

**R2P, DESYATE KVITNYA, the Institute on Statelessness and Inclusion, the European Network on Statelessness and the European Roma Rights Centre**

**Joint Submission to the Human Rights Council at the 28th Session of the Universal Periodic Review**

**(Third Cycle, 6-17 November 2017)**

**Ukraine**

**Introduction**

- 1) R2P, DESYATE KVITNYA, the Institute on Statelessness and Inclusion (The Institute), the European Network on Statelessness (ENS) and the European Roma Rights Centre (ERRC) make this joint submission to the Universal Periodic Review in relation to statelessness, access to nationality and human rights in Ukraine.
- 2) R2P<sup>1</sup> is one of the leading legal experts on statelessness in Ukraine and has extensive experience in providing legal aid to marginalised groups including stateless persons, undocumented persons, refugees, asylum seekers, Internally Displaced Persons (IDPs) and the conflict-affected population. Statelessness is one of R2P's core programming themes and is ingrained into the organisation's mission. Legally chartered in 2013, R2P is the successor organisation to HIAS Kyiv, which has been working on statelessness issues in Ukraine since 2007.
- 3) DESYATE KVITNYA (THE TENTH OF APRIL)<sup>2</sup> is an independent, humanitarian, non-governmental and non-profit organisation based in Odessa, Ukraine. It aims to contribute to the development of civil society and strengthening the rule of law in Ukraine. The Organisation was founded in 2012 by like-minded human rights activists with professional experience of over 10 years and a particular expertise in refugee rights protection. The Organisation provides free legal aid and assistance to vulnerable groups including asylum seekers, refugees, IDPs, stateless persons and Roma people. The Organisation's activities also include monitoring of human rights protection in Ukraine, cooperation with other stakeholders, and capacity-building actions.
- 4) The Institute on Statelessness and Inclusion<sup>3</sup> is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global Centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 10 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 27<sup>th</sup> UPR Sessions.<sup>4</sup>
- 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 100 members in 39 European countries. ENS organises its work around three pillars

- law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.
- 6) The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation which monitors the human rights of Roma in Europe and provides legal defence in cases of human rights violations.<sup>6</sup>
- 7) This joint submission focuses on children's right to a nationality, identification of stateless persons, detention of stateless persons and those at risk of statelessness, and Roma statelessness in Ukraine. It draws on the combined experience of the submitting organisations both in Ukraine and internationally, including the collaborative research and advocacy of ENS, the Institute and R2P on the detention of stateless persons in Ukraine,<sup>7</sup> and ongoing collaboration between ERRC, the Institute, Tenth of April, and ENS on statelessness among the Roma in Ukraine.

## **The Universal Periodic Review of Ukraine Under the First and Second Cycle (2008, 2012)**

- 8) Ukraine was subject to the UPR under the first cycle in 2008 and under the second cycle in 2012. Ukraine received recommendations to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness – from Mexico in the 1<sup>st</sup> Cycle and from Portugal in the 2<sup>nd</sup> Cycle. Both recommendations were noted by Ukraine,<sup>8</sup> and it acceded to the Statelessness Conventions in March 2013. Ukraine also received and noted recommendations to ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families. Finally, Mexico recommended that Ukraine '*review its legislation to ensure the right of all boys and girls to have a nationality and ensure birth registration, regardless of their ethnic origin or their parents' status*'.

*For more information on Ukraine's performance related to relevant recommendations under the previous cycle, please, refer to the Matrix in Attachment 1.*

## **The International Human Rights Obligations of Ukraine**

- 9) Ukraine acceded to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention) in March 2013. It is also party to core human rights treaties in which provisions relating to nationality and statelessness are enshrined. These include the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1969 Convention on the Elimination of all Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the rights of the Child (CRC). Ukraine also ratified the European Convention on Nationality in 2006.
- 10) Ukraine has not yet ratified the Convention on the Rights of All Migrant Workers and Members of Their Families.
- 11) Ukraine has additional international and regional obligations to protect the liberty and security of all persons and to protect against arbitrary and unlawful detention. These obligations derive from the ICCPR (Article 9) and the European Convention on Human Rights (ECHR, Article 5), which protect the

right to liberty and security of the person and freedom from arbitrary detention. Importantly, Article 26 of the 1954 Convention additionally requires States to permit stateless persons “lawfully in” their territory to choose their place of residence and move freely within the State.<sup>9</sup>

## Statelessness in Ukraine

- 12) There is no reliable data on the exact size of Ukraine’s stateless population as the scope of the problem has never been thoroughly mapped. According to Ukraine’s 2001 census, 82,600 persons claimed to be stateless and another 40,400 persons did not specify their citizenship.<sup>10</sup> According to the State Migration Service of Ukraine, as of 2015, 5,159 stateless persons had permanent residence permits and 574 had temporary residence permits in Ukraine. The Ukrainian Government does not keep a record of irregular stateless persons residing in Ukraine and does not have an official statelessness determination procedure in place. In 2015, UNHCR estimates of the stateless population in Ukraine ranged from 35,228<sup>11</sup> to 45,877<sup>12</sup>. Either figure makes this one of the largest stateless populations in Europe.
- 13) Despite the lack of accurate statistical date, it is possible to categorise the stateless population in Ukraine into four main groups as follows:
  1. Those who became stateless or were at risk of statelessness due to state succession in the aftermath of the dissolution of the USSR in 1991. Notwithstanding certain legal safeguards in the Law of Ukraine “On Citizenship of Ukraine” for persons with USSR passports, there remain a significant number of undocumented persons among them. Furthermore, the excessive burden of proof to establish permanent residence when the nationality law entered into force and gaps in the new citizenship laws of successor states contribute to (the risk of) statelessness. Of significant concern, is the requirement for the parents to have formal documentation as a prerequisite to register a child’s birth. While not all persons who lack birth registration are stateless, the registration of births is a key step in acquiring Ukrainian nationality.
  2. Persons whose only documentation is from the Pridnestrovian Moldavian Republic are at risk of statelessness. This entity is not recognised as a state by the international community, as the territory is perceived as an integral part of Moldova. As a result, documents issued by the Pridnestrovian Moldavian Republic are void in Ukraine.
  3. As a result of the temporary occupation of Ukrainian territory, children born in occupied territories and internally displaced persons from them are at risk of statelessness. Birth registration for children born in the temporarily occupied territories of Ukraine is possible only through the lengthy and costly procedure of establishing the fact of a child’s birth in a Ukrainian court of law. In principle, IDPs are eligible for documentation by a certificate of registration as an IDP subject to presenting an identity document, a passport of Ukraine or another valid document. Thus, an undocumented IDP will not be able to receive protection as an IDP or establish their nationality, limiting their access to fundamental rights.
  4. Finally, Roma people often find themselves at risk of statelessness for various reasons, which are addressed in more detail later in this submission.

## The right of every child to acquire a Nationality

- 14) The 1961 Statelessness Convention requires States to grant nationality to persons born in their territory ‘who would otherwise be stateless’.<sup>13</sup> Furthermore, both the ECN and 1961 Convention oblige that foundlings automatically acquire nationality.<sup>14</sup> The most important human rights provision related to the child’s right to acquire a nationality is Article 7 of the CRC, which requires that:
- “1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”*
- 15) International law also sets out rules and timeframes for the acquisition of nationality by children who would otherwise be stateless. Both the ECN and the 1961 Convention set out various criteria according to which, nationality should be acquired by such children, either at birth or later in life.<sup>15</sup> The current practice of Ukraine is assessed against these criteria later in this submission. Importantly, guiding principles of the CRC including the right to non-discrimination and the best interests of the child, further dictate the manner in which these provisions are to be implemented.<sup>16</sup> According to UNHCR’s guidance, these general principles in the context of children’s right to a nationality entail that a child should acquire a nationality at birth or as soon as possible after birth and no child should be left stateless for an extended period of time.<sup>17</sup>
- 16) Despite these international obligations, Ukrainian Law only allows registration of children born to at least one documented parent. While the principle of *jus soli* applies in Ukraine – meaning that children born on the territory should be recognised as citizens, regardless of whether the parents are citizens or not - it requires legal residence and documentation as a pre-requisite to granting nationality. Furthermore, Art. 144 of the Family Code of Ukraine also imposes an obligation to register a birth of the child within a month of the birth. Late registrations are penalised with a fine under Art. 212-1 of the Code of Ukraine on Administrative Offenses.
- 17) In addition to increasing the risk of childhood statelessness, the penalisation of late birth registration also undermines the right to private life protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the European Court of Human Rights, laws which aim to penalise parents, also “*affect the children themselves, whose right to respect for private life [...] is substantially affected. Accordingly, a serious question arises as to the compatibility of that situation with the child’s best interests, respect for which must guide any decision in their regard.*”<sup>18</sup>
- 18) The primary legislation on the procedure of birth registration is the Law of Ukraine “On State Registration of Civil Status Acts” № 2398-VI of July 01, 2010, and the Ordinance of the Ministry of Justice of Ukraine “On adopting the Rules for the state registration of acts of civil status in Ukraine” № 52/5 of October 18, 2000. The latter act lists the prerequisites for birth registration in Ukraine, including the requirement of documentation of at least one parent of a child, without which the birth registration is impossible. This provision means that the children of undocumented parents cannot get documentation themselves – in contravention of CRC Article 7. The lack of documentation may later result in the child’s statelessness. The only way around this under the present legal framework, is for the undocumented parent to first apply to establish his/her citizenship and get documentation. However, it is often impossible to do so, and the obstacles to documentation will be addressed later in this submission.

- 19) Another prerequisite for birth registration is a medical certificate confirming the fact of a child's birth, or in the case of a birth outside of a medical institution, a document issued by specially established medical and consultative commission (Art. 13 of the Law of Ukraine "On State Registration of Civil Status Acts"). In the absence of any medical proof of the child's birth, a court decision is required to register the birth of the child. The costs, access to lawyers and supporting evidence required to make such court applications make this process inaccessible to many.
- 20) Cumulatively, these provisions make birth registration inaccessible to some of the most vulnerable persons in Ukraine, including the Roma and asylum seekers. They also undermine the right of every child to acquire Ukrainian nationality, in contradiction to Ukraine's international obligations under the 1961 Convention, the ECN and the CRC.
- 21) Identifying the challenges related to universal birth registration in Ukraine, and the impact this has on the child's right to a nationality as well as access to other human rights, the Committee on the Rights of the Child, in its most recent concluding observations on Ukraine in 2011, made the following recommendation:

*'The Committee urges the State party to adopt positive incentives so as to ensure that free and compulsory birth registration is effectively made available to all children, regardless of ethnicity and social background. In this endeavour, the Committee recommends that the State party abolish any punitive fines for the failure of parents to register their children. The Committee further calls upon the State party to intensify its awareness-raising campaigns to encourage and ensure the registration of all Roma children.'*<sup>19</sup>

## The Identification of Stateless Persons

- 22) Despite Ukraine having ratified the two UN Statelessness Conventions in 2013, the country's legal framework does not include a statelessness determination procedure. This undermines the enjoyment of fundamental rights and freedoms of stateless persons and persons at risk of statelessness in Ukraine.
- 23) The obligation of the state to identify stateless persons within its territory or subject to its jurisdiction is implicit in international human rights law. According to the UNHCR Statelessness Handbook: "*although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention.*"<sup>20</sup>
- 24) Without accurate identification of stateless persons, there is currently no mechanism in Ukraine to ensure adequate protection of the rights of stateless persons as set out in international law. The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", defines a "stateless person" as someone "who is not considered to be a citizen of any country in accordance with its laws." This definition is narrower than the international law definition found in Article 1(1) of the 1954 Convention, which defines a stateless person as someone "who is not considered as a national by any State under **the operation** of its law". This narrowing of the definition can result in a sizeable protection gap by excluding those who should be considered a national of a state under the letter of the law, but who are not in practice.

- 25) In December 2015, the State Migration Service of Ukraine developed a draft law that aims to introduce a statelessness determination procedure. Despite positive developments (such as the right of any person, regardless of the legality of stay, to access the procedure; the right to access statelessness determination procedure for children; the six-month timeframe for a final decision on the application, etc.), the draft needs further improvements on the following issues:
- developing the definition of a 'stateless person' in accordance with the international law definition of Article 1 of the 1954 Convention;
  - eliminating the requirement that persons recognised as stateless under the statelessness determination procedure will need to present a valid passport for receiving a residence permit;
  - reducing the burden of proof on the applicant;
  - providing temporary documentation and status until a final decision on application is made; and
  - clearly defining the form in which the application should be filed (written, oral, etc.).
- 26) In January 2017, this draft law was sent back from the Parliament to the Government for review due to these deficiencies. The timeframe for the adoption of the bill and its final text is unclear.
- 27) Statelessness will not be identified among persons in Ukraine until an effective statelessness determination procedure is in place. As a result, stateless persons in Ukraine are deprived of access to any documentation and, consequently, to fundamental rights and freedoms. For instance, a travel document should by law be granted to all stateless persons, in line with the 1954 Convention. However, undocumented persons who may be stateless but haven't been identified as such, will find it impossible to receive a travel document, as the possession of a permanent residence permit is a condition to apply for a travel document. Also, staying in Ukraine without proper documentation is penalised by law. Under the Code of Ukraine on Administrative Offenses, Art. 203, living in Ukraine without valid documents, with invalid or outdated documents, constitutes an administrative offense, for which a fine is imposed in the sum of between thirty and fifty tax-exempt minimum wages. Penalising the stay of stateless persons in Ukraine without proper documentation in the absence of any mechanism for their identification and subsequent documentation only deteriorates the situation of stateless people and prevents them from applying to state authorities for any services in Ukraine.
- 28) Without a Statelessness Determination Procedure, stateless persons have access neither to a facilitated naturalisation procedure, nor to any other fundamental human rights, such as rights to education, employment, social security, health care, and the protection from non-discrimination. The absence of a Statelessness Determination Procedure in Ukraine therefore conflicts with both the 1954 Convention and other generally applicable international human rights standards implemented by Ukraine.

## The Detention of Stateless Persons

- 29) In Ukraine, statelessness is not taken into consideration at any stage of immigration detention and removal procedures. Many stateless persons are incorrectly categorised as citizens of other countries. Photographs of undocumented persons subject to deportation are presented to foreign diplomatic missions or consulates for identification purposes. In the absence of an accredited diplomatic or consular office of the supposed country of origin, requests to the competent authorities of the country are sent via the Department of Consular Services of the Ministry of Foreign Affairs. If no response is received from the authorities of the supposed country of origin, the requests are sent repeatedly. In practice this means that if the identity of the person has not been confirmed soon after detention, the detainee will likely be in custody until the maximum period is exhausted.

- 30) In this context, it is important to note that some positive legislative changes such as the introduction of alternatives to detention and judicial review of immigration detention have been adopted since Ukraine's previous UPR examination. However, there is significant scope for improvement, and a number of problems remain.
- 31) After legislative amendments, since 18 June 2016, immigration detention is possible only after a court decision has been made. However, while detention consequently requires a court order "to detain at a Migrant Detention Centre (MDC)", research shows that since the regulations have come into force, numerous people were detained following court decisions to 'expel'. As detention should only be used as a last resort, when it is necessary having exhausted all less restrictive alternatives, the practice of routinely detaining those who the court has ordered to be expelled, is disproportionate, arbitrary and not compliant with Ukraine's international human rights obligations. This same law reform increased the maximum time limit for detention to 18 months. Previously, it was one year, and before May 2011 it was six months.
- 32) At present, there are two operating MDCs: in the Regions of Volyn (western region) designed to house 165 persons and Chernihiv (northern region) with a capacity of 208 detainees. A new MDC has been constructed in the Region of Mykolaiv (southern region), but is not yet operational.
- 33) When a person applies for asylum during their detention, they continue to be detained until the final asylum decision. A person granted asylum (refugee status or complementary protection), should be released following the appropriate notification of the migration service.
- 34) There are various concerns and inconsistencies with procedural guarantees and their implementation in relation to immigration detention. For example, the Constitution of Ukraine establishes that no one shall be arrested or held in custody except in accordance with a court decision and in accordance with the procedure established by law. However, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" establishes that illegally staying foreigners may be detained on the basis of a decision of the detaining authority. Moreover, Article 19.15-1 of the Law of Ukraine "On State Border Guard Service" stipulates SBGS officials' competence to decide to detain foreigners and stateless persons.<sup>21</sup> Thus this law has not been harmonised with the legislative amendments on detention applicable from 18 June 2016, which require a court order for such detention.<sup>22</sup>
- 35) Two positive provisions introduced concerning the immigration detention of foreigners and stateless persons are the mandatory participation of the person in a court hearing, and the exemption of plaintiffs from paying court fees for the appeal against their deportation in all instances. However, the right to be personally present at the court hearing is not always respected in practice. A less positive provision is that any appeal against the decision of the first instance court must be lodged within five days. Given the vulnerable position of persons subject to immigration detention, appeal within this timeframe is often impossible.
- 36) All detainees are entitled to primary legal aid in the form of advice given by the MDC administration as to rights and obligations of foreigners and stateless persons within the territory of Ukraine. From 1 July 2015, the right to secondary legal aid was granted to asylum seekers to challenge the rejection of their claims. Recently (since 18 June 2016) this right was also granted to foreigners and stateless persons detained for identification and removal, from the moment of arrest. Implementation of the right to free legal assistance in practice is not always smooth, for example, state legal aid centres did not have a budget for this work until July 2016.

- 37) In accordance with Law of Ukraine “On Amending Certain Legislative Acts of Ukraine as to Improvement of the Provisions on Judicial Protection of Foreigners and Stateless Persons, and Regulation of Certain Issues related to Counteraction to Illegal Migration” which came into force on 18 June 2016, two alternatives to immigration detention were introduced:
1. Posting of bail for the person by an enterprise, institution or organisation;
  2. Imposition of the obligation to post surety bail on the foreigner or the stateless person.
- 38) The available alternatives to detention are inadequate and not fit for purpose as a viable model to protect stateless persons from arbitrary detention. The financial sanctions imposed on guarantors and high cost of bail further limit the use of these alternatives. Available alternative measures should thus be expanded and their application simplified. At the very least, a person who may be subjected to immigration detention should not have a narrower range of alternatives than those available in criminal proceedings (there are four alternatives to imprisonment<sup>23</sup> ).
- 39) Ukrainian law provides no alternatives or more lenient sanctions or shorter detention terms for families with children. The law only sets out that families with children who are being removed, shall be detained together. The practice of detaining children and the failure to implement alternatives to detention for children is of significant concern. It is never in the child’s best interests to be detained.
- 40) Furthermore, in practice, the principle of separate accommodation of the persons detained on a gender basis prevails – even with respect to families. The MDC administration accommodates children with one parent only, and the other is entitled to visit them during specific times. This practice violates the right to private and family life. According to MDC monitoring data, forty-one children were detained for immigration reasons in 2015.
- 41) Released detainees are entitled to apply for a temporary residence permit. However, it is not easy to exercise this right, as one of the conditions for the residence permit is compulsory registration of the place of residence/stay, which is difficult for released detainees. Even those with a temporary residence permit are not allowed to work or study legally. Detainees released before the termination of the maximum period (for example, if their removal is impossible) cannot receive a residence permit at all. This undermines the purpose of the law – to regularise the status of those who cannot be removed – leaves individuals vulnerable to re-detention and is discriminatory.

## Roma Statelessness in Ukraine

- 42) The last and only All-Ukrainian Population Census of 2001 reported 47,600 persons who defined their affiliation to the Roma nationality.<sup>24</sup> According to different sources, the current size of the Roma population in Ukraine ranges between 120,000 and 400,000 persons.<sup>25</sup> The Roma constitute one of the main national minorities with the highest proportion of stateless persons. According to the Report on the Implementation of State Policy on Roma 2015, by the Ukrainian Ombudsman’s Office, the International Renaissance Foundations, and the ERRC, 83% of Roma have a passport or another identity document, while the remaining 17% are undocumented.<sup>26</sup>
- 43) While most Roma have the right to the Ukrainian nationality under the Law, their risk of statelessness relates to their lack of documentation and the documentation requirements for birth registration. The lack of documentation among Roma is a widespread and long lasting, sometimes inter-generational issue that needs a particular attention by local and national authorities.

- 44) The risk of statelessness of Roma is caused by the factors affecting other groups, which have been outlined in the above sections. Yet, there are certain legal provisions that particularly affect Roma and create specific barriers to acquiring nationality.
- 45) Additional risks of statelessness among Roma in Ukraine and obstacles to solving their statelessness are linked to historical reasons of segregation and social exclusion by the majority community. In Ukraine, many Roma live in compact settlements, also known as ‘tabor’, which are excluded from the rest of the population. Birth at home also results in the lack of birth certificates because of the abovementioned requirement to present medical documents irrespectively of the child’s birth in or out of the hospital. The issue particularly impacts Roma living in remote rural areas. They are more likely to remain stateless as they do not have access to legal assistance to solve this problem. This also causes additional financial burdens for Roma, as travel costs are likely to be an obstacle to acquiring documentation. The situation of the Roma lacking identity documents is further aggravated by state sanctions against those who lack documentation. Furthermore, expenses, including paying a fine (for instance, for illegal stay in Ukraine, or late application for a birth certificate after the expiry of a month since the birth date); a court fee (if a person can establish his/her affiliation to the Ukrainian nationality only through a court procedure); or a fee for certain administrative services (for example, issuance of a registration certificate as a citizen of Ukraine by the State Migration Service of Ukraine) make documentation inaccessible to many Roma.
- 46) As a result and a consequence of marginalisation, social exclusion and poverty, the level of literacy and formal education remains very low among Roma in comparison to the rest of the Ukrainian population. This leads to barriers to completing applications and providing the required documentation, making Roma more likely to have their applications rejected.
- 47) Furthermore, discrimination is both a cause and a consequence of statelessness among Roma in Ukraine. Roma, along with other groups, are systematically discriminated against in Ukraine, at different levels, and on various grounds, as reported by the Office of the Ukrainian Ombudsman, as well as by UN agencies.<sup>27</sup> In October 2016, concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the twenty-second and twenty-third periodic reports of Ukraine were published, which welcomed the positive steps undertaken by Ukraine in addressing discrimination, but underlined a range of further concerns and recommendations thereto. The Committee looked specifically at the situation of Roma in Ukraine, raising concern as to the persistence of discrimination, stereotypes, and prejudices against Roma, and on the particularly insecure situation of Roma IDPs. One of the concluding recommendations of the Committee addressed the issue of statelessness among Roma in Ukraine:

*‘Recalling its general recommendations No. 27 (2000) on discrimination against Roma and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party: [...]’*

*(e) Strengthen its efforts to provide all Roma with identity documents free of charge’<sup>28</sup>.*

- 48) According to the representative of the Ukrainian Office of Ombudsman, the lowest level of tolerance amongst Ukrainians is towards Roma; the tolerance level is unacceptably low even among the most educated members of society such as judges, prosecutors, and teachers. As a State Party to all core human rights treaties which prohibit discrimination, Ukraine bears an international obligation not only to ensure the equal treatment of Roma and other groups but also to adequately identify and address the particular needs of the Roma. As a result, the discriminatory implementation practice directed at Roma in the documentation process creates a serious impediment to overcoming the issues of statelessness and its risk among the Roma population of Ukraine.

- 49) Therefore, in fulfilment of its international legal undertakings under the 1954 Convention, 1961 Convention, the CRC, the ECN and human rights framework, including the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, Ukraine should ensure the birth registration of every child born in the territory of Ukraine, including Roma children, and to enhance the free and direct access to documentation for all Roma in Ukraine.

## Recommendations

- 50) Drawing on the information presented in this submission, and the collective expertise of the co-submitting organisations, we propose the following recommendations to be made to Ukraine:
- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons as set out by International (human rights) treaties.
  - II. Ensure the right to acquire a nationality for all otherwise stateless children in Ukraine in accordance with Article 7 of the Convention on the Rights of the Child.
  - III. Ensure that all children have equal and free access to birth registration, regardless of their parent's (legal) status or documentation. Fully implement the recommendation of the UN Committee on the Rights of the Child in this regard.
  - IV. Ensure that the draft law, which aims to introduce a statelessness determination procedure in Ukraine, is enacted as a matter of priority, after being improved to bring it in line with international law standards and UNHCR Guidance. In particular, the law should ensure that the statelessness determination procedure is fair, effective and accessible to all persons in Ukraine regardless of their legal status, including those who are subject to removal and detention proceedings; reduce the burden of proof of the applicant; and provide applicants with temporary documentation and status until a final decision is made.
  - V. Ensure that the definition of 'stateless person' under Ukrainian law is fully consistent with the definition provided in the 1954 Convention and that no stateless persons are excluded from this definition.
  - VI. Ensure that stateless persons are not subject to arbitrary detention. The 2016 law reform, which requires a court order to detain before a person can be subject to detention, must be fully implemented. The practice of detaining persons pursuant to a court order to remove must end.
  - VII. Ensure that detention is only implemented as a last resort, when necessary and proportionate, after all alternatives (starting with the least restrictive) have been exhausted. The list of alternative measures should be expanded and their application simplified. In order to determine if detention is necessary and proportionate, statelessness must be identified at the point of the decision to detain and reviewed on a continued basis.
  - VIII. Ensure that the barriers to obtaining temporary residence permits for former detainees who cannot be removed – including the requirement of compulsory registration of the place of residence/stay, and the requirement that the applicant was detained for the maximum detention period – are abolished. Furthermore, grant temporary residence permits for periods

longer than one year, and ensure that permit holders have stay rights including the right to study and to work.

- IX. Take all necessary steps to address historical and structural discrimination against the Roma community, which heightens their lack of documentation and risk of statelessness. Fully implement the recommendations of the UN Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Office of the Ukrainian Ombudsman, to break the cycle of discrimination and statelessness faced by Roma, and ensure their equal access to all human rights.
- X. Take adequate measures to quantify the scale of statelessness in Ukraine and assess the risk of statelessness among particularly vulnerable populations.

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<sup>1</sup> For more information about R2P, please see the website <http://r2p.org.ua/en/>.

<sup>2</sup> For more information about DESYATE KVITNYA, please see the website <http://desyatekvitnya.com/>.

<sup>3</sup> For more information about the Institute on Statelessness and Inclusion, please see the website <http://www.institutesi.org/>.

<sup>4</sup> For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>

<sup>5</sup> For more information about ENS, please see the website <http://www.statelessness.eu/>.

<sup>6</sup> For more information about the ERRC, please see the website [www.errc.org](http://www.errc.org).

<sup>7</sup> See European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention in Ukraine*, 2016, available at: [http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_Detention\\_Reports\\_Ukraine-EN.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Ukraine-EN.pdf)

<sup>8</sup> See comments to recommendations XX and XX in the matrix of previous recommendations made to Ukraine in the Matrix of recommendations made in the 2nd cycle.

<sup>9</sup> In line with UNHCR observations the drafting history of the 1954 Convention affirms that persons who have applied to remain in a country based on their statelessness are 'lawfully in' that country. UNHCR, Handbook on Protection of Stateless Persons (30 June 2014, 'UNHCR Statelessness Handbook'), para 135. Available at <http://www.refworld.org/docid/53b676aa4.html>.

<sup>10</sup> First All-National Population Census: historical, methodological, social, economic, ethnic aspects. - The Institute for Demography and Social Studies of the NAS of Ukraine, the State Statistic Committee of Ukraine. – 2004. - P. 109 - [http://2001.ukrcensus.gov.ua/d/mono\\_eng.pdf](http://2001.ukrcensus.gov.ua/d/mono_eng.pdf).

<sup>11</sup> UNHCR Population Statistics. - [http://popstats.unhcr.org/en/persons\\_of\\_concern](http://popstats.unhcr.org/en/persons_of_concern).

<sup>12</sup> UNHCR Populations. - <http://globalfocus-interim.unhcr.org/population>.

<sup>13</sup> 1961 Convention, Article 1.

<sup>14</sup> 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2.

<sup>15</sup> 1997 European Convention on Nationality, Article 2 (6) (b); 1961 Convention on the Reduction of Statelessness, Article 1 (2) (a) and (b).

<sup>16</sup> 1989 Convention on the Rights of the Child, Articles 2 and 3

<sup>17</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/21/04.

<sup>18</sup> European Court of Human Rights, Mennesson v. France, Application No. 65192/11, 26 June 2014, para 99.

<sup>19</sup> CRC Concluding Observations on the consolidated third and fourth periodic report of Ukraine (21 April 2011), CRC/C/UKR/CO/3-4, para 36.

<sup>20</sup> UNHCR Statelessness Handbook, para 144.

<sup>21</sup> The Law of Ukraine N 661-IV on State Border Guard Service dated 3.04.2003 <http://zakon2.rada.gov.ua/laws/show/661-15/print1443083747350167>

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<sup>22</sup>Law of Ukraine “On Amending Certain Legislative Acts of Ukraine as to Improvement of the Provisions on Judicial Protection of Foreigners and Stateless Persons, and Regulation of Certain Issues related to Counteraction to Illegal Migration” available at [www.rada.gov.ua](http://www.rada.gov.ua)

<sup>23</sup> The Criminal Procedural Code of Ukraine dated April 13, 2012, available at [www.rada.gov.ua](http://www.rada.gov.ua)

<sup>24</sup> The statistics is available at - <http://2001.ukrcensus.gov.ua/>.

<sup>25</sup> Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis. - OSCE ODIHR, 2014. – Available at: <https://www.osce.org/odihr/124494?download=true>. “ECRI Report on Ukraine (fourth monitoring cycle)” (ECRI Report on Ukraine), adopted on 8 December 2011. - Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>; Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis. - OSCE ODIHR, 2014. – p. 11. – Available at: <https://www.osce.org/odihr/124494?download=true>. / ‘However, unofficial sources estimate the number of Roma to be up to 400,000 persons in country.’ - (9) Roma Children in Ukraine: Photo Essay. – 2006. - Available at: [https://www.unicef.org/ukraine/media\\_11430.html](https://www.unicef.org/ukraine/media_11430.html).

<sup>26</sup> The Conditions of the Implementation on the Roma State Policy. – 2015. – 80 p. - p. 10. - Available at: [http://www.ombudsman.gov.ua/files/alena/ZVIT\\_ROMA.pdf](http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf). (In Ukrainian.)

<sup>27</sup> For more details, see: The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine. – 2015. – 552 p. – Available at: [www.ombudsman.gov.ua/files/Dopovidi/Dopovid\\_2015\\_10b.pdf](http://www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2015_10b.pdf). (In Ukrainian.); The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine. – 2016. – 537 p. – Available at: [www.ombudsman.gov.ua/files/Dopovidi/Dopovid\\_2016\\_final.pdf](http://www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2016_final.pdf). – p. 156. (In Ukrainian.); The Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine. - CERD/C/UKR/CO/22-23. - 4 October 2016. - Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en); Ukraine combined twenty-second to twenty-third periodic report CERD/C/UKR/22-23. – 2016. - Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20318&LangID=E#sthash.By19x2Q2.dpuf>.

<sup>28</sup> The Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine. - CERD/C/UKR/CO/22-23. - 4 October 2016. – Paras. 19-22. - Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en).