-figli-anagrafe>

<sup>44</sup>[https://tavoloapolidia.org/app/uploads/2018/12/Advocacy-Paper-Tavolo-Apolidia\\_def.pdf](https://tavoloapolidia.org/app/uploads/2018/12/Advocacy-Paper-Tavolo-Apolidia_def.pdf); [http://www.cir-onlus.org/wp-content/uploads/2018/02/In-the-sun\\_apolidia\\_CIR\\_rapporto-finale\\_italiano.pdf](http://www.cir-onlus.org/wp-content/uploads/2018/02/In-the-sun_apolidia_CIR_rapporto-finale_italiano.pdf)

<sup>45</sup>ASGI, Out of limbo: Verso uno status legale per le persone rom prive di documenti, apolidi o a rischio di apolidia, maggio 2015: [https://www.asgi.it/wp-content/uploads/2014/04/Rapporto-OUT-OF-LIMBO\\_def.pdf](https://www.asgi.it/wp-content/uploads/2014/04/Rapporto-OUT-OF-LIMBO_def.pdf); Associazione 21 luglio ONLUS-Rapporto Annuale 2016, Aprile 2017: [http://www.21luglio.org/21luglio/wp-content/uploads/2018/04/Rapporto\\_Annuale-2017\\_web.pdf](http://www.21luglio.org/21luglio/wp-content/uploads/2018/04/Rapporto_Annuale-2017_web.pdf); Raccomandazioni del tavolo di lavoro sull'apolidia sulla protezione degli apolidi e sulla riduzione dell'apolidia in Italia, Ottobre 2017:

[https://tavoloapolidia.org/app/uploads/2018/12/Advocacy-Paper-Tavolo-Apolidia\\_def.pdf](https://tavoloapolidia.org/app/uploads/2018/12/Advocacy-Paper-Tavolo-Apolidia_def.pdf); Presidenza del Consiglio dei Ministri, Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine étnica, Strategia Nazionale d'inclusione dei Rom, dei Sinti e dei Caminanti, Attuazione Comunicazione Commissione Europea N.173/2011:

[https://www.comune.roma.it/resources/cms/documents/Strategia\\_italiana\\_rom.pdf](https://www.comune.roma.it/resources/cms/documents/Strategia_italiana_rom.pdf)

<sup>46</sup>See <https://www.gazzettaufficiale.it/eli/gu/2018/10/04/231/sg/pdf>

<sup>47</sup>See Office of the High Commissioner for Human Rights, *Legal changes and climate of hatred threaten migrants' rights in Italy, say UN experts*, 21 November 2018, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23908&LangID=E>



24. The new legislation amends the Italian law on citizenship<sup>48</sup> introducing a new Article 10-*bis*, which establishes that Italian citizenship will be stripped pursuant to a decree of the President of the Republic, acting on the proposal of the Ministry of the Interiors, to be adopted within three years from the day an individual is convicted for a criminal offence “committed for the purpose of terrorism or subversion of the constitutional order”.
25. It is not very clear whether issuing the denationalization proposal would be a discretionary power of the Ministry, or whether such a proposal will automatically follow each and any conviction for the terrorist-tainted offences listed in new Article 10-*bis*. It is, equally, unclear what remedies will be available to the individual stripped of their Italian citizenship, though it seems reasonable to assume that the normal procedure for challenging the decrees issued in matters of citizenship (*i.e.* an application to the Administrative Tribunals or before the Civil Court) will apply.
26. By contrast, it is quite clear that this measure targets those who are not Italian by birth. Deprivation of nationality is only for those who have acquired Italian citizenship by naturalisation, as the new provision only applies to those who acquired Italian citizenship pursuant to Articles 4(2) (acquisition of Italian citizenship for the foreigner who has been born on Italian territory and has legally been residing there up until they reach majority ), 5 (acquisition of Italian citizenship through marriage) and 9 (acquisition of Italian citizenship through continuing and legal residence on Italian territory and other instances of naturalization) of Law No 92/91.
27. The law therefore clearly discriminates between Italian citizens by birth and citizens by naturalisation. Further, the discretionary power of the Ministry and the lack of procedural guarantees to challenge the order of deprivation of citizenship seem to violate the standards required by Article 8 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights in its case law concerning deprivation of citizenship.<sup>49</sup>
28. Moreover, the new Italian law does not take into account statelessness. In other words, a naturalised Italian citizen is now liable to be deprived of their citizenship even it that results in statelessness. This is in breach of Italian obligations under the 1961 Convention considering that law 132/18 was not in force at the time of the ratification of the Convention.

## Recommendations

29. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Italy:
  - I. Improve the statelessness determination procedure by amending the law to incorporate the rights enshrined in the 1954 Convention and international human rights law; and to ensure that the procedure follows the procedural safeguards

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<sup>48</sup>Law No 91 of 5 February 1992

<sup>49</sup>See, for example, the European Court of Human Rights cases of *Ramadan v Malta* and *K2 v the United Kingdom*.

outlined in UNHCR's Handbook on Protection of Stateless Persons, including guaranteed access to the procedure regardless of status in the country, protection during the procedure, a shared burden of proof and ensuring rights and protection in line with the Convention are granted to all those recognised as stateless under the procedure.

- II. Issue administrative guidance for decision makers to protect every child's right to a nationality by ensuring that existing provisions in the Citizenship Law providing for automatic acquisition of Italian nationality at birth by children born on the territory to stateless or unknown parents, or parents who cannot pass on their nationality, are correctly and flexibly implemented in practice.
- III. Take further steps to protect stateless people from arbitrary detention by introducing a clear referral mechanism to the statelessness determination procedure from return procedures; embedding consideration of statelessness as a juridically relevant fact in all decisions to detain; introducing a requirement in law to identify a country of removal prior to detention; considering and implementing alternatives to detention before deciding to detain; and providing documentation and temporary residence status to protect people from re-detention.
- IV. Implement concrete measures to regularise the legal status of Romani people at risk of statelessness in Italy and guarantee the child's right to a nationality and legal identity, including through legal outreach and engagement initiatives and proactive information campaigns in consultation with community representatives.
- V. Amend Law 132/2018 providing for new measures to revoke citizenship, to eradicate discrimination between citizens by birth and naturalised citizens, prohibit the arbitrary deprivation of nationality and ensure the avoidance of statelessness.
- VI. Accede to the 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.